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Revenue Committee
March 04, 2011

[LB40 LB400 LB436 LB570]

The Committee on Revenue met at 1:30 p.m. on Friday, March 4, 2011, in Room 1524 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB436, LB40, LB570, and LB400. Senators present: Abbie Cornett, Chairperson; Dennis Utter, Vice Chairperson; Greg Adams; Deb Fischer; Galen Hadley; LeRoy Loudon; Dave Pankonin; and Pete Pirsch. Senators absent: None.

SENATOR CORNETT: Good afternoon and welcome to the Revenue Committee. I am Senator Abbie Cornett from Bellevue. To my left is Vice Chair Dennis Utter from Hastings. To his left is Senator Deb Fischer, who will be joining us from Valentine, as will Senator Greg Adams from York. On my far right is Senator Pankonin from Louisville. To his left will be Senator Pirsch from Omaha; LeRoy Loudon from Ellsworth; Senator Galen Hadley from Kearney. Our research analysts today are Steve Moore to my right, and Bill Lock will be joining us after the first hearing, to my left. Matt Rathje, to my far left, is our committee clerk. The pages today are Marilyn Buresh and Amara Meyer. Before we begin our hearings today, I would please ask everyone to turn your cell phone to either the off or vibrate position. Sign-in sheets for testifiers are on the tables by both doors and need to be completed prior to coming up to testify. If you are testifying on more than one bill, a sheet needs to be completed for each bill. When you fill out the forms, please print your name and have it completed and give it to the committee clerk when you come up. There are also clipboards at the back of the room where you can either indicate your support or opposition to a bill. That will be included in the official record. We will follow the agenda posted on the door today. The introducer or representative will go first, followed by proponents, opponents, and neutral. Only the introducer will be allowed rebuttal. As you begin your testimony, state your name and spell it for the record. If you have handouts, please bring ten copies and give them to the committee clerk. If you do not have copies, we will make them for you. With that, we will begin today's hearings: LB436. Senator Gloor, you are recognized to open.

SENATOR GLOOR: (Exhibits 1-15) My thanks to the Chair. I'm pleased to be here. Hello to members of the Revenue Committee. I'm excited to see a roomful. I'm sure these aren't all for this bill. But if it is, I think I have a reputation for introducing medical bills that are so intricate and technical that most people fall asleep before the end of the hearing. And I don't think that will be the case today. I'm Senator Mike Gloor, G-l-o-o-r, District 35. I'm here introducing LB436 which would increase cigarette and tobacco products tax in this state. We have, you'll be pleased to know, not gone through the process of organizing a list of yours or my constituents to come up here and share stories about the effects of smoking illness and disease. Although there may be some of that, we certainly didn't organize it. We do have a list of people who have submitted letters of support. I'll hand that out at the end of my comments for your perusal to take a look at. We're trying to stick with providing you with information, research data, hard numbers, things that you can get your mind around as it relates to this bill. Clearly,

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smoking and smoking-related illness has an emotional attachment. We're trying to do this as best we can with numbers. There have been discussions with me about the fact that there's a little turmoil around the bill itself, but we need to understand that smoking-related disease and illness is the number one public health problem in this state and in this country. And it seems to me, especially if we haven't addressed the issue of tobacco tax for almost a decade, that it's appropriate that we take a little time to talk about what is a major public health issue for this state. You have a handout I believe--hopefully it's been passed out by the pages--in front of you. Let me start running through some of the numbers. The cigarette tax increase proposed is \$1.35 a pack. That will be this page. It shows a \$1.35 per pack increase to \$1.99. Current tax is 64 cents. The estimated revenue as a result of this increase would be \$103 million. Now there are tobacco products. And tobacco products you would recognize by statute as cigars, pipe tobacco, roll your own, chew. Those products would have a tax increase that would be proportional to the type of increase we're talking on cigarettes. It would take it from a 20 percent increase to a 65 percent increase. That gives an additional estimated revenue of \$4 million. I have built in earmarks. The preliminary budget that we've been dealing with, LB436 is designed with these earmarks to restore some of those funds: \$486,470 to the Tobacco Control Cash Fund. That's the fund we use to deal with issues around smoking cessation, and it seemed inappropriate to me that we would be proposing to tax cigarettes and tobacco products to get people to stop and at the same time take dollars out of the state budget that are used to help people quit. And so we've reestablished that by way of an earmark. It also reestablishes \$30.8 million in Medicaid provider rate cuts that were proposed. Those would be for aging services, behavioral health services, Medicaid services. Some of the same philosophy. We have smokers who go to these same people for a variety of illnesses and diseases, and to reduce their payment which provides a disincentive for them to see these individuals also seemed disingenuous. So we would restore those dollar amounts. That leaves \$7.15 million available to go to the General Fund. You'll see in the fiscal note those dollars are spelled out. There's \$103 million-plus, I think, that they've built into the overall increase, with another \$4 million as I said. That's spelled out in the fiscal note. Important point: The fiscal note takes into consideration a lot of which you'll hear, I think, from opponents, and that is we'll lose money because people who give up smoking, which is the intent of this bill, will reduce the overall packs of cigarettes we sell. That's been taken into consideration with the fiscal note. You'll also hear a lot about people running across the borders to buy cigarettes. That's also taken into consideration in the fiscal note. And a very important point is, the last time we went through this in 2002, there was a look-back at the fiscal note which also tried to estimate the loss in total packs sold versus the increase in price, as well as border bleed. And that fiscal note which projected a significant increase was very accurate. So there's no reason to think this fiscal note, which tries to take into consideration those components, also won't be accurate. I made mention of it--let me do so again: We're trying to get people to stop smoking. To me this is a public health bill, although I recognize if there's going to be support for this, especially on the floor, it's going to have to do with the revenue it

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generates. There is pretty significant, exacting recordkeeping. Across the nation when the price of cigarettes goes up, the price of tobacco products goes up, especially when the tax increase is part of it. We were able to use those numbers and those statistics to come up with estimates of the number of Nebraskans who will quit as a result of this level of price increase: 11,000 Nebraskans will quit. In addition to that, the most price sensitive component of our population in Nebraska, of Nebraskans, are kids, and we'll see a 20 percent reduction in children who either won't take up smoking or will stop smoking because that price goes up and makes it a little more out of reach for them. That's 20,000 youth who won't take up or will stop smoking as a result of this price increase. This is about dollars as far as I'm concerned. With a lifetime in healthcare, I know the impact this has on the people that are in our hospitals and nursing homes and visit our physicians' offices. The direct savings as a result of diagnoses related to smoking-related illness and disease is \$459 million. We're in the middle of a budget crunch, and wouldn't it be nice if we had done this ten years ago and seen that reduction to our Medicaid expenditures? I'm also here to tell you that I know how this recordkeeping is done and I know that these numbers of \$459 million are a floor, not a ceiling. Because there's so many times when people, as a result of weakened lungs, among other things, end up with what for you and I might be a simple cold becoming a pneumonia, and they end up being hospitalized--at greater expense. That doesn't figure into this \$459 million. There's no way to keep track of those records. But again I'd tell you--and others probably will--this happens thousands of times a day in this state. I've been around long enough to know this body likes comparisons, and so one of the documents that you've got in front of you compares us to other states. And if you wonder why there are 51 states? I know there are 50 states but we counted Nebraska twice for purposes of this little graph. You'll see Nebraska ranks thirty-eighth at our current 64 cents. We're in the bottom third of states in terms of the level of our cigarette tax. The increase, as significant as it is, still puts us at the bottom end of the top third of states that are out there--and we will start slipping immediately. Other states are right now considering an increase to their cigarette tax. Those states are marked with an asterisk. So if you see an asterisk, and there are a sizeable number of states (inaudible), not surprisingly. You'll notice that there are others who will likely also increase at the same time we would increase should this bill pass. I think this is pretty dramatic. And I'd say again, even if we institute this, we'll start slipping in terms of position immediately. Let me make mention of healthcare inflationary rates from 2000 and 2010 which roughly mirrors the period of time we're talking about since our last increase. Healthcare expenditure rates nationally, for everything, went up about 48 percent. That's a big number when you take a look at the cost of healthcare. And we are trying to recover dollars. I mean smoking tax is...any sin tax is an assessment of sort where we try and recover some of the dollars back that we as a state and society spend taking care of the illness, the disease, the injury that may come along with things like smoking. So it's important that we keep that percentage in mind. Border bleed--there's a graph in there that shows the last time we did this increase. It's this one. On the left side you'll see Nebraska. We measure--because it's a taxation issue, very closely the

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number of packs sold. From '02 to '03, it shows a decrease in total number of packs sold in Nebraska. That's to be expected--and hoped for. We hope we sell less packs of cigarettes. Mind you, we still generated revenue. But it also shows that same period of time for Iowa. No appreciable change in total packs sold in the state of Iowa. If there's a border bleed, it doesn't show up through the statistical measurements, and I think we'll have somebody up here who will show the same with some other states. For some people, it doesn't intuitively make sense--surely, there will be a border bleed. As part of getting ready for this, last summer, I started paying attention when I went to convenience stores. And I was amazed at the number of people who were walking out of convenience stores with gallons of milk and bread, and we know...thank goodness for convenience stores. But the price is more expensive than if you went down the street to your local supermarket. But we get busy and we do things that are convenient for us. And the reason border bleed isn't as dramatic as people think, is because if people don't take the time to drive ten more minutes to go someplace where they can buy staples for their families, hopping in the car and driving 30 minutes to an hour to buy cigarettes isn't something that also happens with great regularity. It's human nature. We know that's the case. There was a survey done by the American Cancer Society late last year. Surveyed people about the possibilities of support for a cigarette tax increase. That's this colored copy. What's I'll point out to you is on the far left, a surprising number, although not surprising when this same survey has been repeated over the years in other states and other parts of the country, smokers who are surveyed were in favor of the smoking tax at almost a 50/50 rate--48/49 percent rate. Why would that be, do you ask? And the answer probably comes from two interviews that I did in the fall...or excuse me, in January when I introduced this. Two of the people who were interviewing me from the media, after the interview said: I have to tell you, I'm a smoker and I hope this goes through; I need this bump in price for me to give up. This is an addiction. Nicotine is an addiction; people recognize it's an addiction. Some people want to smoke. A lot of people smoke but would like to give it up. A 50/50 split on smokers who are in support of a tax increase is dramatic. Seventy-three percent of all Nebraskans, smokers and nonsmokers, were in support of this. So it's popular in the public. I have a couple of amendments...or I have an amendment, I should say. Let me ask the pages to distribute this. After we had put together the green copy, the Appropriations Committee reduced the provider cut that I talked about earlier from 5 percent to 4 percent, and so this provides for an adjustment from the green copy. You also have Handout 5. Handout 5 runs the numbers differently than the ones in front of the green copy. Although the total revenues don't change from the fiscal note, where it says new revenue it shows 71,000 was what was on the...is the new number that we're working off from the General Fund. There is a 42 percent increase on total tobacco products that's plugged in there also. So there's a little change in the numbers, that being more of a bump to the General Fund. With AM630, the total dollars then go from the \$71.5 million to, with all revenues and all earmarks taken out, \$75.9 million. So there's a nice increase in monies that can go to the General Fund if that interests you. And that's yet to be determined, obviously. The other thing it does is it increases the previous earmark that's been in the

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cigarette tax statute, and that is dollars going to cancer research at Nebraska's two research institutions, both the University of Nebraska and Creighton. It sets aside an additional \$700,000 that can be used for that. Before I take questions let me hand out the letters of support, again in the interest of time, so that you are not faced with an over litany of people who traipse up here to plead their case for this. But I'll read their names so they are on the record. AARP Nebraska; Alegent Health; American Lung Association; Campaign for Tobacco-Free Kids; Centers for Disease Control and Prevention of the Department of Health and Human Services; Children and Family Coalition of Nebraska; Children's Hospital and Medical Center; Craig HomeCare; Friends of Public Health in Nebraska; Madonna Rehabilitation Hospital; Nebraska Association of Behavioral Health Organizations; Nebraska Chapter, National Association of Social Workers; Nebraska Child Healthcare Alliance; Nebraska Dental Association; Nebraska Hospital Association; Nebraska Medical Association; The Nebraska Society for Respiratory Care; the Public Health Association of Nebraska; Nebraska Pharmacists Association; Nebraska Health Care Association. Thank you and I'd be glad, very glad, to answer any questions you may have. [LB436]

SENATOR CORNETT: Questions from the committee? Senator Pankonin. [LB436]

SENATOR PANKONIN: Thank you, Chairman Cornett. Senator Gloor, after serving with you for two years on Health and Human Services before I moved to this committee, your usual thoughtful thoughts and introduction. Appreciate that. As I told you on the floor earlier this morning, my first question was going to be the numbers you came up with. I'm in very general agreement with the policy, both from the health side of it, after especially being on HHS for four years and my own family's experience with my parents. I think it would take some of the pressure, fiscally, off our state's budget and help in some of the initiatives that are important to people, and this table--the education part of it, roads, and so many other issues. But to come with this large of an increase, why...I mean how did you come up with this number? [LB436]

SENATOR GLOOR: Thank you for the question and thank you for helping stir my memory this morning, because I did a reflection back to when I was first considering doing this last summer. And once I made that decision, then the question was, what level of increase? The \$1.99 is strictly Walmart pricing--you know, instead of \$2.00 it's \$1.99. But the overall level of increase is to go back and take a look at what happened in 2002 with the increase back then. And the increase that our Legislature and our Governor was interested back then--Governor Johanns--took us into that upper third tier of states. And so we've moved basically into that same general direction as was the case previously when there was an increase back in 2002. And I also knew, as I mentioned, that that position, based upon how many states were already looking at increases, will begin to erode us pretty quickly. I also looked at it in relationship to the fact that we'll need support from people who will vote for this only because of the revenue issue--not that they're not interested in public health, but they're also very

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strongly interested in the revenue increase. And that level of increase, I think, can be pretty significant to the state addressing some of its concerns. We also need to increase it at least 10-15 percent to get people to stop smoking. And increase any less than that, and Big Tobacco will just absorb the increase in their overall pricing of product, and so there's the issue of let's get this price up high enough so that we won't have to revisit it again, probably for another nine to ten years--again, because we'll slip and slip. I have no doubt the next time that we're comfortable taking a look at this and have the resolve to look at this, it will be eight to nine, ten years from now, and we will have by that time slid back down to the lower third. So that's the philosophy behind it. [LB436]

SENATOR PANKONIN: Thank you. [LB436]

SENATOR GLOOR: It's not exacting but it made sense in my scientific mind. Thank you. [LB436]

SENATOR CORNETT: Senator Hadley. [LB436]

SENATOR HADLEY: Senator Cornett. And Senator Gloor, thank you for bringing this. I think it's great to have this discussion. Is it true that the smoking habits have a tendency to have the lower income strata... [LB436]

SENATOR GLOOR: Yes. [LB436]

SENATOR HADLEY: ...be heavier smokers? [LB436]

SENATOR GLOOR: And I thought a lot about that. Here's my own personal reflection on that. We're making some tough decisions this year. First of all, it's always important to note that this is one of the few taxes you don't have to pay. And, in fact, that's the point. If you don't want to pay the tax, don't smoke, or smoke less. And that's what we would love to have happen. I mean it improves public health and reduces the expense to the state of Nebraska for health-related illness. But above and beyond that, here's my own ethical dilemma on this as a, as they say, a regressive tax. Take a look at what we're doing right now in our budget discussions. We're cutting housing for this segment of the population. Day-care services, health services in terms of the availability to healthcare providers, education for their children. We're cutting all of these things that would affect, dramatically, that segment of the population. And our fallback comment is: But we're keeping smokes affordable for you. And that doesn't fly with me. I don't think I'm going to get a humanitarian award when I show up at the Pearly Gates with that in my back pocket. And so my comfort level with this is this is an important public health issue. I believe an important public health issue especially to that segment of the population that smokes, although we know secondhand smoke is a problem too. People who are completely innocent suffer from smoking-related illness. Hypertension just for being in the room with smokers. I can reconcile myself to that and to the fact that it's

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considered a regressive tax. [LB436]

SENATOR HADLEY: I guess that's just one of the things I am wrestling with is that if we were sitting in this room and we were going to increase the income tax, and we were going to increase the income tax on anybody who made less than \$15,000 a year, we would probably be run out of this building very quickly if we came in with that. And so I'm trying to wrestle. And I realize it's a choice that people make but I also remember Mark Twain's famous words that quitting smoking was easy because you've done it a thousand times. And, you know, it is not, as I...I can barely remember April 14, 1984, the last time I had a cigarette. You know, I can still remember it, but it's...it isn't an easy thing. And I guess I just...you know, I want to make sure in my mind that the lower income, that we...if we raise taxes, and suddenly they're doing without food or whatever, because they have the addiction, and they're going to spend it on cigarettes. [LB436]

SENATOR GLOOR: Well, if it helps you with your ethical wrestling--and it helped me--is the fact that a large number of those people will stop smoking. [LB436]

SENATOR HADLEY: That would be the... [LB436]

