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Transcriber's Office

General Affairs Committee
January 27, 2014

[LB680 LB771 LB855 LB861]

The Committee on General Affairs met at 1:30 p.m. on Monday, January 27, 2014, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB680, LB771, LB855, and LB861. Senators present: Russ Karpisek, Chairperson; Colby Coash, Vice Chairperson; Dave Bloomfield; Sue Crawford; Jerry Johnson; and Bob Krist. Senators absent: Scott Lautenbaugh and Ken Schilz.

SENATOR KARPISEK: Okay. We'll get started. Welcome to the General Affairs Committee. I am Senator Russ Karpisek and I chair the committee and I am from Wilber. Committee members present to my far right are Sue Crawford from Bellevue. She is the new kid on our committee, so it looks like we kind of pulled pretty well on that. Next to her is Senator Bloomfield from Hoskins. Senator Lautenbaugh from Omaha will not be joining us today. He had some business to take care of. Then is Vice Chair Senator Coash from Lincoln. Right next to me is Josh Eickmeier. He's legal counsel for the committee. To my far left is Christina Case, who is our committee clerk; then Senator Johnson of Wahoo. Senator Schilz from Ogallala we expect to be with us, and Senator Krist of Omaha. Pages helping us out today are Colton Wolinski. When it says pages, it's just page. He's good enough we only need one. (Laughter) After each bill introduction, we would like to hear testimony in support of the bill, then testimony in opposition, and finally neutral testimony. If you are planning on testifying in any capacity, please pick up a sign-in sheet that is on a table at the back of the room at both entrances. Please fill out the sign-in sheet before you testify. When it is your turn to testify, give your sign-in sheet to either Colton or the committee clerk, and this will help us keep a more public record. If you have handouts, please make sure that you have ten copies for the page to hand out to the committee. If you don't have ten, get his attention and he will get you some ran off. When you come up to testify, please speak clearly into the microphone. Please tell us your name and spell your first and last name. Even if it's a common name like Karpisek, please still spell it for us. (Laughter) Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps. Please keep your conversations to a minimum or take them out in the hallway. We also don't want to see any public signs of cheering or booing, especially for Senator Mello's bill because he's not here very often. Finally, we do allow handouts. We do not allow visual aids or other display items unless you check with the Chair first, and then I'll decide. You don't have any, do you, Senator Mello? Good, because you wouldn't get any. We will begin today's hearing with LB680. Senator Mello, whenever you are ready. Welcome to the General Affairs Committee.

SENATOR MELLO: Good afternoon, Chairman Karpisek, members of the General Affairs Committee. My name is Heath Mello, H-e-a-t-h M-e-l-l-o, and I represent the 5th Legislative District in south Omaha. LB680 would update the Nebraska Electrical Act to reflect changes in the National Electric Code and is brought on behalf of the State Electrical Board. This legislation would update the current minimum standards for

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electrical wiring in the state to the most recent national guidelines from the 2011 NEC code to the 2014 NEC code. The current State Electrical Act was passed in 1975 and historically every three years a bill is introduced to update the references to the NEC in state statute. With one small exception, regular code updates have passed the Legislature with little to no fanfare. Similar bills have commonly faced no opposition and are frequently considered as part of our consent calendar. Fortunately, it appears that the same type of concerns that delayed the adoption of the 2008 NEC are not present in the 2014 NEC with the result of past delays ultimately leading to better communication between the State Electrical Board and interested parties like the homebuilders. Randy Anderson from the State Electrical Board is here to describe some of the provisions included in the 2014 NEC and to explain the code adoption process. But I would be happy to answer any nonelectrical questions that you may have. [LB680]

SENATOR KARPISEK: Thank you, Senator Mello. Do we have any questions for Senator Mello pertaining to this bill? Seeing none... [LB680]

SENATOR MELLO: And I will waive my closing. Thank you. [LB680]

SENATOR KARPISEK: Thank you very much, Senator Mello. Proponents. Welcome. [LB680]

RANDY ANDERSON: (Exhibit 1) Mr. Chairman, members of the committee, I'm Randy Anderson. I'm the executive director of the State Electrical Board. Glad to be here in front of you today. We represent the citizens of Nebraska and the changing laws of the Nebraska State Electrical Act and how it's used and how it's enforced. I am representing the board today in support of LB680. LB680 was introduced as a result of many hours of research by the State Electrical Board. This isn't just something that you all of a sudden jump into and say we're going to do it. The start...the process for this code started over two years ago, and we're privy to what's coming in for changes and you have a chance to travel to meetings and see what's going on. Our primary goal is to monitor the State Electrical Act and improve and update laws as necessary to keep up with the changing industry and to do so in the best interests of the citizens of Nebraska. In the period of January 1, 2013, to December 31, 2013, the Electrical Division issued 9,385 electrical permits, performed 22,264 electrical inspections, conducted 707 electrical licensing examinations, conducted 15 continuing education courses on the electrical code across the state at given locations, issued 2,174 new electrical licenses, and we currently have 10,113 licensed or registered electricians in the state of Nebraska. Everything mentioned in those numbers has to do with the National Electrical Code. We're currently on the 2011 and have been since August 27, 2011. Everything in the electrical industry in Nebraska hinges on the National Electrical Code which is updated every three years. New technology is introduced every year, and to keep up with the ever-changing industry we have to stay current in our code adoption. I have been studying changes to the 2014 electrical code for over two years, and hundreds of hours have been put in by

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many other people. Some of the changes that are coming in now are for photovoltaic. There's some low-voltage, T-grid ceilings coming in, all has to do with new technology that right now is not addressed by the code, but they're trying to keep up with energy and...renewable energy, I should say. The electrical wiring in the state is either inspected by the State Electrical Division or by local jurisdiction. The state maintains jurisdiction over all state-owned property. These programs monitor what the state does. And when we adopt the code, we give them a certain amount of time to get through their legal process to adopt the code at their local jurisdiction. We currently