SENATOR GLOOR: We know that. And we also know that we have some earmarks here that will put some dollars back into the system that will soften some of the other difficult decisions that we have to make that will affect that segment of our population of Nebraskans also. [LB436]

SENATOR HADLEY: Thank you. [LB436]

SENATOR CORNETT: Further questions from the committee? Senator Fischer. [LB436]

SENATOR FISCHER: Thank you, Senator Cornett. Thank you, Senator Gloor, for being here today. I note on the fiscal note that it says that there will be increases...or that your bill increases the tax on tobacco products other than snuff. Why doesn't it increase taxes on snuff? [LB436]

SENATOR GLOOR: Snuff has, over the years, found itself governed by a whole different set of statutes. And this is a complicated and difficult enough bill to talk about and to educate people on, without then pulling in a whole different set of statutes that deal with a very tiny percentage of overall tobacco use. And it was a simplicity decision and the fact that that segment is such a small piece of it all. And that's frankly it. We also talked about snuff I think my first year here, a couple of years ago. But it's as simple as that, trying to keep things a little simple and focus on the bigger-use items that are out there. But good question. Thank you. [LB436]

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SENATOR FISCHER: Okay. Thank you. [LB436]

SENATOR CORNETT: Further questions? Senator Gloor, I know that you handed out the letters of support, but I had some previous to your coming up to testify and I did not know if you had read those into the record. [LB436]

SENATOR GLOOR: Probably not. [LB436]

SENATOR CORNETT: I'm going to go ahead and read them in, so. [LB436]

SENATOR GLOOR: Yes, would you please? [LB436]

SENATOR CORNETT: (Exhibits 16-20) I'll do that at this time: a letter in support from the city of Lincoln; a letter of support from the Nebraska Association of Area Agencies on Aging; AARP, which I believe you mentioned; Nebraska Health Care Association; and the NSEA. The rest were the ones that you have handed out. And you've read all of those into the record, correct? [LB436]

SENATOR GLOOR: Yes, I have. [LB436]

SENATOR CORNETT: Okay. Thank you very much. Before we begin testimony today, I'm going to advise everyone we have a very full room. I'm going to limit testimony to three minutes. When the light turns yellow, it's time for you to wrap up what you're saying. When it turns red, you're done. If you are...if you have already heard what you are planning on saying, coming up and saying, "I agree with that" or "me too" works for us. With that, we'll begin the first...with the first testifier. [LB436]

GLEN BOLGER: Good afternoon, and thank you to the Chair and to the committee for having me here this afternoon. I am Glen Bolger; that's G-l-e-n B-o-l-g-e-r. I'm a partner and cofounder of the public opinion firm Public Opinion Strategies. My firm, we founded it 20 years ago. We are the leading Republican pollster in the country. We poll for 20 U.S. Senators; 70 U.S. members of the House; 6 governors...including all three members here in Nebraska, as well as the Republican senator and the Governor. We completed a survey for the American Cancer Society and Campaign for Tobacco-Free Kids that the senator previously referenced, but I have a little bit more detail on that. We did the survey statewide, 500 likely voters, December 14-16 of 2010, and it has a margin of error of plus or minus 95 out of 100 cases. And what we found was that 73 percent of Nebraska voters favor the proposal to increase the statewide tobacco tax by \$1.35. You have strong, intense support: 53 percent strongly favor that. When we measure intensity, whether it's for or against, any time intensity is over 30 percent in polling that's a fairly significant measure of strong feeling for or against something. And that support is bipartisan and it goes across party lines. You have 74 percent of Republicans, 72 percent of Democrats, and 75 percent of Independents. It crosses

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regions here in Nebraska by media market: 75 percent in Omaha, 71 percent in Lincoln, and 72 percent in the rest of the state supported. It ideologically crosses lines: conservative, 71 percent support; moderate, 78 percent; liberal, 71 percent. People who support the Tea Party, 62 percent of them support this. As mentioned by the senator, 48 percent of smokers support it; 49 percent oppose it. So what we find is across all spectrums of Nebraskans there is strong support for a tobacco tax increase. And this is something that we see. I've done polling in a number of states, sometimes for these organizations, other times for political leaders, and whenever we test increasing the tobacco tax, it receives widespread bipartisan support. It is also seen as fair by 63/33 over those who say that it is unfair because it singles out just a small number of people to pay for some government programs. [LB436]

SENATOR CORNETT: Thank you very much. Questions from the committee? Seeing none, thank you. [LB436]

GLEN BOLGER: Thank you. [LB436]

SENATOR CORNETT: Next proponent. [LB436]

THOMAS MURRAY: (Exhibits 21 and 22) Good afternoon, Senator Cornett and other members of the Revenue Committee. I'm Dr. Tom Murray, T-o-m M-u-r-r-a-y. I'm the associate vice president for Health Sciences Research and the chair of the Department of Pharmacological at Creighton University. I'm also the principal investigator of the Cancer and Smoking Disease Research Program at Creighton, and today I appear on behalf of Creighton in favor of LB436. I greatly appreciate the opportunity to appear before this august committee. Creighton University's Cancer and Smoking Disease Research Program, funded through the cigarette tax, has been extremely effective in leveraging the state of Nebraska's support into extramural funding over the past 16 years. This program has served as a means to develop and expand important research, targeting both a further understanding of the causes of cancer, as well as attempts to develop novel treatments for various forms of cancer. As an example, these Creighton research programs have identified a novel biomarker that may lead to the individualization of treatment of breast cancer patients; identified a potential therapeutic target for nonmelanoma skin cancer; identified a novel strategy to control prostate cancer metastasis; and characterized the ability of cigarette smoking to increase the risk of osteoporosis. In addition, the Cancer and Smoking Disease Research Program has played a key role in the outstanding progress of the Hereditary Cancer Program at Creighton led by Dr. Henry Lynch. Dr. Lynch is widely recognized as one of the world's best-known classical clinical geneticists and is responsible for the description of many discrete cancer family syndromes, including one named after him, the Lynch Syndrome. With early detection, the Lynch Syndrome and other colon cancers are curable in 90 percent of patients. He is a classical clinical investigator, whose experience in the management of patients and families enables him to recognize a multigenerational

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cancer pedigree and prove the association through well-established genetic techniques. The Hereditary Cancer Database at Creighton University is a remarkable collection of clinical information and specimens that has made possible the discovery of genes and discrete genetic events that lead to hereditary cancer. This database currently has over 200,000 individuals and nearly 3,000 families represented, and approximately 900 of these families are from the state of Nebraska. With the support of the state of Nebraska, the Hereditary Cancer Center at Creighton University will continue to identify predisposing genes for cancer and biomarkers to aid cancer diagnosis. The Cancer and Smoking Disease Research Program has also played a key role in the UNMC Eppley Cancer Center's ability to be competitive as a National Cancer Institute-designated cancer center, the only one in the five-state central region of the U.S., from North Dakota through Oklahoma. The UNMC cancer researchers are developing new therapies to treat pancreatic cancer and lymphoma. Their extramural funding has grown significantly as a result of this program. The support of the Nebraska Cancer and Smoking Disease Research Program has provided Creighton the resources to develop investigators who seek funding from other sources, such as the National Institutes of Health and the Department of Defense. Over the history of this program, Creighton has received \$23 million for cancer and smoking research. This has led to \$124 million of extramural support brought into the state of Nebraska by Creighton University researchers. The return on the state of Nebraska's investment has therefore been exemplary, with each dollar of LB595 leading to \$5.31 in extramural funding for Creighton University. This greater than fivefold return on the investment clearly demonstrates the effectiveness of Creighton faculty in leveraging this support. Beyond the benefits to human health, the federal grants resulting from cancer research at Creighton have had a tremendous economic impact on the state of Nebraska. According to a recent economic analysis authored by Dr. Ernie Goss of Creighton, extramural grants have stimulated scientific and research job expansion in Nebraska at a rate much greater than the national average. This research productivity also impacts the overall state economy as research dollars are re-spent in the state. This spending creates sales, earnings, and jobs in the retail sector. Using the Goss model, it is estimated that the state of Nebraska Cancer and Smoking Disease Research Program at Creighton alone has had a total state economic impact of approximately \$350 million. This research enterprise represents an important economic driver that increases the attractiveness of the state of Nebraska to either startup or relocation of other businesses to our state. [LB436]

SENATOR CORNETT: Dr. Murray. [LB436]

THOMAS MURRAY: Thank you for your time. [LB436]

SENATOR CORNETT: I was going to say if you have a written testimony, if the red light hits particularly, we can finish reading. [LB436]

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THOMAS MURRAY: Okay. [LB436]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB436]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. I agree, and you've done quite well with your research. I guess what my question to you would be, then if we can do so much with a lot of this money, then why should we dump, oh, what, 7 to anywhere's from \$60 million to \$70 million into the General Fund? If we're going to tax sin why don't we use that tax to work on more research or fund healthcare or something like that? In other words, earmark all of that money instead of just a portion of it. [LB436]

THOMAS MURRAY: Well, speaking as a researcher, Senator Louden, I would welcome as much increments in research support as you're willing to propose. From my perspective, we've done a tremendous job of exerting careful stewardship over these monies and brought in a great return on the investment to the state of Nebraska. [LB436]

SENATOR LOUDEN: Okay. Thank you. [LB436]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you, Doctor. Next proponent. [LB436]

ALAN THORSON: My name is Alan Thorson. It's A-l-a-n T-h-o-r-s-o-n. I'm from Omaha, representing the American Cancer Society. I'm the immediate past-president of the national board of the American Cancer Society. Thank you for the opportunity of speaking for a few minutes. My comments will be brief. The American Cancer Society's mission includes a statement that our goal is to eliminate cancer as a major health problem. We know from our fights over the last several decades that battling tobacco is our single most positive way to eliminate cancer as a major health problem in the United States; for that matter, for the world over. Thirty percent of all cancer deaths--all cancer deaths--are related to tobacco. Eighty-seven percent of all lung cancer deaths are related to tobacco. We know what the impact is of increasing the cost of tobacco to the purchasers, and those figures have been given to you and you'll probably hear them more today so I don't need to reiterate the actual figures. But we do know that the impact is simply that as the cost goes up, the number of new smokers, the number of youth tobacco users decreases dramatically. The number of adult tobacco users decreases also, not the same drama as we see with youth. But particularly with youth, it's so important because of the addicting nature of tobacco which you've also heard about today. And only if we can help prevent the utilization of tobacco by our youth will we be able to decrease the concerns about having to deal with people quitting smoking later as the costs continue to go up. All of this translates directly into a decrease in human suffering, which is probably the most important thing that we can be dealing with today. And along with that individual human suffering of the individual patients is the

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suffering that goes with the families of those patients and the friends of those patients, and for that matter, all of Nebraskans through the loss, the premature loss of talent, companionships, and productive capacity. I'll end my comments there. Thank you very much. [LB436]

SENATOR CORNETT: Thank you. Questions from the committee? Seeing none, thank you. Next proponent. [LB436]

JAMES CAVANAUGH: Senator Cornett, members of the Revenue Committee, my name is James Cavanaugh. I'm an attorney and registered lobbyist representing Creighton University Medical Center, appearing today in support of LB436. You're going to hear a lot of testimony from healthcare providers. I can only say that Creighton University Medical Center is one of the primary Medicaid health providers in the state, and facing the budget cuts proposed by the Governor of some \$32 million--\$80 million if you include the federal match--we find that the solution contained in LB436 is a timely one and we'd urge you to give it favorable consideration. I'd be happy to answer any questions you might have. [LB436]

SENATOR CORNETT: Thank you, Mr. Cavanaugh. Questions from the committee? Seeing none, thank you. [LB436]

JAMES CAVANAUGH: Thank you. [LB436]

SENATOR CORNETT: Next proponent. [LB436]

DAVID HOLMQUIST: (Exhibit 23) Good afternoon, Chairman Cornett and members of the Revenue Committee. My name is David Holmquist, D-a-v-i-d H-o-l-m-q-u-i-s-t. I'm a resident of Omaha and a registered lobbyist representing the American Cancer Society and the American Cancer Society Cancer Action Network in Nebraska. I appreciate your patience on this Friday afternoon and am grateful to Senator Gloor for introducing this important bill. LB436 is a win-win-win for the state of Nebraska, and as you all know, we like to win in Nebraska. It's a win for public health because it will dramatically reduce tobacco use and its costly and devastating health consequences. It's a win for the state's budget because, despite the reductions in tobacco use, it will produce an estimated \$100 million of new revenue in the first year and \$124 million in its second year. And finally, it's a win for you and others as elected officials because Nebraska voters overwhelmingly support the tax. The public's health win. Every year, 2,200 Nebraskans die from tobacco-related use. They are your fellow citizens, family, and friends. In addition to the toll on people's lives, these diseases cost Nebraska more than \$537 million in direct healthcare costs each year. Much of this is borne by taxpayers. And, in fact, every pack of cigarettes sold in Nebraska costs you and I, as taxpayers, \$9.64 in long-term costs. The bottom line is that raising taxes saves lives by reducing consumption. Since our last increase in 2004, 44 other states, the District of Columbia,

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and Guam have raised cigarette taxes more than 80 times. There is sound economic reason to do so. Even with declines in use that occur as a result, these tobacco tax increases always result in significant new revenue for the state. Every state that has increased its tobacco tax significantly has seen revenues increase dramatically as the consumption declines. There are no exceptions. The Nebraska increase from 34 cents to 64 cents, in 2002, generated more than \$24 million in new revenue--a 55 percent increase in the first full year after going into effect, even though consumption declined by more than 18 percent. And this revenue has remained consistent. Equalizing the tax on other products would also bring additional economic and health benefits and raise approximately \$4 million. I understand concerns raised by members of the committee on border bleed. The most likely suspect in everyone's mind would be loss of sales to Iowa. Their current tax is \$1.36. I have included notes on some of this information in the red packet I handed out. The reality is that, in 2002, when Nebraska raised its tax to 64, Iowa remained at 36 cents. While our revenues increased 55 percent, Iowa's revenues actually decreased slightly. And when Iowa raised its tax by \$1 a pack, Nebraska's revenues in bordering cities didn't decline dramatically. For a close at home...I won't go into Kansas and Missouri. You can ask me about it if you would like; it's in the packet. It will not dramatically hurt, at all, convenience stores. In fact, there's a new study coming out demonstrating that when taxes go up, more convenience stores are built. This win translates into support and support for the Legislature increasing the tax on cigarettes and other tobacco products and using the significant revenues to support provider rates and other resources necessary. Thank you for the opportunity. [LB436]

SENATOR CORNETT: Thank you. Questions from the committee? Seeing none, thank you. [LB436]

DAVID HOLMQUIST: Thank you. Thank you. [LB436]

SENATOR CORNETT: Next proponent. [LB436]

KIM RUSSEL: (Exhibits 24-26) Good afternoon. My name is Kim Russel, R-u-s-s-e-l, and I'm the president and CEO of BryanLGH Health System. I'm also appearing today on behalf of Methodist Health System, Alegent, Madonna Rehabilitation Hospital, and I'm also representing the Nebraska Hospital Association. Thank you to the members of the committee for all the work that you do for our state. [LB436]

SENATOR CORNETT: Did you have letters to enter into the record? [LB436]

KIM RUSSEL: Right here. [LB436]

SENATOR CORNETT: Okay. [LB436]

KIM RUSSEL: Um-hum. The driving reason behind our support for increasing the

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cigarette tax is because of the overall health impact for our citizens and our state. The fact that raising this tax will potentially save 9,400 lives and deter at least 20,000 young people from becoming smokers is the most powerful reason to support the bill. I'm not going to repeat all of the health statistics you've already heard. We absolutely agree in support with those. But the contribution of smoking to human suffering is absolutely inarguable. Every day at BryanLGH we see the remnants of this disease. However, in addition to the health consequences, I must also address the Medicaid program. I recognize what a huge challenge the Medicaid budget is for our state. Hospitals like BryanLGH are seeing a steady increase in the number of patients coming to us who are covered by the Medicaid program, and we expect this number to increase even more in the future. This makes the potential Medicaid cut in reimbursement a very serious matter for all Nebraska providers. The proposed cut will impact every hospital in our state. And when we cut Medicaid, we're also turning away federal dollars through the FMAP match that could be used to provide care for Medicaid patients. As I stand here today, the Medicaid payment to BryanLGH covers only 26 cents of every dollar. A specific example that's even worse than that, frankly, would be when we have a Medicaid patient coming to us for a total knee replacement operation. We buy the actual knee implant for \$9,500 from the manufacturer. Medicaid pays us a total of just over \$8,000 to provide the total care for that patient's hospitalization. Also, as the Medicaid rates are cut, my fear is that fewer and fewer physicians will accept Medicaid patients. This begins the spiral of Medicaid patients using the emergency department because physician care is inaccessible. And I certainly understand the Medicare program is not the purview of this group, however, all hospitals...all the urban hospitals in this state are facing incredible Medicare cuts as a result of the new healthcare reform law. The first few years of healthcare reform law means conservatively \$13 million in funding cuts to BryanLGH. So I ask you to advance this bill out of the committee. I believe voting in favor of the bill will have a significant positive impact on health. It will save the state money in the short and the long run on the cost of healthcare and it will preserve urgently needed Medicaid funding to serve Medicaid patients in every hospital in this state. I really believe that your vote is a twofer because it's vote both for physical health and for fiscal health. Thank you. This concludes my comments. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none, could I please remind the testifiers to turn in your sheet to the committee clerk, first, so he can enter it into the record. Thank you. Next proponent. [LB436]

JOHN CAVANAUGH: Madam Chairman, members of the committee, my name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h. I'm the executive director of Building Bright Futures and also appearing on behalf of the Nebraska Health Alliance. In addition to...well, first, I'd like to commend Senator Gloor and this committee for your consideration of this bill and his brilliant, really, presentation of the bill in terms of comprehensive presentation of the reasons this bill is an important public policy. This may be one of the most important bills, certainly of this session and maybe of the many

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sessions to come, in terms of your ability to do a tremendous amount of good. You've heard a lot of testimony about the health benefits, and I would just like to reiterate the connection between the health benefits and education. Building Bright Futures is committed to improving educational performance for 45,000 low-income students in Douglas and Sarpy County. The greatest connection between failures and academic performance is healthcare. It's the biggest reason that low-income children miss school. It's the biggest contributor to their attendance problems. It's the biggest contributor to their academic performance. Undiagnosed hearing, vision, other health problems are visited disproportionately on low-income children. Restoring the Medicaid provider rates is among the most important elements here, including the child health program cuts. Our goal is to increase access to healthcare for low-income, knowing the direct impact that it has on their ability to succeed academically and, eventually, economically. So as you consider this, all of the health benefits, I would encourage you to also focus on the tremendous education benefits that are a component of the outcomes of this legislation. Thank you very much. [LB436]

SENATOR CORNETT: Thank you. Questions from the committee? Seeing none, next proponent. [LB436]

BETH BAXTER: (Exhibit 27) Good afternoon, Chairwoman Cornett and members of the Revenue Committee. I'm Beth Baxter. That's B-e-t-h B-a-x-t-e-r, and I'm here today representing the Nebraska Association of Regional Administrators. We're a coalition of the administrators of the six behavioral health regions across Nebraska. I am the administrator for Region 3, which encompasses the central part of Nebraska, and I appear before you in support of LB436. Our reasons for supporting LB436 are very simple. We see it as a way to provide additional, much needed resources to the state's behavioral health system. It will save millions in Medicaid dollars that are spent on smoking-related illnesses, and it addresses a significant health risk among Nebraskans. Under the original copy of LB436, 37.5 cents of the increase would be placed in the Health Care and Human Service Provider Rate Stabilization Fund for an estimated \$30.8 million. This allocation would replace a proposed cut to the reimbursement of service provider rates with Medicaid, Behavioral Health, CHIP, and Aging Services. This would provide a much needed safeguard against the possibility of cuts that the regional behavioral health authorities are facing across the state due to the reallocation of resources. We support all and every effort to preserve the continuum of care across the behavioral health spectrum in Nebraska. Too, we support the additional one-half cent that is proposed to be placed each year in the Tobacco Prevention and Control Cash Fund to replace a proposed cut to funding to help tobacco users quit and to keep kids from starting. Our regions, in many cases, access some of these dollars and partner with local school districts and community coalitions to provide these prevention programs. As school districts face lower budgets and counties face potential cuts or reallocations of resources, these programs will go unfunded. LB436 provides an opportunity for stable and ongoing funding for these programs. It's been said before,

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tragically, six Nebraskans die every day from a smoking-related illness. I don't believe that that's something that we can walk away from. I see, through LB436, that Nebraska has an opportunity to do something that works. National research tells us that as we increase the cost of tobacco products, we decrease the use of it, thus saving lives. This is a common-sense and effective approach to reducing smoking and improving our lives in Nebraska. I appreciate your consideration of LB436 and would entertain any questions that you might have. Thank you. [LB436]

SENATOR CORNETT: Questions? Senator Hadley. [LB436]

SENATOR HADLEY: Yes, Senator Cornett. Thank you for coming. A follow-up question that I asked earlier: I guess do we run any risk of unintended consequences of the lower income families, that cessation of smoking may not happen, and we're going to be putting a two-pack-a-day smoker, it's \$1,500 a year more in cigarette costs, that this will have the unintended consequence of less food, less things for children, and such as that? [LB436]

BETH BAXTER: Well, I have to look at it in terms of what research has borne out. [LB436]

SENATOR HADLEY: Okay. [LB436]

BETH BAXTER: And as we increase the cost, then the use decreases. I think what's really important is the prevention efforts that go on every day across Nebraska in all of our communities. And those prevention efforts do make a difference for people. They do make a difference for people in every economic situation. [LB436]

SENATOR HADLEY: Okay. Thank you. [LB436]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB436]

BETH BAXTER: Thank you. [LB436]

SENATOR CORNETT: Next proponent. [LB436]

JILL DUIS: (Exhibit 28) Good afternoon, Madam Chairperson and members of the committee. My name is Jill Duis, J-i-l D-u-i-s, and I am a volunteer with the American Heart Association. On behalf of the AHA we would like to express our support of LB436. According to the Campaign for Tobacco-Free Kids, one of the projected health benefits of the cigarette tax increase is that 19,500 Nebraska kids will be kept from becoming addicted adult smokers. This means the net effect is that lives will be saved, which is really the key impact of LB436. As a registered nurse and as a survivor of both heart disease and stroke, I am keenly aware of the risk factors of cardiovascular disease, with

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smoking being one of the main ones. I am also all too familiar with the costs associated with treating cardiovascular disease from my experience as a medical professional, as a survivor, and as a volunteer for the AHA. In a policy statement in the January 2011 edition of Circulation: Journal of the American Heart Association, according to an AHA panel of experts, the cost of treating heart disease in the United States will triple by 2030. The chair of that panel, Dr. Paul Heidenrich, stated that despite the success in reducing and treating heart disease over the last century, even if we just maintain our current rates we will have an enormous financial burden, on top of the disease itself. That panel also said that effective prevention strategies are needed to limit the growing burden of cardiovascular disease. Cardiovascular disease remains the leading cause of death in the United States and it accounts for 17 percent of overall national healthcare expenditures. It also remains the leading cause of death in Nebraska. Tobacco use costs Nebraska \$537 million annually in healthcare expenditures, including \$134 million in annual Medicaid costs. I know from my own personal experience how high the cost can be for treating a chronic disease such as cardiovascular disease. I live a healthy lifestyle and I am dedicated to that. Because I have lived with cardiovascular disease my entire life, I have had a pacemaker defibrillator since the age of 21. Recently, due to no fault of the device, my physician, or I, the device needed replacement, and the replacement failed a month later. To correct this required additional hospitalization, three consecutive days of surgery, and recovery. The cost of the hospitalization alone: \$135,000. Now imagine if this would have been complicated by smoking. The increased time of recovery and respiratory complications are just two of the potential additional problems. I thank you for allowing me to testify in support of LB436 and I urge the committee to support this bill. Thank you. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next proponent. [LB436]

MARK WELSCH: Good afternoon, Chairman Cornett and committee members. My name is Mark Welsch. I'm the president of GASP of Nebraska, the Group to Alleviate Smoking Pollution, and I am a registered lobbyist for that organization. I'd like to tell you...personalize this just a little bit and tell you a little story about my family. My grandfather, my mom's dad, died because he was a smoker. He could have lived many more years. I could have played a lot more cribbage and other card games with him had he not been a smoker. His wife had a heart problem. She had to breathe my grandfather's smoke every time she was in the house with him or when they were driving. My mom, a registered nurse, tells us kids that she probably died early because Grandpa smoked around her. My Uncle Lowell, my dad's brother, died a year or so after he retired. He drowned in his own blood from cancer. His wife, about a year after that, did the same thing. My cousin held their hands while they drowned in their own blood from cancer caused by smoking. He is still a smoker. It's a terrible addiction. And like Mark Twain, I haven't quit thousands of times but I've quit hundreds of times. It is easy to quit but it's very hard to stay that way. This tobacco tax will not bring back any of my

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family members nor perhaps any of yours who have died from this terrible addiction, but it could save many people's lives in the future. Grandparents alive today who quit smoking may live an extra year or two or five years. Uncles and aunts might live an extra decade. Parents might live another 20 years if they quit smoking. Children today may live 50 years longer than my cousin who died at 46 years of age from a blood clot that probably would not have killed him except he was a smoker. It's also, I think, a time to stop forcing nonsmokers to subsidize the smoking costs to this state. We're spending millions...tens of millions of dollars more on Medicaid expenses than we bring in as a state through our taxes. This has been going on for decades, if not 100 years. This bill will change that. So please think of your family members, your friends, your family whose lives may have been saved if this bill would have passed a decade or two ago, and think of those lives who you could save if you get this bill advanced and passed this year. Thank you very much. [LB436]

SENATOR CORNETT: Questions from the committee? Senator Hadley. [LB436]

SENATOR HADLEY: Senator Cornett, just one quick question. We've had a lot of...there's been a lot of data on the relationship of raising the cost of cigarettes to the number of people that quit and such as that. Is there any data on for every dollar we spend on cessation programs in terms of how that actually impacts people's smoking? [LB436]

MARK WELSCH: You know, I'm sure there are and I don't have those numbers in my brain at this time. I do know that cessation by itself is not the most effective way to address tobacco use and to get people to quit. That's...sadly that's the one thing that the tobacco companies want states to target their money on is cessation programs, because they know that's the least bang for your buck. If you want to have a big bang for your buck, you spend it on, you know, educating youth to not start to smoke. You know, that's where you've really had... [LB436]

SENATOR HADLEY: Okay, I guess I... [LB436]

MARK WELSCH: ...and women. But I'll look for that information... [LB436]

SENATOR HADLEY: I guess the point... [LB436]

MARK WELSCH: ...and get it if I can find it. [LB436]

SENATOR HADLEY: I guess the point of my question is, is that we are putting part...this bill puts part of it to the General Fund, a significant part. In the back of my mind I'm thinking would we be better off putting all of it to keeping youth from smoking, smoking cessation, and such as that. Is that...if the overall...if our overarching goal is to keep...to save lives and cut down medical costs, maybe we would be better off putting the one

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hundred and some odd million all into... [LB436]

MARK WELSCH: Well, I know the Tobacco-Free Nebraska Program in the Health and Human Services would love it if you would do that, because they know and I know that that kind of investment in our health would drastically reduce the smoking rates even more than simply adding a tobacco tax like this would do. [LB436]

SENATOR HADLEY: Okay. Thank you. [LB436]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB436]

MARK WELSCH: Thank you. [LB436]

SENATOR CORNETT: Next proponent. [LB436]

JOE KOHOUT: (Exhibit 29) Chairwoman Cornett and members of the Revenue Committee, my name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing before you today on behalf of March of Dimes, the Nebraska Chapter. Because the Chair invited it and us too, and you're receiving a letter from the state director, Rosemary Opbroek, who could not be with us today. With that, I will try to answer any questions. [LB436]

SENATOR CORNETT: Questions for Mr. Kohout? Seeing none, thank you. Further proponents? [LB436]

LOU KLEAGER: Madam Chairman, Senators, I am Lou Kleager, K-l-e-a-g-e-r. I am a practicing physician from Scottsbluff, Nebraska, an ears, nose, and throat surgeon. And I would like to say at this point that we deal with throat cancers, cancers of the mouth and the face, and in all of those cases or 75 percent or more of those individuals who have that cancer have smoked more than a pack of cigarettes per day for ten years. Today I'm representing the Nebraska Dental Association and I am the president of the Nebraska Medical Association, representing 70 percent of the physicians and 80 percent of the dentists in Nebraska. Much of our testimony has been advanced already so we don't need to cover that again, but we do endorse LB436 for the secondary health benefits. One statistic that's not been reported is that for every 10 percent increase in costs of a pack of cigarettes, 2 percent of adults will stop smoking and 6.5 percent of youth will not stop. It's more effective with the youth than it is with the adults if that helps some of your previous questions. When we were lobbying our congressional representative in Washington, D.C., last month, we had breakfast in a cafe where they were selling cigarettes, and I just inquired. Back there a pack of cigarettes runs around \$11 a pack and they have a \$2.50 tax on a pack of cigarettes in Washington, D.C. Just FYI. So in summary, both of our professional organizations strongly support this bill for the secondary health benefits. And, of course, any increased revenue to the state at this

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time is more than welcome from our perspective. Any questions? [LB436]

SENATOR CORNETT: Questions from the committee? [LB436]

LOU KLEAGER: Thank you. [LB436]

SENATOR CORNETT: Seeing none...oh, I'm sorry. Senator Fischer. [LB436]

SENATOR FISCHER: Thank you, Senator Cornett. I don't mean to be ornery here, but if we're truly serious that the reason for this bill is to cut down on the number of smokers in this state or to eliminate smoking in this state, is it possible for us to ban the sale of cigarettes in Nebraska? [LB436]

LOU KLEAGER: You have that authority. It's just...in your case, it would depend how that would float with the public, you know. [LB436]

SENATOR FISCHER: But if the public were...you know, we've heard about the survey results and the 75 percent or so of the public supports an increase in the tax on cigarettes, let...I mean be honest. If we're going to be honest, if it's a health concern, why don't we just ban the sale of cigarettes in the state of Nebraska? [LB436]

LOU KLEAGER: I have personally thought of that... [LB436]

SENATOR FISCHER: Would you...I mean I just... [LB436]

LOU KLEAGER: ...and I would agree with you. Yeah. But from a practical standpoint... [LB436]

SENATOR FISCHER: I keep hearing, this is great for the revenue; look at the revenue situation we're in at the state; this will help this group; this will help research; this will help...if it's truly a health concern, why don't we ban the sale of cigarettes? [LB436]

LOU KLEAGER: I think it would be a long-term goal and I think you'd have to arrive there incrementally over a period of time. And in the meantime, you get some increased revenue as you work toward that if you do the LB436. [LB436]

SENATOR FISCHER: Okay. Thank you. Appreciate it. [LB436]

SENATOR CORNETT: I was going to...my only comment to that would be you'd have to turn all the money that you're receiving now over to law enforcement, because there's no way you could maintain a ban. [LB436]

SENATOR FISCHER: A ban on the sale of cigarettes. [LB436]

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SENATOR CORNETT: Not the possession. [LB436]

SENATOR FISCHER: Not on the use, but on the sale of cigarettes. [LB436]

LOU KLEAGER: It's the best health practice not to have tobacco in Nebraska so we would support that, but I just really don't think that's going to float right now. [LB436]

SENATOR FISCHER: Okay. Thanks. [LB436]

SENATOR CORNETT: (Exhibits 30 and 31) Thank you. Next proponent. Are there any further proponents? We'll move to opposition testimony. I would like to read into the record that we have a letter from the Nebraska Retail Federation in opposition to LB436, and we also have a letter from the State Chamber in opposition. First opponent. [LB436]

MARK WHITEHEAD: Chairperson Cornett, the rest of the committee, thank you very much. My name is Mark Whitehead. I'm with Whitehead Oil Company, president of Whitehead Oil Company, co-owner of Whitehead Oil Company. I'm also vice chairman for the Nebraska Petroleum Marketers and Convenience Store Association. I am here today to...in opposition to LB436 and in some ways am a proponent for LB436--but I dare not say that I am neutral on it, certainly. I have, in fact, listened carefully to the proponents for the bill. I would state that on a personal note that I've never touched a cigarette in my life. I do not smoke and most of my friends do not smoke. The reality of our industry, though, is that we deal with the practical, real reality of the consumption of cigarettes within our industry. I've been in this industry for over 30 years...or almost 30 years, rather...and the convenience store business for almost 30 years; 40 years in the petroleum business. I've seen the price go from, you know, roughly 55 cents a pack up to where it currently is today. I've seen all the different plateaus, and for those of you who have been around even longer than I can understand the same things. When cigarettes came to \$1 a pack, by golly, I'm not going to smoke another cigarette. And as it continued to go up along those plateaus, the same observations are made. But the reality is, is when I started this in our first convenience store in 1982, all the way through to yesterday and today, it's still our number one product category for inside sales. It represents 35 percent of our inside sales within...of everything that we sell inside of our stores. And I say this without prejudice. It doesn't make any difference what my personal opinions are on it. I've told you what my personal opinions are. The reality is we are there to provide a product and a service for our customers. And that is our primary goal. I do that without prejudice. And the reality of the consumption of it is such that it cannot necessarily be measured. The decrease in consumption cannot be measured. It cannot be measured by a decrease in border bleed. It cannot be measured by banning the sale of it. Obviously, the statistics would show that consumption had come to a screeching halt had we banned the sale. That would not be reality. The reality is people will find their cigarettes whichever way they possibly can, and that is the reality

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at the detriment of the retail industry within the state of Nebraska. They will bootleg it in. They will do it under the counter. They will do it via e-mail. Part of the reason I would be a proponent for this is I've got five stores in Council Bluffs, so I would encourage (laugh) to go there only from that standpoint--but I say that somewhat in jest. This would not be good for the retailers of the state of Nebraska. It would not have the positive effect on consumption that the proponents of this bill have indicated they would. I'd be glad to answer any kind of questions. [LB436]

SENATOR CORNETT: Senator Pankonin. [LB436]

SENATOR PANKONIN: Thank you, Senator Cornett. Mr. Whitehead, thanks for being with us today. By the way, nice article in the alumni magazine about your dad and you and your sisters and your donation to the university. Appreciate that. [LB436]

MARK WHITEHEAD: Thank you very much. We were honored to do it. [LB436]

SENATOR PANKONIN: You have stated...obviously the concept we've talked about today that really hasn't been mentioned is price elasticity--the fact that if you change the price of a product, does the demand change and at what proportions. Would that be a fair statement? [LB436]

MARK WHITEHEAD: That's a fair statement. [LB436]

SENATOR PANKONIN: So you said that this is a high percentage of the products sold--and I'm sure it's based on dollar sales--but you also just stated that you don't think it makes a lot of difference. So where I'm going with this is we could raise the price, whether it's this bill or some proportion of it, and it really won't hurt your business, because the price goes up but the demand doesn't drop as fast. In proportion, the price going up, at a certain proportion the demand lessens, but not as much as the price increase. Price elasticity is still in your favor. [LB436]

MARK WHITEHEAD: Right. My point is, is all the representations on the decrease to the consumption is impossible to measure. Again, it's not only rated as a matter of border bleed, but rather, all the different avenues to the people who have got to do it. One of the biggest concerns that we've got as a retailer is theft of the product. This will...with a huge increase in our inventory costs that this is going to represent, it also obviously is going to become a pilfered item that's going...and that, of course, goes towards consumption as well. That's the reason that they're stealing them obviously...and for revenue purposes. But I guess my point is, yes, there will be some decreased consumption but not nearly to the extent that is represented, and it's impossible to tell exactly how to measure that. Did I answer your question? [LB436]

SENATOR PANKONIN: To a certain extent. But I think the point being that it might not

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hurt your industry that much and it would raise revenue. And, you know, there's two ways to look at it--the public health part of it and the revenue for the state. So with that, thanks for your comments. Appreciate it. [LB436]

SENATOR CORNETT: Mr. Whitehead, how much do you average off a pack of cigarettes? [LB436]

MARK WHITEHEAD: We are right at...we are not at the legal minimum, but I think our gross margin is right at about 12 percent I think. [LB436]

SENATOR CORNETT: Twelve percent. What do you bring in annually with your different convenience stores? [LB436]

MARK WHITEHEAD: I could not tell you off the top of my head. [LB436]

SENATOR CORNETT: Okay. Thank you very much. Further questions? Seeing none, thank you. [LB436]

MARK WHITEHEAD: Thank you, Senator. [LB436]

SENATOR CORNETT: Next opponent. [LB436]

DAN JOHNSON: My name is Dan Johnson. I represent AMCON Distributing. I'm a distributor out of Omaha, Nebraska. I'm also here to represent probably one of the very few smokers in this room. What it means to my family is about an \$800 increase in costs of out of my...what I have for my income. I will also say that I could probably afford the \$800, but there's a good deal of people out there that have one or two smokers in the family, and that represents a great deal of money at a, you know, a carton a week. I also represent the wholesale industry, and one of the things that I don't think people understand is this is really the item that we're talking about. This is 30,000 stamps. The increase in that stamp will cost us about...it will take this to a \$60,000 roll of stamps. That's inventory that we'll have to carry every day. This is a little different than a tax that you pay after the fact. We order these stamps from the state, write you a check, come pick them up, take them back to our warehouse and store them until they get applied to a pack of cigarettes. We deliver these cigarettes to the retailers. Most of those retailers have (inaudible) terms, and by the time all that happens the cost to wholesale and retail, it'll take about \$20 million out of their operating capital--operating capital, people do not have. That doesn't...that kind of goes downstream right back to me, the person who buys the cigarettes and smokes the cigarettes and the cost of those cigarettes. There are 900 convenience stores who have 35 percent of their sales riding on this. In the wholesale business, our sales are around 70 percent cigarettes, so this is a very important topic for us in the wholesale business. Where will the sales go? I know there is talk of Iowa; there's talk of Kansas; there's talk of other...but really we have Missouri

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which is only an hour from Omaha--\$1.70 is what the tax is on a carton of cigarettes. At \$20 a carton in Nebraska, most of the population would be on the east side, I don't think this is a \$3 increase and I think we'll see a lot more bleed over the state than a lot of people would imagine. Internet sales. Going to...when \$13.60 tax in Iowa becomes attractive, that's a frightening concept for us in the wholesale business. So I oppose LB436 and thank you for your time. Any questions? [LB436]

SENATOR CORNETT: Thank you very much. Questions? Senator Pankonin. [LB436]

SENATOR PANKONIN: Sir, thanks for coming today. Why do you think Missouri is so low? I mean I obviously I noticed that statistic. [LB436]

DAN JOHNSON: Well, I believe it's because the people of the state have to pass all tax increases, and it's lost time after time after time, contrary to the figures that they tell you that all of us smokers and nonsmokers alike really want a tax increase. That would be absolutely untrue if Missouri is the...has anything to say about that. [LB436]

SENATOR PANKONIN: So it's been on the ballot...you're stating it has been on the ballot several times? [LB436]

DAN JOHNSON: It has been on the ballot I don't know how many times. I mean each time it's a...you know, I'm obviously involved with that fight because I do business in Missouri as well. But it's been on several times. I think it was two years ago. [LB436]

SENATOR PANKONIN: Thank you. [LB436]

DAN JOHNSON: Um-hum. [LB436]

SENATOR CORNETT: Further questions from the committee? Seeing none, thank you. [LB436]

DAN JOHNSON: Thank you. [LB436]

WILLIAM PETERS: Senator Cornett and members of the Revenue Committee, my name is Bill Peters, P-e-t-e-r-s. I'm appearing today as the registered lobbyist for the Cigar Association of America to oppose LB436. If in my testimony I do lapse over onto the cigarette side a bit, please remember that I spent 20 years representing the Tobacco Institute before we had that infamous Master Settlement Agreement that you listened to, two days ago. First thing I'd like to observe is that on the OTP tax is where my concern is. We're an ad valorem tax and that means we're taxed by value. Our tax of 20 percent is on the imported price to Nebraska. We've had tax increases over the years, much more frequently than anyone else, because of this very factor. When the federals had their substantial tax increase, our tax went up 20 percent of the federal tax

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increase. Whenever the manufacturers up the wholesale price, the ad valorem approach that's used for OTP adds 20 percent to that wholesale price increase. So it's not that we've not been quite regularly taxed. The issue of border bleeding is...has been debated in this room since this room became the Revenue Committee hearing room. The only thing that I would say that in addition to the border bleeding, CNBC had a special Wednesday night. I missed it but I do have transcripts of the special. On that special they said that because of high taxes and also because of the disparity in the taxes in this country, that's a \$5 billion illegal business in the United States. And it's not only border bleeding, but it's more significantly what we call the trunk slammers. You know, a trunk will hold a lot of cartons of cigarettes, and if you're in an area where you can sell them at \$5 or \$10 cheaper, that's better, and enforcement is nonexistent. The last point I'd like to make is if price is so sensitive--this has been a point made every year that we've talked about tobacco tax increases--if price is so sensitive with the youth, I'm constantly amazed at the continued drug use of this country, because I understand that we're still selling tobacco for less than we are selling the illegal drugs. And with that, I see the light is about ready to turn on me and think this would be a good time to conclude my testimony. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB436]

WILLIAM PETERS: Thank you. [LB436]

SENATOR CORNETT: Next opponent. [LB436]

RICHARD COSAERT: (Exhibit 32) Good afternoon, Senator Cornett and Senators. My name is Dick Cosaert, C-o-s-a-e-r-t. I'm president of a retail company, Cubby's. Cubby's operates 28 grocery stores, truck stops, and convenience stores in a three-state area. We have 16 stores here in Nebraska with 11 stores that what would be called border stores. And basically what I want to talk to you a little bit about today is what it means to Cubby's. Back in 2007, Iowa raised a pack of cigarettes to \$1. And if you look at the Philip Morris survey, I think they were as high as 50 percent loss in business on the border stores. I don't know if it was quite that much. I know that we were up in the 30 percent range in some of our stores on the border, but I do know that that was the statistic that they said. They even actually quoted that for the whole state of Iowa, that they had lost about 34 percent. And keep in mind when, you know, what you're doing is when you raise, not only is it going to be Iowa but it's going to be other states that are going to be lower priced, and so you will see some of that border bleeding. You know, my responsibility as president of Cubby's is to make a profit for the company and take care of the 259 employees that we have employed here in the state of Nebraska. I'm going to throw out a few numbers and these actually will be numbers from our company. In the state of Nebraska, in the total state of Nebraska, we do \$6,100,000 in cigarette sales. And we do, if you look at just the 11 stores on the border, we're doing about

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\$4.836 million worth of sales just on those border stores. If you take and if you...let's just say if we just...if we take and say that--I'll wrap it up real fast--20 percent of \$6 million, you're looking at a cost of right at a sales loss of \$1,220,000 in sales. At a gross profit of 15 percent, that's a loss of \$183,000 to our company. And if I told you what that represents to our bottom line, it's just huge. And if realistically we're talking about, on the low side, when I indicate 20 percent. So, you know, I can...you know, people are talking about things that are turning around, things are great. Well, in our industry we didn't see the downside of it last year when everybody else was, and I'm going to tell you that we're seeing more of it today than we did a year ago. And right now it would be really tough for us to find \$183,000 to replace within our company. Thank you very much. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. Next opponent. May I see a show of hands for how many people are here to testify in opposition? Thank you. [LB436]

JIM MOYLAN: (Exhibit 33) Madam Chairwoman and members of the committee, I'm Jim Moylan, an attorney from Omaha, and I'm here representing two clients today. The first one is Reynolds American Inc., who is formerly R.J. Reynolds Tobacco Company, a tobacco manufacturer. And the other one is the Nebraska Licensed Beverage Association, the state association of liquor retailers, of which there are approximately 4,700 in the state, and they are the vast majority of them are the purveyors of tobacco products in the state. I've handed out a map here which shows the comparisons in taxes, excise taxes on all the surrounding states based on the new census. This shows that 53.5 percent of the population in the state live in the border counties, which is basically a half-hour's drive to another state where, you know, the cigarette tax in most of them are lower. Now we'll take an example--of course, Iowa. I have two clients in Iowa, two or three that smoke, and right now they're coming over to Omaha to buy their cigarettes because they save \$7.20 a carton on cigarettes by coming over to Nebraska. Now if those two clients in Council Bluffs decide that they're going to stay and pay the tax in Iowa, if we go to \$19.90 a carton, then you're going to see plenty, plenty of Nebraskans going over to Iowa. Now that doesn't include the Missouri trip. I know a group of old ladies in Omaha--not old, just elderly women in Omaha. There's about seven of them, and the youngest one makes a trip every six weeks or two months. She gets on I-29, hightailing it south to the Show Me State to buy tobacco products for all seven of them. And at the present time it is a savings of \$4.70 a carton. Now if we raise ours up, there will be a lot more of them hightailing down the I-29. It's only about a 40-minute drive. They will be saving \$18.20 a carton by going down to Missouri to buy their cigarettes. So we think the border bleeding will intensify if LB436 is passed. So on behalf of both of my clients, I ask you to indefinitely postpone LB436. If there are any questions, I'd be happy to try to answer them. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you.

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[LB436]

JIM MOYLAN: Thank you. [LB436]

SENATOR CORNETT: Next opponent. [LB436]

TED STESSMAN: (Exhibit 34) Senator Cornett and members of the Revenue Committee, I'm Ted Stessman. I represent the Nebraska Candy and Tobacco Association as their president, and I'm also an employee of Farner-Bocken that does business in the state. And as the president, we oppose this bill; as an employee of Farner-Bocken, we oppose this bill. We've got probably 5,000 signatures on a petition from smokers or nonsmokers in the state that oppose this bill. We will leave them for you to review. The bottom line on this is, you know, I'm going to answer a couple questions that maybe didn't get answered real well, and that's tax stamps. We get a report from the state of Nebraska on tax stamps every year. And for the last ten years, tax stamps have dropped 3 to 4 percent. What that means is this is a declining revenue source for the state, plain and simple. Now one way to increase that revenue, of course, is to raise the tax. And the tax was raised significantly, federally, \$7.10 a carton just two years ago come this April. And you did see a more significant increase at that point in time. But we stamped, in 2008, approximately 110 million packs. Revenue to the state: \$70 million; 2010, it's down to 95,600. Revenue to the state: \$61 million. Now when Dick Cosaert from Cubby's mentioned the border bleed in Iowa, we've got figures...and the cigarette companies turn their...because of the MSA agreement, they turn their numbers into MSA--and they're real numbers. I think we heard a lot of numbers today that just boggle me, you know, from the proponents of this bill. But these tax stamps, you can check them with the state of Nebraska, those are real. The border bleed in Iowa, that was real. And in my estimation, if you raise this tax \$1.34 a pack, three years from now you're going to be right where you are in regards to \$61 million in revenue. It's a declining source and not to be one to be counted on. But in the meantime, what's it do to our employees? What's it do to retailers? And what's it do, in fairness, to the end user, the smoker? The smoker gets hit the worst. If this passes, \$4.06 a pack on his retail cost, is going to have to come out of his pocket and just go directly to one tax or another. So in closing, we think it hurts small businesses and threatens jobs, encourages illegal activity. We heard about the \$5 billion. That came from the ATF Bureau, so it came from the government. Five billion dollars, that's what it does. Increases the border bleed. I can tell you this much: We're a wholesaler that does business in all the surrounding states, really not in Colorado too much--just for a chain. And we have, in Iowa and Nebraska, approximately 80 salesmen doing the same amount of business as ten in Missouri. Same amount of sales. I think that says something. And the compromise on the retailers' security and the taxes on who least can afford it, that's why I'd like to see you kill this bill--and definitely an opponent of LB436. And I've got a little handout here on behalf of the association for the members. Any questions? [LB436]

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SENATOR UTTER: Seeing none, thank you. [LB436]

TED STESSMAN: Thanks. [LB436]

KATHY SIEFKEN: (Exhibit 35) Senator Utter and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, representing the Nebraska Grocery Industry Association. And I'm glad someone here is in charge. We're here in opposition to the bill. We are concerned that people are going to continue to purchase tobacco and we're concerned that those dollars are going to come out of their food budget, and we don't believe that it is a good alternative to increase taxes and decrease the amount of money that they're going to be able to spend on food. In addition to that, we believe that the people in this state that smoke are going to make their purchases either over the Internet or they're going to travel to another state, and that way they will be able to obtain the tobacco at a much lower cost. And we also have a concern that while they're visiting those other states, they're going to buy their groceries and other food items while they're over there, and Nebraska would miss out on those taxes also. What I handed out to you, at the bottom, is a list of all of the states that border Nebraska and the current tax rate that they charge. And if Nebraska goes up to \$1.99 per pack, it will make us the highest taxed state in this area. We will lose sales. When we had a tax increase last time, Ted Stessman with Farner-Bocken kept track of the numbers, and he actually saw the purchases move from Nebraska to Iowa, and then when Iowa raised their taxes we saw those purchases come back to the Nebraska side. And when you've got retailers on both sides of the state line, retailers that own...the same owner that has stores in both states, they will tell you that the reality of a tax increase is that those purchases move as the taxes increase and they stay with the lower taxed state. With that, if you have any questions I'd be happy to answer. [LB436]

SENATOR UTTER: Thank you, Kathy, for your testimony. Are there any questions for her? Seeing none, thank you. [LB436]

KATHY SIEFKEN: Thank you. [LB436]

MICK MINES: (Exhibit 36) Senator Utter, the remaining 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 the Nebraska Association of Tobacco and Candy Distributors as their lobbyist and as their executive director. My role today is--Ted Stessman brought up the issue--but we have over 5,000 petitions that have been signed by Nebraskans from border to border, north to south, east to west. And I'd just like to take the opportunity, and maybe it's been passed around, the petition is "Enough is Enough. No Increase in Cigarette and Tobacco Taxes. I strongly oppose LB436, a bill to increase cigarette taxes by \$1.35 per pack and taxes on other tobacco products up to 65 percent. In an already weak economy, higher taxes should not be imposed on Nebraska families.

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That's why I, along with members of the Nebraska Association of Tobacco and Candy Distributors, Nebraska Petroleum Marketers and the Nebraska Grocery Industry Association, join with retailers and consumers in opposing any increase in new cigarette taxes or new levies on other tobacco products." And as mentioned, we will leave those petitions for the committee. You know, we've been...I admire Senator Gloor for the very hard work he's put into this bill. And the discussion is: Is this a health issue or is it a revenue issue? Senator Fischer, you hit the health issue on the nose. If it's a health issue, let's ban the product. It's a legal product. There are Nebraskans that choose to use this legal product, and the people...or the members in our organization are distributing those legal products to retailers. We, as retailers and wholesalers, the number was mentioned earlier, a \$19.7 million figure, would be our responsibility due to increased costs of stamping. That roll of stamps that was displayed earlier, we'd have to...we purchase those stamps. We place them on the cigarette packages and then those packages are sold. There is lag time in between and there's, overall, on an annual basis, we estimate about a \$19.7 million cost to our members. We hope you've heard both sides. In fact, I'd like those here that are in opposition to raise their hands. A lot of them have been silent and patient in the back, but we do have strong support in opposition to this bill. We appreciate your patience and I'd be happy to answer any questions. Thank you. [LB436]

SENATOR CORNETT: Questions from the committee? Seeing none,... [LB436]

MICK MINES: Thank you. [LB436]

SENATOR CORNETT: ...thank you. Next opponent. Is there any further opposition testimony? Neutral? Senator Gloor, you're recognized to close. [LB436]

SENATOR GLOOR: Thank you, Senator Cornett, members of the Revenue Committee. Long afternoon. I appreciate the testimony on both sides. Obviously I've been hearing it for about six or seven months and I had a chance to kick it back and forth. And I have some notes, but I think it's probably a more effective use of your time with the other bills you have to consider that I talk to some of you individually. But I need to go back and touch base on the great question asked by Senator Fischer who never asks an obnoxious question. She may be obstreperous, and she's enough of an educator to know that obstreperous is, in fact, a compliment to her--but never obnoxious. But prohibition is an issue that's come up a lot. (Laugh) I've even had that conversation up on the second floor for a period of time. Prohibition. We tried that in the 1930s. It didn't work. It was on alcohol. And when they go back and look--and I'm enough of a student of history to have kind of taken an interest in this--the reason it didn't work is because of the culture. It's because we were dealing with a culture then, and to a large extent now, where alcohol was part of the social fabric. It was considered appropriate. People got together for happy hour. A lot of German immigrants who enjoyed having a beer and a brat in a gasthaus someplace in Milwaukee and Chicago, it was part of the social fabric.

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We've got the same thing when it comes to cigarette smoking. Clearly we have the same thing when it comes to cigarette smoking. Thomas Jefferson said--related to the colonies and the king ruling the colonies--but he said: A wrong thing long endured eventually takes on the appearance of being right. And we have that same thing at work when it comes to smoking. It's been such a part of our social fabric. One of my little Cub Scout den things when I was a kid was to make ashtrays for our parents. I mean we made ashtrays for our parents. One of my enduring memories of my parents when I was growing up was watching them share a cigarette after meals, and was envious of that bonding between them as they shared that cigarette. And that's built into my culture and my fabric in a lot of ways, and that's the reason prohibition doesn't work because it's part of our social fabric. We recognize it. It has attachments that aren't totally wrong. In fact, in some cases, like the view of my parents sharing a cigarette, generate warmth. We watch it in movies. I've got packets here of material that gets sent to my children, adult children. Packets of materials get sent to my adult children to get gym bags and coats and business cards that have logos of cigarette companies on it, and that gets seen on the street and it's worn on T-shirts. I mean we haven't separated ourselves from the fact that this is a major health problem for us because it is our social fabric. But we're getting better. We recognize it as a problem. We recognize it, that it needs to be taxed to discourage people from smoking. Slowly but surely we take small steps to take something that we know is a wrong and remove it from our social feeling of this is an okay thing to deal with and put up with and pay for. What I'm asking you to do with this bill is move it forward to take one step in the direction of it not being correct and not part of the appropriate social fabric of society. That's what this is. And in the process, we recoup some of the costs associated with keeping it. It wouldn't surprise me at all--it wouldn't surprise me at all if as a result of the discussion on border bleed, you decide--that this should have come out of committee--matching Iowa. Okay. That's fine. You can take the numbers that were there and cut them in half. But my encouragement to you would be, let's get this out of committee, have it on the floor. Common sense dictates to us that unless we need the money, there won't be enough votes out there to get the inertia necessary to get it passed into law. But at least it will be there and available for us to turn to if we need it, and also sends the statement that we recognize that this is an appropriate thing for us to do to move in the right direction. That may not be enough to make it law at this point in time, but someday it will be, and we point ourselves in that direction as a result. I appreciate your time and the energy level you've maintained throughout. Thank you. [LB436]

SENATOR CORNETT: Senator Gloor. [LB436]

SENATOR GLOOR: Yes. [LB436]

SENATOR CORNETT: I'm somewhat of a rabid nonsmoker. But where does this type of legislation end when we talk about social control through taxes? I mean we hear every day that childhood obesity is one of the largest threats facing our society, but we're not

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proposing a substantial increase on taxes for fast food because the general population would go crazy and say we're targeting the working mothers and the poor who, you know, hit the 99-cent value meal and the French fries for their kids. Why aren't we targeting alcohol because of the associated diseases with alcohol? Where do we...I mean where is the line of social control through taxation? And trust me, we need the money and I understand that. But I don't know if it's the Revenue Committee's job to dictate social policy. Money, yes. I can go there. But the whole aspect of social control through taxation bothers me. [LB436]

SENATOR GLOOR: You won't see me introducing bills that will increase the tax on alcohol or fatty foods or anything along those lines. [LB436]

SENATOR CORNETT: Why not? [LB436]

SENATOR GLOOR: For one reason, and that is hundreds of thousands of Nebraskans eat responsibly. Hundreds of thousands of Nebraskans, the vast majority of them drink responsibly. Only small sets of it abuse that. But there's no such thing, Senator, as a good amount of smoke. Even the smallest amount of smoke, even secondhand smoke, to nonsmokers is a health problem. It's that issue. You can eat French fries when you leave here tonight and you will still look as wonderful as you currently do. But that cigarette will be a problem. [LB436]

SENATOR CORNETT: Okay. Flattery will get you somewhere...(laugh)...but. [LB436]

SENATOR GLOOR: But that's the answer. That there is...this is a number one health issue in our country. There is no such thing as... [LB436]

SENATOR CORNETT: But that is...I'm just saying that is from your perspective. Because I've had doctors come in and tell me that fast food is the number one health risk. I've had people tell me pop and sugar, you know, and let's tax pop because of childhood obesity. I've had people from MADD tell me that alcohol is the number one threat for our youth. Everybody has a different perspective on what the number one threat or the threat is to our health. And again, I'm just...and you...we've had discussions and dialogues about this bill for a year now, I think, or close to it. [LB436]

SENATOR GLOOR: Probably what I would say you could always hang your hat on is legislators in executive offices before us have had this tax. It's not new. Someday I'm guessing, if it's not now... [LB436]

SENATOR CORNETT: Well, I was going to say we have tax on alcohol. We have tax on... [LB436]

SENATOR GLOOR: Yup. [LB436]

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SENATOR CORNETT: Without a doubt, I mean. But my point is basically we're trying to take one thing and say that it's the worst thing in society, so we're going to tax it the most and control people through taxation. And I don't know if that's the right approach per se. [LB436]

SENATOR GLOOR: I'm sure... [LB436]

SENATOR CORNETT: I mean raising...generating revenue I have no issue with. [LB436]

SENATOR GLOOR: I can't come up with another way to do it. [LB436]

SENATOR CORNETT: Okay. [LB436]

SENATOR GLOOR: If I could, I'd present a bill that would do it. But that's the only way that, historically, seems to have worked or the past Legislatures seemed to have found to work. [LB436]

SENATOR CORNETT: One more question and then Senator Fischer gets you. (Laugh) How is this going to affect your other bill? [LB436]

SENATOR GLOOR: I don't think it will affect my other bill. In fact, my other bill is... [LB436]

SENATOR CORNETT: Well, we had the discussions on the different prices for people for sale on reservations and off reservations and reservation stores. [LB436]

SENATOR GLOOR: Yeah. If anything, it probably points out the importance of that other bill. [LB436]

SENATOR CORNETT: I was going to say the other bill is...I understand the importance of that. But I was wondering how this affects that. [LB436]

SENATOR GLOOR: They're really not linked. The other bill is an enforcement bill that relates to the MSA. [LB436]

SENATOR CORNETT: But it's enforcement of taxation collection. [LB436]

SENATOR GLOOR: Yeah. And we have to...regardless of what that tax level is, we have to be participants in that and enforce it. Even if it were at Missouri's obscenely low tax rate... [LB436]

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SENATOR CORNETT: So then let's forget the border bleed issue. What happens when we...if we enact this, people can go onto the reservation which is right inside of our state and purchase it for a less cost. Am I correct? [LB436]

SENATOR GLOOR: That's... [LB436]

SENATOR CORNETT: They set their own taxation. They're... [LB436]

SENATOR GLOOR: That's been some of the discussion. I think it's been less going on the reservation and buying, because there's a formula that can be worked out; there's ways to do that. It also relates to the export of cigarettes off reservation also. [LB436]

SENATOR CORNETT: And that was the issue that we heard the other day where there was the issue of sale to American Indians and the sale where they were identified as non...or Caucasian or non-American Indian. [LB436]

SENATOR GLOOR: That was part of it. Yep, that was certainly the part that we'll have to address through an amendment. [LB436]

SENATOR CORNETT: Thank you. Senator Fischer. [LB436]

SENATOR FISCHER: Thank you, Senator Cornett. Senator Gloor, I just wanted to clarify that the endearing term that I used was ornery. I believe you had a Freudian slip when you said obnoxious. (Laughter) So thank you, Senator Cornett. [LB436]

SENATOR CORNETT: (Laugh) You're quite welcome. [LB436]

SENATOR GLOOR: I'm sure I will spend the remainder of yours and my tenure... [LB436]

SENATOR FISCHER: We'll be discussing that. [LB436]

SENATOR GLOOR: ...dealing with that. Yes. (Laughter) [LB436]

SENATOR CORNETT: I was going to say... [LB436]

SENATOR GLOOR: Neither word is appropriate, I would like to point out for the record. [LB436]

SENATOR CORNETT: I was just going to...groveling works (laugh) anyway. [LB436]

SENATOR GLOOR: Yeah. [LB436]

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SENATOR CORNETT: Further questions? Senator Utter. [LB436]

SENATOR UTTER: Senator Gloor, this bill really is conflicting for me, and as you may have remembered when we discussed the smoking ban in my first year, that I identified myself as a world-class smoker. [LB436]

SENATOR GLOOR: I remember. [LB436]

SENATOR UTTER: And I kicked that habit about the same time Senator Hadley kicked that habit. And since that time, of course, I paid the penalty...part of the penalty that endures to us when I fought cancer, so. But that being that we have the tax issue on one side, and that as a preventive, hits us from two places as I see it. We think that that's, number one, going to help us curb, particularly the use...the habit of smoking. Taxes wouldn't have curbed my desire. I was...I'm back...I go clear back to the Bull Durham days, and that's probably a term that not many of you really understand. My tobacco didn't cost much when I got the habit because my dad never missed a bag or two of Bull Durham. And I hid it out behind the barn and I think I spilled three-fourths of it and the other part of it I smoked. The thing I guess that I'm conflicted about is the curb of commerce on the one side and the conflict that we have with regard to what we think might happen, as is shown in the fiscal note, to our state revenues. And that becomes a really difficult issue for me, particularly when we start talking about border bleed and all of these other things that enter into this issue. It isn't a black-and-white thing, I guess, and I would...I initially thought: You know, that would be, to you, Dennis, you've smoked and you battled cancer and, luckily, you got through it, so you ought to be...this ought to be a pretty clear issue to you. But it isn't. [LB436]

SENATOR GLOOR: Well, I appreciate and understand that. And I recognize the fact that you with your obstreperous personality would be a hard one to get to kick at any price level. That's who is obstreperous. But the fiscal note mirrors the same approach they took when they did the fiscal note, again back in 2002. And it was accurate, you know. And the concern--and you'll hear a lot of the concern about border bleed, and that's not to say that there isn't some border bleed, but apparently it's not enough border bleed. The number of cigarette packs that we sell in this state are enough to build a sidewalk of cigarette packs from the Missouri River to Wyoming. I mean millions and millions of cigarette packs are sold in this state. Is it possible that 100, 200, even a million packs are bought and brought up from Missouri or come across from Iowa if we were to come...? Sure, it's possible some of that happens. And yet, the overall revenue impact on us and on other states, including between Missouri and Kansas when Kansas had their big increase, still results in a net increase in revenue. And there are a lot of people who smoke cigarettes and a lot of packs that go out. And all I can tell you is, as I've looked at it and have gone to people who are trying to look at this without a jaded eye, that overall price increase, as long as that increase is at least 10 percent of the cost of a pack of cigarettes, will result in a reduction in smokers and at the same time

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result in an increase of revenue. Ten percent seems to be the magic number. [LB436]

SENATOR UTTER: Thank you. [LB436]

SENATOR GLOOR: Yup. [LB436]

SENATOR CORNETT: Senator Adams. [LB436]

SENATOR ADAMS: One quick question. I don't have any bad habits. (Laughter) Lying, on occasion, I guess. Obviously, Senator, you've been very thoughtful in developing this and you've done your homework. In that process did you ever catch yourself thinking, aside from the health issues but purely on a tax side, that we are identifying one group of folks to generate revenue off of? [LB436]

SENATOR GLOOR: I'd go back to my comment to Senator Hadley which is, you bet, I thought about it a lot. And my problem is that this is such a terrible health problem and the afflictions that it brings upon that segment of the population isn't, to me...I mean people in other states and the measurements they take from other states, as they look, don't show an increase in people going on food stamps or children who are being abandoned because their parents can't feed them or people being evicted from their homes. As I showed you on that sheet, states all around us, states all across the nation are increasing their cigarette tax and the world hasn't crumbled around our ears. I have a career of working in a hospital around sick people, and I can't help myself when it comes to this issue. One of the issues that I've learned is smoking has a terrible impact on us, both in terms of cost and society. And any more that Senator Hadley can help himself and a lifetime of education, or you, or Senator Fischer in ranching, or banking for Senator Utter, or law enforcement for Senator Cornett, when you've done something that long, you inherently learn things and know and develop a passion for this is wrong; if I ever get in a situation where I can make a difference, I ought to do something about this. And that's smoking. I lived it for three decades. And I recognize not eating healthfully, which is a problem clearly, or drinking, which is a problem. But smoking--smoking is a terrible burden on us as a society. This bill, one step in moving in the right direction and one move that I feel I can make where I bring some of my experience and my gut feeling about things that are good for the state of Nebraskans, understanding there's a subset of the population that this affects--but also understanding the effect on that population from a health standpoint is awful. [LB436]

SENATOR ADAMS: Thank you. [LB436]

SENATOR CORNETT: Further questions? Seeing none, that closes the hearing on LB436. Senator Hadley, you are recognized to open on LB40. As soon as everybody quiets down, Senator Hadley. [LB436]

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SENATOR HADLEY: I certainly know how to clear a room, don't I? Thank you, Senator Cornett. My name is Galen Hadley; that's G-a-l-e-n H-a-d-l-e-y. I represent the 37th District and I'm here on LB40--Take 3. "Death by Fiscal Note: The Journey Continues." [LB40]

SENATOR CORNETT: (Laugh) [LB40]

SENATOR HADLEY: And I'm back. There is an old saying about cats having nine lives. The good news: this issue hasn't died. The bad news: a bill that has twice been passed by the body still hasn't made it across the finish line, so I'm back again. LB40 is a bill that provides the Department of Revenue clarification that it is not our intention to tax nonprofit healthcare. It provides much needed direction to our community hospitals as to what is and isn't taxable. LB40 makes clear that nonprofit clinics owned by at least one nonprofit hospital are exempt from paying sales and use tax. And the crux of this problem, if we go back in history to the late 1980s, there was a fear that large hospitals in the eastern part of the state would go out and start nonprofit health clinics across the state and drive local hospital healthcare clinics out of business. So the idea was to force them to have two owners to try and save the local hospitals and their relationship to the clinics. This committee supports this tax policy. Passed it out of this committee. The Legislature voted 42-0 in support of this issue in both 2009 and 2010. That's where the good news ends. Twice this issue has come back from the Governor's Office. The first time it was called back by the Legislature at the eleventh hour so there would be room on the green sheet for that possible estimated impact of a wind project that we did not have. I will not go into all of the details other than to tell you that I agreed to allow the bill to be pulled back because I felt strongly, and still do, that jobs and investment will help us grow new revenue. Unfortunately, for many reasons, including a downturn in the economy, that project didn't happen, even though our green sheet counted in the number. Hence, LB420 was put on hold. I think that's an important point right there. If you believe in our system of fiscal notes, I knowingly asked the bill to come back from the Governor's Office, agreed to it, because we had to balance the budget. Well, it turns out the reason that I pulled it back, the other project didn't happen. So if you believe in the fiscal notes, you might say that we have about \$3 million a year more in our tax revenues that we wouldn't have had before because we didn't do this, and the project that was brought back--that I brought it back for--did not happen also. Last year, LB420 once again made it to the finish line with overwhelmingly support of the Legislature. Recognizing the budget issues, it came with a delayed implementation date of 2013, which promptly received a letter from the Governor that states support for the underlying tax policy but opposition to the delayed implementation in light of the economic downturn. Again, I decided not to ask for a veto override because I understand the problems, the budget considerations. Okay, we're now March 2011. I think it's time to revisit it. And I'm not asking that we revisit it maybe right now, but I would like the committee to leave this on our plate so that we can examine it over the two-year budget process. We need to provide our community hospitals and the Department of Revenue

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with clarity on tax policy regarding nonprofit healthcare. Let me give you an example. A nonprofit hospital purchases ten boxes of Band-Aids. Seven boxes of Band-Aids stay at the hospital to be used and are not subject to sales and use tax, but three boxes that travel ten miles--or even across the parking lot--to the nonprofit clinic owned by the hospital will be assessed a sales and use tax. To me, that just is utterly unbelievable from a policy standpoint that the hospital can use a Band-Aid and it's tax-exempt. But the clinic that they wholly own that's a nonprofit clinic, we have to pay sales and use tax on it. The Legislature needs to eliminate the current confusion and mandate a uniform tax policy concerning nonprofit health clinics. Currently, government-owned nonprofit health clinics are exempt from sales and use tax. Both hospitals and the Department of Revenue need clarification. Hospitals are already facing a number of cuts at both the state and federal levels. By not passing LB40, we are issuing a new tax on nonprofit hospitals. In 2010 alone, hospitals provided more than \$1 billion in community benefits to Nebraska citizens. They are facing increasing costs, lower reimbursement rates, lower provider rates, and we are turning around and charging sales tax. And I find it ironic that we fund Medicaid and we turn around then and tax the clinics on a sales and use tax, and we might be paying that because we're paying the Medicaid bill. It was never the intent of the Legislature to tax nonprofit healthcare. Nonprofit hospitals only recently began receiving audits on their nonprofit clinics by the Department of Revenue. The Department of Revenue, rightly so, began strict interpretation of the statute prompted the department to assess taxes on supplies that had previously never been taxed. Hospitals are major economic drivers in communities across Nebraska and employ more than 42,000 people. We need to encourage them to help us grow our economy and provide jobs at a time when the state needs it the most. Just for one interesting fact: In 2008, LB949, which is effectively this bill, was brought by Senator Christensen and it had a \$53,000 fiscal note. This bill that I am bringing has a \$1.35 million fiscal note--and it's the same bill. I would hope that we will take, in the next two years--this year and next year-- we will look at this bill and make a decision as a Revenue Committee whether the time is appropriate to do it. One of the big concerns I have in facing and in working in the Legislature is, we try hard I think, as a committee, to make good policy, to make decisions based on good, sound tax policy; not, you know, what's happening here or what's happening there, but what is good tax policy. Where we run into problems is the fiscal note sometimes makes us make decisions which I don't feel are good tax policy. And that's what bothers me. I think it is good tax policy not to tax tax-exempt nonprofit healthcare. And we find ourselves in a position of doing that, and I think it is bad policy, and it's time, as a state, we recognize that, we bite the bullet, and we move forward. Thank you, Senator Cornett. I'd be happy to answer any questions. [LB40]

SENATOR CORNETT: Senator Louden. [LB40]

SENATOR LOUDEN: Yes. Thank you, Senator Cornett. Well, I agree, Senator Hadley. This bride has been brought to church three times now (laughter) and nothing has ever

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happened. So we may have to get the shotgun out or something. (Laughter) [LB40]

SENATOR HADLEY: I agree, Senator Louden. [LB40]

SENATOR LOUDEN: The...is...they weren't getting that revenue. I mean when they say this is a fiscal note on it, they weren't getting that revenue anyway, were they? [LB40]

SENATOR HADLEY: That's right. That's right. They were not doing it until they started the audits. [LB40]

SENATOR LOUDEN: And are they actually getting it now? [LB40]

SENATOR HADLEY: Yes. They... [LB40]

SENATOR LOUDEN: Does anybody know how much... [LB40]

SENATOR HADLEY: We have talked to them and they have done some audits. They're in the process of doing audits. And they had one, I believe, up in your district--Chadron. [LB40]

SENATOR LOUDEN: Yeah, that's the one that goes to Crawford and that. Yeah. [LB40]

SENATOR HADLEY: Yeah. And it goes over to Crawford. And they had, I believe, remodeling. And it became a significant fiscal note for the clinic up there. And, of course, they use then to extrapolate how many clinics there are and using statistical methods to try and determine the total amount of the fiscal note. [LB40]

SENATOR LOUDEN: In other words, what they thought they...what they got out of there, then they multi... [LB40]

SENATOR HADLEY: I think that...yes. And they're... [LB40]

SENATOR LOUDEN: They grabbed these numbers out of the air and multi... [LB40]

SENATOR HADLEY: Yeah. Well, I...maybe not grabbed them out of the air, but they're using...they're certainly not going out and doing a 100 percent sample. They're taking some samples, now that they're doing more audits, and deciding that that's what's out there. [LB40]

SENATOR LOUDEN: Nobody said how many of those clinics are out there. [LB40]

SENATOR HADLEY: No. We have the number and I could certainly get that for you. [LB40]

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SENATOR LOUDEN: But I mean there is a known number of clinics out there. [LB40]

SENATOR HADLEY: Yeah. There is a known number of clinics. Yes. [LB40]

SENATOR LOUDEN: Yeah. Anyway I questioned whether this, like you say, these fiscal notes. It depends on... [LB40]

SENATOR HADLEY: Well, I... [LB40]

SENATOR LOUDEN: And the people that do the fiscal notes only have one thing to work with, and that's the numbers they're given, so they've got to... [LB40]

SENATOR HADLEY: That's right. [LB40]

SENATOR LOUDEN: This is what they have to do. They've got to come up with that fiscal note (inaudible). [LB40]

SENATOR HADLEY: Senator Louden, you know, it is my point if we really truly believe the fiscal notes, we'll go back to that...the bill that I pulled mine back for, that didn't happen, so there should be \$3 million more floating around someplace in the system. [LB40]

SENATOR LOUDEN: Well, when we go back to that, I would still question that I don't think there's anything in the constitution that says we can do that. I always said that that bill...and I agreed--I think Senator Council brought that up--that actually that bill was passed into law, because, you know. [LB40]

SENATOR HADLEY: That's right. There could be that. But I think we... [LB40]

SENATOR LOUDEN: And nobody has ever challenged it. [LB40]

SENATOR HADLEY: Nobody has challenged it. And we want to...we're going to try and right that wrong now and do it this way. [LB40]

SENATOR LOUDEN: Okay. If we do this, then they don't have to challenge it. [LB40]

SENATOR HADLEY: That's right. That's correct, Senator Louden. [LB40]

SENATOR LOUDEN: Okay. Thank you. [LB40]

SENATOR CORNETT: Thank you. First proponent. [LB40]

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TODD CONSRUCK: (Exhibits 37-39) Madam Chairwoman, Senators. My name is Todd Consruck, T-o-d-d C-o-n-s-b-r-u-c-k. I'm beginning to feel like I'm probably not Senator Hadley's lucky charm. This is my third time also in speaking on behalf of this legislation. I'm here today representing St. Francis Memorial Hospital in West Point, Nebraska. We have five rural health clinics. We jumped in the health clinic business in the mid-'90s. And also on behalf of the Nebraska Hospital Association. I do sincerely thank Senator Hadley and all the members of the Unicameral over the past couple of years that have supported this bill unanimously. It has been a challenge in the clinic business to understand what's happening here. Over the past few years, it kind of became one of those things where at first we just didn't understand what was happening; then, very hopeful that this would be resolved. And now, as my colleagues are facing these audits and beginning to see this roll out across the state, this is becoming much more serious to all of us in the hospital-owned clinic business. The past few weeks, in fact, we've had the state surveyors in our five clinics, which is a pretty lengthy process to do that. And one of the points I've made over the years--and I don't have it in my testimony and I should have--is we are, in fact, a department of the not-for-profit hospital. We have to be, by statute, be a rural health clinic. So we have the same tax ID number. We actually do business as a different name under our corporate parent. All of those things follow right along that. It is unusual to see that as the one versus the two hospitals. I had not heard that about the urban hospitals in the '80s. It doesn't make a lot of sense to me, but we do have to go forward and fix this now. Our hospital did not want to get into the clinic business, nor did most rural or probably even urban hospitals. We did that because our communities faced some type of need. That's what we do. We respond to a mission. In our case, it was the lack of physicians. We had physicians who aged in place. They didn't replace themselves. Really, the only organization that had the ability to go out and do that was the hospital. We had the resources. Physicians in the '90s, and now the 2000s, want to be employed. In the handout I've included for you there are some statistics along those lines that also kind of show, particularly in rural Nebraska, how difficult it is to recruit and retain physicians. If hospitals suddenly are faced with more taxation and more of those issues, it will just make things more difficult. I know there's a perception at times among this body and others that healthcare, probably particularly clinics, are doing well financially. I can speak honestly with you that that is not the case. We've basically had flat revenues for about eight or nine years now, with rising costs. Clinics don't have an ability, contractually or otherwise, with Medicare or Medicaid or insurance companies, really to do much about that revenue. We are in the business for that mission. I would happily entertain any questions and I thank all of you for your previous support. I do hope this gets out of committee. I do hope it passes. But I also understand the challenges the state faces right now. [LB40]

SENATOR CORNETT: Questions? Senator Louden. [LB40]

SENATOR LOUDEN: Yes. Has anyone from the hospital organization, has anybody

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considered to challenge that, that first time here, what, two years ago? [LB40]

TODD CONSRUCK: I don't think, to my knowledge, anyone has substantially done that. You would have to go ahead and engage, of course, you know, an attorney or bring something like that. Like you, I remember reading, probably in the World-Herald, where Senator Council from Omaha said, well, in my opinion, it's passed. But we have not sought to challenge it. [LB40]

SENATOR LOUDEN: Nobody has researched it to see or anything? [LB40]

TODD CONSRUCK: And this is only speaking for myself and none of my colleagues or anyone else. I really don't want to offend the Governor or this body probably by doing that, would maybe be my view on why that hasn't happened. And it's also something that...I know this maybe sounds kind of foolish, but this is such a common-sense thing that you can't, in my mind, tax a not-for-profit clinic--which in our case is attached to the not-for-profit hospital--owned and managed by it, that it just seems like this should happen through normal channels. [LB40]

SENATOR LOUDEN: Okay. Thank you. [LB40]

SENATOR CORNETT: Further questions? You're kind of running out of senators today. Seeing none, may I see a show of hands of how many people are here as proponents? Go ahead. Technical difficulty there. [LB40]

ALLEN VAN DRIEL: (Exhibits 40 and 41) Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Allen Van Driel, A-I-I-e-n V-a-n D-r-i-e-l. I'm the chief operating officer at Chadron Community Hospital and Health Services in Chadron, Nebraska, a not-for-profit provider of healthcare services in a large area of the northwest Panhandle of Nebraska. Senator Louden obviously is familiar with the organization. I'm here today to testify in support of LB40 and I want to thank Senator Hadley for his very eloquent and very well-stated description of the problem and the history of this effort. I've also provided written documentation in support of the bill from Harold Krueger, who is the CEO of Chadron Community Hospital and Health Services. As Senator Hadley said, LB40 would clarify the existing statute, which is Section 77-2704.12, to more accurately state what we believe was the intent of the Legislature. The statute provides for exemption from sales and use taxes on the purchases made by a variety of entities and organizations commonly referred to as tax-exempt entities. These entities include a variety of healthcare organizations, including nonprofit hospitals, nursing homes, assisted-living facilities, and other entities. Unfortunately, the current language of the statute, as described by Senator Hadley, allows for exemption from sales and use taxes for health clinics owned by nonprofit hospitals, only if the clinic is owned or controlled by two or more hospitals or their parent corporations. This wording means that a medical clinic operated by a hospital that's a government

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subdivision--again, as Senator Hadley described--a county or district hospital is tax-exempt, but a clinic operated by a nonprofit hospital is not exempt. It means that a clinic operated by a nonprofit corporation that operates more than one hospital is tax-exempt but the clinic operated by a single nonprofit hospital is not tax-exempt. It's this inequity created by the presence of the word "two" in the existing statute that would be corrected by the passage of LB40. It might seem like being subject to sales tax would not be a major factor in the operation of a clinic by a nonprofit hospital. Again, Senator Hadley described the difficulty and how ridiculous that can be. But as a practical matter, certainly it is not the case that this is a small factor. As Mr. Krueger stated in the letter that I delivered today, Chadron Community Hospital and Health Services operates clinics in Crawford, Nebraska, and Hay Springs, Nebraska. Because those clinics are operated by one hospital, they're not tax-exempt under the existing law. Those clinics are operated in those communities out of concern for access to care by the residents of those communities and the surrounding area. It's a very rural area. A hospital such as Chadron Community Hospital, which operates a clinic, purchases goods and services...good and supplies, excuse me, for the use in the clinic through the same supply channels that it uses to purchase goods and supplies for use in the hospital. However, the goods purchased for use in the hospital are exempt from sales tax while the same goods that would be used for the clinic are subject to sales tax. This creates somewhat of a bookkeeping nightmare for the hospital and its suppliers. But a larger problem is also created. Many nonprofit hospitals, including Chadron Community Hospital and Health Services, purchase many of their supplies through what are referred to as group purchasing organizations. These are collaborations between hospitals and entities that allow the facilities to use the aggregated volume of their purchases to negotiate more favorable pricing from suppliers and distributors. In other words, they purchase goods at a significant discount. This lowers the cost of providing health services to a population served by these hospitals. However, the group purchasing organizations universally have clauses in their membership agreements that prohibit the purchase of goods by organizations that are not tax-exempt. So if a nonprofit hospital which is a member of a group purchasing organization owns or operates a clinic, not only does Nebraska law require that the facility pay sales tax on the goods and supplies purchased for use in the clinic, but it means that the goods and supplies cannot be purchased through the group purchasing organizations without jeopardizing the eligibility of the hospital's purchases for the discounts afforded through the aggregate purchasing agreements. So it's much more than just an inconvenience or a bookkeeping problem. It's a real threat to the continued existence of those clinics. I understand that in today's budget crisis, any proposal that has the potential to reduce sales tax revenue will not be well received by the Legislature or the Governor. Again, Senator Hadley addressed this very well. But we've been down this road before on this very issue, and the time never seems right to make a correction. Budgets are always tight. There are always those who object to the real or potential loss of tax revenue. The time is always right, however, for fairness--and fairness is what this bill is about. I urge you to think of this bill as one which levels the playing field, removes barriers to the

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operation of clinics by nonprofit hospitals, and helps assure continued access to primary care services in the communities served by these clinics. I thank you very much for your attention today. I urge you to pass LB40 out of committee, and I would hope for its passage through the Legislature--and this time, get it signed by the Governor. Thank you very much. I'd be happy to answer any questions. [LB40]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you. [LB40]

ALLEN VAN DRIEL: Thank you. [LB40]

SENATOR CORNETT: (See also Exhibits 42 and 43) Next proponent. Opponent? Neutral? Senator Hadley. Senator Coash. [LB40]

SENATOR COASH: (Exhibits 44-47) Good afternoon, Chairman Cornett, members of the Revenue Committee. For the record, my name is Colby Coash, C-o-l-b-y C-o-a-s-h, and I represent the 27th District here in Lincoln, here to introduce LB570. LB570 is a bill about Wyuka Cemetery, which is right here in Lincoln. And Wyuka is a really special place for a lot of reasons, but it's also special because this is a unique cemetery in that it is our state cemetery. And by statute, and I've got copies of the statutes that govern Wyuka coming around, but by statute Wyuka is defined as a public charitable corporation, which I find a very interesting way to put a cemetery. It's public, it's charitable, but it's also a corporation. The intent of LB570 is to change the trust...it's got several changes and I'm going to go through them one by one. The intent here is to change the trustees' reporting requirements to those more in line with the nature of Wyuka's operation and to clarify Wyuka Cemetery's tax-exempt status by placing it among the state and local entities that are currently subject to sales tax exemption provided in Chapter 77-2704. So allow me to first address the changes regarding the reporting. In the conduct of their business as a public charitable corporation, it makes more sense for the trustees to file their annual report with the Auditor of Public Accounts rather than the Secretary of State. LB570 redirects the reporting from the Secretary of State to the Auditor. In addition, it sets the due date for these reports to the first Tuesday in June rather than March. This falls in line with the administrative needs of the trustees which I have a trustee here who is going to help explain a little bit more about this. Lastly, I want to address the tax-exempt status element to this bill. Wyuka Cemetery has always operated under the authority of the state of Nebraska. Its trustees are appointed by the Governor. They are required to report annually their expenditures to the Secretary of State. However, they serve without compensation and the cemetery receives no state funds. Given these elements, Wyuka is assumed to be covered under the sales tax exemption provided to entities listed under Chapter 77-2704. Due to some recent questions surrounding this tax status upon which Wyuka Trustee Mrs. Osborn will expand, the trustees requested a response from the Attorney General. And it wasn't an official AG Opinion, but it was a very good response that clarified things. But the question was, is Wyuka indeed tax exempt? The AG's response states that "It is true

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that the trustees of Wyuka are appointed by the Governor, and Wyuka is required to file a report of its receipts and expenditures with the Secretary of State, as well as file reports regarding its retirement plans with the Public Employees Retirement Board...These facts, however, do not establish that Wyuka is the 'state' or an agency of the state for purposes of construing the (tax) exemption." And that's what the AG's Office said. This opinion was understandably a shock to those trustees as they diligently worked on rehabbing the financial security of Wyuka following embezzlement of funds by a former trustee. You will recall that this embezzlement was uncovered by a detailed audit of the cemetery by our State Auditor. This audit was completed in January of 2008 and made no mention of the sales tax issue. On the account of the tax-exempt status coming into question, Wyuka began to pay sales tax on their park and garden project beginning in December of last year and in January of this year. So in other words, colleagues, this...Wyuka has not been paying sales tax. Okay? And if they were to seek a tax refund on the account of this bill, it would be about \$5,000. However, should the committee prefer that the tax-exempt status not be retroactive so as to eliminate any fiscal impact of a refund, there is an amendment, AM641, that authorizes the tax-exempt status to begin in July of this year. In conclusion, this bill makes three changes. It changes Wyuka's expense reporting receipt from the Secretary of State to the Auditor; it changes the due date of the reports from Tuesday in March to Tuesday in...first Tuesday in March to that in June; and it grants Wyuka the tax-exempt status that they have in effect already been operating under. So with that, I'll close. [LB570]

SENATOR CORNETT: Questions from the committee? Senator Louden. [LB570]

SENATOR LOUDEN: Well, thank you, Senator Coash. Yeah, I remember that it was the Auditor that caught some of them problems that they had going on over there. And I presume they've got it straightened out since then. [LB570]

SENATOR COASH: They're working really hard to do that. And I would point out that the Auditor who came in there and looked at all the books, and this was in 2008, didn't tell the trustees to start paying sales tax in this audit so it didn't even come up in his audit. [LB570]

SENATOR LOUDEN: Yeah. He was mostly auditing the sale of lots is my understanding is where the... [LB570]

SENATOR COASH: He looked at a lot of things, Senator Louden. And I think one of the trustees that is going to follow will be able to... [LB570]

SENATOR LOUDEN: Yeah. [LB570]

SENATOR COASH: ...she was around when that happened so. [LB570]

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SENATOR LOUDEN: Anyway, when they...you say they weren't paying sales tax anyway? [LB570]

SENATOR COASH: Nope. [LB570]

SENATOR LOUDEN: Well, then when you give this fiscal note here, they weren't getting any of that money anyway? [LB570]

SENATOR COASH: That's right. [LB570]

SENATOR LOUDEN: Well, then how do they come up with \$171,000 if they have some retroactive sales tax on the fiscal note if they didn't... [LB570]

SENATOR COASH: It's my understanding, Senator Louden, that the fiscal...and I'm looking at the fiscal note right now, the fiscal note...the decline in revenue is reflective of if we started to allow them to pay taxes or not allow them, if we required them to pay taxes and then took it away it would be about that much. [LB570]

SENATOR LOUDEN: Okay. But there's something about a retroactive they said in Section 2 and that's what I'm wondering, you know, how... [LB570]

SENATOR COASH: The retroactive would be, Senator Louden, is if there was a...if the retroactive piece of this bill were enacted, then they could go back and seek those taxes that they didn't pay. [LB570]

SENATOR LOUDEN: (Laugh) So they can get the taxes that they didn't pay. Is that what you're saying? [LB570]

SENATOR COASH: I guess, yeah, a refund yet. [LB570]

SENATOR LOUDEN: Okay. They didn't... [LB570]

SENATOR COASH: Senator Louden, it's somewhat of a mess and we're trying to clear it up here. [LB570]

SENATOR LOUDEN: Well, I know that because my wife has some lots there and we had to go through some of this. That's the reason I'm somewhat familiar with it. [LB570]

SENATOR COASH: Yeah. I mean, you know, the thing about Wyuka is it is a cemetery and that's its purpose, but they also have some grounds and it's a park and it is a public place. I mean this is a state cemetery and so they have a lot of expenditures. And they weren't...you know, they were refurbishing some buildings and buying materials. They weren't paying taxes on those. And so it came to light when some of the contractors

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were wanting to charge taxes and the trustees said, well, we're the state and we're charitable. We're tax-exempt. And the contractors said, well, we're not sure about that and so that prompted the trustees to ask the Attorney General what he thought and that's where we come today. [LB570]

SENATOR LOUDEN: Well, I agree that there's these things you've pointed out here I think need to be addressed and probably taken care of. But I just question the fiscal note as usual on that. Thank you, Senator Coash. [LB570]

SENATOR COASH: Sure. [LB570]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB570]

SENATOR COASH: Thank you. [LB570]

FAYE OSBORN: Good afternoon, Senator Cornett and members of the Revenue Committee. My name is Faye Osborn, F-a-y-e O-s-b-o-r-n. I am one of the five trustees appointed to Wyuka Cemetery. I'm here to testify, you know, in support of LB570, and I'd also like to thank Senator Coash for presenting this bill for us today. Please allow me to give you a little bit of background on how this issue arose to our attention. In 2010, Wyuka trustees approved the parking gardens project that we were considering to move forward for the cemetery project. This would include, you know, doing walkways, a path around the lake that's there, landscaping and other, you know, amenities that would like help enhance the look of Wyuka as when you enter it off of O Street. Before the contractor submitted its first invoice, they requested Wyuka to give them a certificate of exemption from the sales tax. They wouldn't, you know, include the sales tax then in the first invoice at that time while we were unable to locate the certificate. So we contacted the Department of Revenue and asked them to provide us a copy of the certificate. They told us that Wyuka was not exempt from sales tax for the purchases made by Wyuka. Well, that was news obviously to quite...and quite a surprise to us that were the trustees. And to the best of our belief and knowledge, Wyuka had never paid sales tax for any of its purchases. We have always been, you know, believed that Wyuka is exempt from the sales tax and use tax under the Section 77-2704.15 as Wyuka Cemetery is clearly a state organization and it stated that. Under Section 12-101, Wyuka Cemetery is a public, charitable corporation. In addition, Nebraska law requires Wyuka Cemetery to be audited by the Auditor of Public Accounts. Each year Wyuka trustees are required to file with the Public Employees Retirement Board an annual report on retirement plans established for its employees. Also each year we're required to file an itemized report of all the receipts and expenditures with the Secretary of State. Wyuka fully complies with the open meetings law, which applies to the public body, which includes independent boards such as the Wyuka Cemetery Board that was created by the statute. The Auditor of Public Accounts requires Wyuka to also have an annual...adopt a budget on file with the office pursuant to the Nebraska Budget Act

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which generally applies to the governing boards and bodies of the state. The bottom line is Wyuka has never paid sales tax to the best of our knowledge. So we're asking that the legislators to simply allow Wyuka to maintain status quo and continue doing what we have done for so many years. I thank you for your interest today and your time.
[LB570]

SENATOR CORNETT: Questions? [LB570]

FAYE OSBORN: I'm sure there's some questions. [LB570]

SENATOR CORNETT: Are there questions? Senator Fischer. [LB570]

SENATOR FISCHER: Thank you, Senator Cornett. Thank you, Ms. Osborn, for being here today. I agree that Wyuka is a special place. My grandparents, great-grandparents and a number of family members are there. Am I correct that Wyuka has a mortuary now that is part of the business? [LB570]

FAYE OSBORN: Yes, and we've had that for many years. I've been a trustee about five years right before all of the problems were noted. I was appointed like a few months before so, you know, the background, yes. We have, you know, besides the cemetery there is a mortuary which, you know, we have sales of like caskets and the burial and we have a very nice chapel there, everything. You know, we have the full service.
[LB570]

SENATOR FISCHER: Now the mortuary, you're looking to make that tax exempt also?
[LB570]

FAYE OSBORN: Well, basically, yeah, because the whole thing is operated under one identity. It's not separate, whether it's the funeral home or the cemetery, it's all done. At this point as, say, caskets are ordered or urns or anything like that, sales tax are not paid on buying those from entities. But there has been sales charged after when someone purchases. So when something is sold, taxes are given to the state on that sale of that entity. [LB570]

SENATOR FISCHER: Oh, okay. Thank you very much. [LB570]

FAYE OSBORN: So it's not totally, you know. It's just that when we're doing things, you know. Right now taxes haven't been paid. Say we got things that we buy, supplies and all that kind of stuff, and everything that is a cost of operating it, no sales tax to our, you know, requests or, you know, looking back have ever been paid. So, you know, assuming there was a certificate which is, yeah, we probably shouldn't assume, but, you know, you're just thinking that it was and now we find out that they're saying, you know, we're not. So that's why we need a clarification on what Wyuka really is. And this has

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been brought to a...to the point and to a light of, you know, what's going on here? You know, because everything that was made was so many years ago and nobody has ever looked at it. I think it was one of those entities that are sitting here and owned by the state of Nebraska that nobody really considered state of Nebraska owning it. [LB570]

SENATOR FISCHER: Okay. Thank you very much, appreciate you coming in today. [LB570]

FAYE OSBORN: Sure. [LB570]

SENATOR CORNETT: So I just...I want to make sure. When you formed the mortuary, you did not separate that in any way as a legal entity from the cemetery itself. [LB570]

FAYE OSBORN: Well, no because they built the, you know, mortuary...I don't know, what is it, like 20 years old I guess, 18. I should know, but I don't have any idea when it...but it's been there for quite a while. [LB570]

SENATOR CORNETT: Now services for mortuaries, the services are exempt from sales tax for everyone if I'm not correct. [LB570]

FAYE OSBORN: Well, yeah. And there's a slight little fee for military people and, you know, there's nothing charged to them. There's a little bit of opening the graveside thing and a few bugs, but it's very minimal. So if you have a service identity, you know, that's a place that you can be buried without charge. [LB570]

SENATOR CORNETT: Okay. Thank you. Further questions? Seeing none, thank you. [LB570]

FAYE OSBORN: Thank you. [LB570]

SENATOR CORNETT: Next proponent. Opponents. Neutral. [LB570]

SENATOR COASH: Thank you to all the members of the Revenue Committee. I just find this very interesting. They've never paid the tax so we have a fiscal note that says if they don't keep paying the tax it hits us in the pocketbook. Doesn't make any sense. [LB570]

SENATOR HADLEY: Welcome to the Revenue Committee. [LB570]

SENATOR COASH: So again, Wyuka has never paid sales tax and I think Ms. Osborn did a nice job of outlining this. We're talking about the exempt status of Wyuka as an organization and paying taxes on their projects and the things that they do, you know, their business. When they sell a casket or sell an urn, they are collecting sales tax on

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those. And we're not...this bill is not to remove sales tax on the things that they're selling. [LB570]

SENATOR CORNETT: It's on what they're buying. [LB570]

SENATOR COASH: It's on what they're buying. So I just want to make sure that that's the intent of this bill is to remove the sales tax for the operation of...because they had a large...they're doing a large project on the grounds and so the materials for all these things need to be tax exempt. It's interesting, you know, it sounds like a duck, walks like a duck, I mean, they have to do open meetings laws and they have to report things. This is the state. And so I kind of thought if, you know, let's say we make them collect, you know, pay sales tax. It's kind of like taking money out of one pocket and putting it in the other because they are the state. So it's really not...in my mind it's kind of a wash and we just need to get some clarity to this issue for the trustees so that they can...what they need to be able to do is go with very clear statute to the folks that provide services and goods to them and say, no, you don't need to collect taxes from us because we are a tax-exempt organization. Thank you. [LB570]

SENATOR CORNETT: Further questions? Seeing none, thank you. [LB570]

SENATOR COASH: Thank you. [LB570]

SENATOR CORNETT: Next. Senator Janssen, you're recognized to open.

SENATOR JANSSEN: Thank you, Chairperson Cornett, members of the Revenue Committee. For the record, my name is Charlie Janssen, C-h-a-r-l-i-e J-a-n-s-s-e-n. I represent District 15, which is Fremont and all of Dodge County. I appear today to introduce LB400. LB400 would repeal the Long-Term Care Savings Plan Act. The Long-Term Care Savings Plan Act was established through enacting legislation in 2006. The hope was that Nebraskans would be able to better plan for their future healthcare need by purchasing long-term care insurance plans or savings plans, I'm sorry. A small income tax deduction was offered to encourage people to do so. Unfortunately, the results have been less than expected. As of December 31, 2010, there were 421 people who had invested a total of approximately \$586,000 in the accounts. In comparison, a similar program established by the Unicameral to encourage people to plan for their child's postsecondary education, the 529 Plan, has seen more than \$2 billion invested. Repealing this program was one of the 16 options that the Government, Military and Veterans Affairs Committee identified in the LR542 process last interim. At the time, we estimated a savings of over \$100,000. You'll notice the fiscal note estimate is \$98,084 General Fund savings with an additional \$18,000 to \$22,000 General Fund increase per year due to the absence of deductions for plan contributions. I'd like to add that LB400 is in no way a criticism of the administrator of the plan or the participating financial institutions. I think they've done a fine job. I would note that the way in which the return

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on the contributions for past plan participants in the bill language is fairly broad. It reads on page 10, line 18-23, "The State Treasurer shall liquidate the long-term care savings plan and return all contributions and investment earnings to the participants as soon as is practicable. This section shall terminate after all participants of the plan have received such contributions in investment earnings pursuant to this section." Working with the legal counsel of the Government Committee, we thought that this language may be sufficient, but I would certainly yield to the Revenue Committee and your excellent staff to determine if improvements need to be made in the "return" provision language. I certainly don't want to penalize current participants by potentially incurring any clawback concerns. I appreciate the State Treasurer's support of LB400 and hope that the proposal can assist in a small way the budget gap that we face in the 102nd Legislature. I do thank the AARP and the Nebraska Health Care Association for giving me advanced notice of their planned opposition testimony to LB400. That is completely understandable. While we differ on LB400, I think we all agree that planning for the retirement of long-term care needs to be...long-term care needs is important and the financially responsible thing to do. I offer LB400 simply as a budget shortfall option that the Government Committee considered in the LR542 process. And further on that opening, as I looked further and further into the Long-Term Care Savings Plan, I looked at it, wasn't real clear on how it was being utilized by I guess the financial advisors. I went on to the plan page to see who I would go to, and in my own community there was a bank and I actually...it's my investment representative, and I did this just today, and I clicked on it and it said, yes, you talk to this person here. So I called him up, I said, have you ever heard of this? He said, no. I said I linked right to you on your Web site and it goes right to you. I said so you obviously don't have anybody in it. He said, no. So that was concerning to me. I also brought an insurance agent that's been in the insurance field I think for nearly ten years that knows little about it. Maybe I'm saying that the wrong way, but has not sold any policies and is uncertain on how to sell it. Also the way it's being utilized a lot of times I'm hearing is people will put into the plan and then pull it out immediately and buy long-term care insurance plans so they can get their deduction, which when I heard that I said, well, it kind of makes sense. I'd probably do that too, but that's not the intent I don't think of the plan, so being used somewhat as a tax shelter by some people in the plan. So I think this could be...again, I don't want to stop people from long-term care savings and I think we want to promote that. There is a deduction. That's something that could stay on and it could be applied somewhere else, somebody just buying a long-term care insurance policy, and that was something that was brought up in our discussions is if I go out and I buy a long-term care insurance plan tomorrow...insurance plan and I pay \$2,000 for it, I walk out, I get hit by a car, whatever, become disabled that would take care of me for whatever I bought the term for, ten years. If I go invest \$2,000 into this Long-Term Care Savings Plan which, by the way, can only grow with the interest of the bank--you can't invest that like the 529 Plans like I have for my children--it just grows on the interest rate that the bank has, so then you'd have \$2,000 to last me for my long-term care problems for that. So the more I learned about the program I just didn't think it was...I got a little bit...I felt stronger about

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the bill. At first when I thought about it, I said, well, I'm going to kind of take one for the Government Committee here and propose this and give it as an option for the LR542 process. But I think there's some real merit to probably discontinuing this program. [LB400]

SENATOR CORNETT: Questions from the committee? Senator Pirsch. [LB400]

SENATOR PIRSCH: Senator Janssen, so you'd like to recall the Long-Term Care Savings Plan Act, is that right? [LB400]

SENATOR JANSSEN: I'm sure you'd like to impeach it but. [LB400]

SENATOR PIRSCH: Yes. Well, kind of an inside joke, but the...why hasn't...you know, this act has been in existence how long now? [LB400]

SENATOR JANSSEN: I think it was 2006. Isn't that (inaudible)? I think it was Senator Jensen I think that originally passed this. [LB400]

SENATOR PIRSCH: And why do you see that this...is it just as with any new plan or policy it takes a matter of time before it's...people reasonably become aware of it and utilize it? [LB400]

SENATOR JANSSEN: Well, people aren't becoming aware of it right now. As you've seen, it's been around, I think it's 2006. I may be clarified if it is 2006 and that's been quite a bit of time. And the fact that I've talked to an insurance agent and my financial advisor personally, I mean that's I don't think my accident, maybe I just have bad ones, I don't know. But neither one of them has really worked in this area a whole lot. So the advertising isn't out there and in reality it's not really...it's not that good of a deal all in all. If I'm an insurance agent and somebody comes to me with \$2,000, I'm most likely going to tell them I would recommend a long-term insurance plan. If you go out and get hit today, it's going to last you for ten years or whatever the term is. If I give you this, you've got \$2,000. So I think smart money would be on not this program. [LB400]

SENATOR FISCHER: Thank you, Senator Pirsch. Other questions? I see none. Thank you, Senator Janssen. [LB400]

SENATOR JANSSEN: Thank you, Vice Chair Fischer. [LB400]

SENATOR FISCHER: Next we will move to proponents. Are there proponents for the bill, please? Good afternoon and welcome. [LB400]

DON STENBERG: (Exhibit 48) Good afternoon. For the record, my name is Don Stenberg, S-t-e-n-b-e-r-g. I'm the Nebraska State Treasurer, and I appear in support of

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LB400. As the State Treasurer, I am the administrator of the Long-Term Care Program. And in my opinion, the policy objectives of the Long-Term Care Savings Plan can be achieved without the need for the administration of a plan by the Nebraska State Treasurer. Dollar savings here are relatively small in the context of the budget of the state of Nebraska, but I think the precedent is very important. And that is that we have a government program that simply hasn't achieved what it was expected it would achieve. It's costing close to \$100,000 a year to administer. And I think when you have a failed program you just need to recognize that and save the taxpayers money by putting an end to it. As Senator Janssen mentioned that as of the end of last calendar year there were only 421 Nebraskans who were participating in this program, it was only a little over a half a million dollars invested. This year's current fiscal year's appropriation to administer the program is \$98,000. It's clear to me that very few Nebraskans have found this program to be of interest, and that the small participation does not justify the nearly \$100,000 expense of administering it. In my opinion, if the Legislature as a policy matter wants to encourage people to purchase long-term care insurance to provide for their long-term care, you can do that without a state government administrator involved. If you want to provide a tax deduction or a tax credit for the purchase of long-term care insurance, you would have a whole army of insurance agents out there with a promotional item to encourage their clients to provide for their own long-term care and there would be no expense of government administration involved in that program. I'm not recommending that at this point given the obviously difficult revenue situation that the state faces. But looking down the road if the Legislature wants to encourage long-term care participation, I think some type of tax incentive without government administration involved would be a far superior way to encourage long-term care provision by people for their own behalf. So that's my thoughts. I'd be happy to answer any questions. [LB400]

SENATOR FISCHER: Thank you, Mr. Stenberg. Are there questions? I have just a couple for you. Right now do you provide notification to those 400-some participants of the plan? Do you give them like a yearly statement or anything to send out? [LB400]

DON STENBERG: Their bank would. And the banks then report to the Treasurer's Office who have set up accounts or who have deposited money into existing accounts. We then forward that information to the Nebraska Department of Revenue so that they can match up against the people that are claiming the deduction against people who have actually deposited. I've been told that there are some Nebraskans who mistakenly believe under current law that if they buy long-term care insurance that they're entitled to a deduction and they take that on their income tax. And the Department of Revenue sends them a notice that says, no, I'm sorry. The purchase of long-term care insurance does not qualify. And yet if they were fully informed, they could have achieved that result by setting up an...it involves some bureaucracy. They could go to their bank, set up an account. As soon as they have their account set up, they could take out their checkbook, write a check to their insurance agent for long-term care insurance, and

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they would qualify. So at least we think some people...some of those 421 people that have these accounts are doing that. They're just setting up the account, the money is there for ten minutes, they walk down to the insurance agent's office, write a check for the \$1,000 they just put in the bank, and they get their tax deduction and their long-term care insurance both so. [LB400]

SENATOR FISCHER: What do you see as the mechanics of ending this program? [LB400]

DON STENBERG: Well, the legislation as written is very broad... [LB400]

SENATOR FISCHER: Very broad. [LB400]

DON STENBERG: ...discretion of the Treasurer. In answer to that question, let me say one thing before I forget it and then I'll more directly answer your question. The one thing that I would...if the committee advances this to the full Legislature, I would recommend a provision that makes it clear that the termination of this program is not a taxable event for any of the participants. You know, they've gotten their tax deduction in good faith, and I don't think there should be any question that the Revenue Department might go back and try and say, well, now that this program is over, we're going to deny those deductions for the last three years and you now have a tax liability. I think that would be very unfair to the people, and I would recommend that the committee put some clarifying language in that makes clear that that's not a taxable event if this program is terminated. In answer to your question, I don't think it would be all that difficult given the way the program works. We have 28 banks involved and you have the accounts. And I haven't thought through all the details, but I think basically we would write to each of those banks and to each of the participants simply saying the program has been terminated. And the bill as it's written, I would understand that probably the banks would send a cashier's check to the people returning their money to them along with whatever interest it had earned. So I don't see a lot of complexity to it. The only concern I would have is that it not be a taxable event for the participants. [LB400]

SENATOR FISCHER: Thank you very much. Other questions? I see none. Thank you. [LB400]

DON STENBERG: Okay. Thank you. [LB400]

SENATOR FISCHER: Senator Cornett, we're on proponents. [LB400]

SENATOR CORNETT: Any further proponents? [LB400]

BRIAN JACOBSEN: I'm Brian Jacobsen, that's B-r-i-a-n J-a-c-o-b-s-e-n, and I support LB400, the repeal of the bill. As Senator Janssen did indicate, I'm an insurance agent.

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I've been in the insurance business about ten years, and I hope he doesn't think I'm as bad as maybe he mentioned. A couple of things and some of this was touched on, but I guess I'll give you a scenario if someone were to talk into my office. Let me first say this. I talked to a half a dozen or better of my colleagues asking them what they knew about this bill or about this plan. None of them knew anything about it. And if you compare it to the savings, the College Savings Plan, one of the reasons that that works and one of the reasons that it has had the participation that it's had is it's beneficial to us to use the 529 College Savings Plan. We get paid when somebody uses that. So let's say somebody comes in my office with \$2,000 and they say, you know, I would like to talk about long-term care. And I have the option at that point to tell them you can put it in a long-term care insurance policy or you can put your \$2,000 in the long-term care savings plan of Nebraska. Now let's just leave it right there. Let's not say that they're going to use that \$2,000 to pay an insurance premium later on, but they just put it in the bank account. That person walks out of my office and a month later they get hit by a bus and they're debilitated, they're a paraplegic and they're going to need long-term care or at least home healthcare the rest of their life. They've only got \$2,000 to work with. So had they purchased instead with that \$2,000 a long-term care insurance plan that has home healthcare benefits and all the other things, as their advisor I would have wronged them into asking them to put the money into the Long-Term Care Savings Plan. While we all know that long-term care is a great thing and that we all need it and it takes the burden off of the state from the standpoint of taking care of people who need long-term care services, I don't think putting \$2,000 in a savings plan per year is going to last very long if someone needs long-term care or home healthcare. Conversely, if I sell them a long-term care plan which, just for your information, a couple of age 50 or so can buy a pretty nice long-term care plan for the two of them for around that \$2,000 per year, so I sell them that plan instead and they go get hit by the bus a month later and they need the care that they're going to need, they're covered, of course, after their waiting period and so I won't get into the legals about the policy itself. So I'm talking to my customer and we're visiting about it and he's ready to write the first month's premium check or maybe the first year's premium check. Am I going to stop him and say, you know, I think what you ought to do is go down to the bank, open your Nebraska Savings Plan account, put the money in there, withdraw it back out, then bring me that premium check and buy your insurance? It's just not feasible. If I'm sitting there selling something and maybe that guy gets hit when he walks out of my office, I don't know, but you can see the complicity in this thing and why it's not being utilized. It's just it's too difficult, and that's why the industry is not using it because of the complicity of it plus the fact that it really has not sold us any extra long-term care policies or incentivized anybody to go buy long-term care insurance. Questions? [LB400]

SENATOR CORNETT: Questions? [LB400]

BRIAN JACOBSEN: Thank you. [LB400]

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SENATOR CORNETT: Are there any further proponents? Opponents? [LB400]

BRENDON POLT: Good afternoon, Senator Cornett, members of the committee. My name is Brendon Polt, that's B-r-e-n-d-o-n P-o-l-t. I'm here representing the Nebraska Health Care Association and our membership of a little over 200 nursing homes and 200 assisted-living facilities. In 2006 I sat before the committee and we asked that the committee advance the initial bill from Senator Jensen. Did we think that it was going to solve our financial problems as a profession? No. Did we think that it was going to change a mentality of citizens that rely on an entitlement where financial planners tell you how to divest your assets and then that way you can go onto Medicaid? No, we didn't think it would happen quickly, but it was a philosophical statement on behalf of the Legislature that you have to be personally responsible for yourself is the only thing we had done. The fiscal note for the long-term care insurance bill that would have created the tax incentive was enormous, and I don't know what sort of gamesmanship was involved in that process, but that was LB966. And LB965 advanced because it was less expensive. But I did go back and look at my testimony because I was like I wonder what I said on that. And I looked at it and it was very clear that we support it because of the two-pronged approach. You could either save your money if you didn't like the thought of putting your money into an insurance plan and then never needing long-term care, you'd at least have something left over. But we realized, well, a lot of people might just take the money and buy premiums. Well, great. So it was kind of a dual-serving purpose to create the savings account as opposed to just the insurance. So, you know, if there was an option in eliminating this program to go forward with the long-term care insurance plan, that would probably be fine. But we tried that once and it was too expensive. The thing is, is as I've worked in the state budget office before my current job and now here, we always look in two-year periods. And that's what we have to do because we have a requirement to balance the budget in two years. But the reality is you can't do anything then. I mean you can't look in terms of wellness programs and long-term care insurance to try and reduce massive amounts of spending in the future because if the savings don't happen as of June 30 in two years then we don't do it. But I was thinking in prior testimony was said that there's a thought that potentially a significant number of the savings plans, the 431 savings plans, are actually being used to ten minutes later go buy insurance premiums. And I'm thinking, great. Because if you just took, let's just say a lot means half, let's say half those plans, it would cost \$56,000 a year to live in a nursing home. If I take 216 times \$56,000, right now we have a present value savings to the state of Nebraska of over \$12 million. But not in two years so who cares? And that's the mentality that is just always the way we budget, and I understand that. I understand our requirement to balance the budget. But I'm here not to rant and rave. It was just a philosophical basis. We were so pleased that the Legislature took a first step four years ago or five years ago, and we just hope that you don't undo something that we need to encourage this paradigm shift. Any questions? [LB400]

SENATOR CORNETT: Seeing none, thank you. Next opponent. How many opponents

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do we have? [LB400]

TAD FRAIZER: Good afternoon, Madam Chair, members of the committee. My name is Tad Fraizer, that's T-a-d F-r-a-i-z-e-r. I'm here representing the Mutual of Omaha companies who do write long-term care insurance coverage. As Mr. Polt previously noted, this bill came about in 2006 as LB265 (sic--LB965) from Senator Jensen, which was advanced 8-0 from this particular committee and then was tweaked again by LB304 in 2007 by Senator Gay, again advanced from the Revenue Committee 7-0 with one member absent. And as Mr. Polt noted as well, there have been several attempts contemporaneously with that and since then to move just to a straight tax credit rather than using the plan and those didn't advance. So this is really the one program in place with the state that encourages the foresight that's needed. And I went back and looked at a little of the legislative history and the introducer's statement to LB965 in 2006 said that it was "to alleviate the demand on future Medicaid expenditures." And I think that's a key here. Part of that was obviously aimed at not only helping people generally, but helping the state of Nebraska. Because as you all well know far better than I, both in this committee and in Health and Human Services and Appropriations and on the floor, from the Governor's Office there's a constant drumbeat about how Medicaid is killing the state budget, both now and in terms of the future. And this is the one program that at least in a small way has encouraged people to practice some foresight and take care of themselves with the goal of reducing demands generally and on the state, and this reverses that philosophy. As noted by Mr. Polt, you know, the average cost is in excess of \$50,000 for someone to be in a nursing home on an annual basis. Just two people would eat up the program savings that are going to be realized by the repeal of the bill. And as Treasurer Stenberg noted and then some other people have noted, there might be other ways to do it. The problem is that in repealing this program it does not include those other ways, whether a tax deduction or a tax credit. I mean if the committee wants to file an amendment and bring back some of those bills that didn't advance in terms of a tax credit or a tax deduction, we might be all in favor of that. But this simply pulls back the one state incentive that's been in place and doesn't put anything else in place as a substitute to encourage that forethought, that savings that will help reduce the state's costs. And just given the cost, your knowledge of Medicaid and other costs to the state going forward, the policy of the state should be to encourage people to make provision for themselves any way you can so that they don't ultimately turn to the state down the road. And I'd be happy to try to answer any questions you might have. [LB400]

SENATOR CORNETT: Questions from the committee? Seeing none, thank you.
[LB400]

JAN MCKENZIE: Senator Cornett, members of the Revenue Committee, for the record my name is Jan McKenzie, spelled J-a-n M-c-K-e-n-z-i-e. I'm executive director and registered lobbyist for the Nebraska Insurance Federation, here today in opposition to LB400. This is the 17th time since 2000 that I've sat and testified in support or

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opposition to a long-term care act bill or credit bill or deductions bill. I would add one other very, very important point that Senator Jensen made back in 2006 when we were talking about the difference between this bill and a bill that was a tax credit or deduction to incent people. There are people who would like to buy a long-term care insurance policy who have a preexisting condition. They cannot. And he felt this program was critical for those folks to be able to put money away in savings in the event that something happened where they were going to have long-term care needs. And that doesn't show up anywhere in the statement. You would have to go to the questioning during the hearing from LB965. But he was very concerned about being fair across the board to people who also might have a need for long-term care insurance and this was his solution to that. I would answer any questions you might have. [LB400]

SENATOR CORNETT: Questions. Seeing none,... [LB400]

JAN MCKENZIE: Thank you. [LB400]

MARK INTERMILL: My name is Mark Intermill, M-a-r-k I-n-t-e-r-m-i-l-l, and I'm here today representing AARP. Ms. McKenzie just made my point and that was that we do have a lot of people who have preexisting conditions who can't get long-term care insurance. This provides them with an opportunity to do that. I was almost ready to let this bill go until I sat down with some of my members and they reminded me of that. They also reminded me that one of the reasons that we may not be having a lot of people taking this up is we have some limits on investments. We can't, as was mentioned previously, we can't invest in the same types of things that we invest the educational funds in. I think they'd have to be FDIC insured products. Something to maybe alleviate that or allow other types of investments of this type of savings plan would probably make it more attractive to me. So those are some other things we consider. We supported this bill early on back in 2006. We still think it has merit. And we think we need to encourage people to save for their retirement and this is one way to do that. I'd be happy to answer questions. [LB400]

SENATOR CORNETT: Seeing none, thank you. [LB400]

MARK INTERMILL: Thank you. [LB400]

KORBY GILBERTSON: Good afternoon, Madam Chair, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Nebraska Association of Health Underwriters in opposition to LB400. I think Ms. McKenzie and others have covered pretty much everything I was going to say. There are a variety of reasons why long-term care insurance isn't always the answer for people and this clearly is another option. We hope that you would not choose to take it away. I'd be happy to try to answer any questions. [LB400]

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SENATOR CORNETT: We went down this road a number of times. [LB400]

KORBY GILBERTSON: Yes, we have. [LB400]

SENATOR CORNETT: I think it started the first year or second year I was here or actually the first year and the bills were killed. Is there a way that we could advertise this program better? [LB400]

KORBY GILBERTSON: I'm sure there is. [LB400]

SENATOR CORNETT: I mean it seems like a very good idea and it seems rather disturbing to me that the banks...Senator Janssen's bank doesn't even know it exists. And we do a lot to advertise the tuition bill. [LB400]

KORBY GILBERTSON: Right. [LB400]

SENATOR CORNETT: Everybody knows about that and nobody knows about this. [LB400]

KORBY GILBERTSON: Um-hum. [LB400]

SENATOR CORNETT: So where...who should be promoting this more? I would think it would be the insurance industry. [LB400]

KORBY GILBERTSON: Right. And I'd be happy to go back and discuss this with the NAHU people. When we discussed it at the meeting, there were a number of them there that said they have recommended this to people because of their preexisting conditions or it just wasn't the right time for them to do things like that. [LB400]

SENATOR CORNETT: Because I mean part of the other groups you might want to talk to are like, I mean MS, all the different... [LB400]

KORBY GILBERTSON: Right. [LB400]

SENATOR CORNETT: ...the different groups that this would make sense for. [LB400]

KORBY GILBERTSON: I think that's a good idea. [LB400]

SENATOR CORNETT: Thank you. [LB400]

KORBY GILBERTSON: Thank you. [LB400]

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SENATOR CORNETT: Any further opponents? Neutral? That closes...did Senator Janssen waive? Okay. That closes the hearings for today. Thank you. [LB400]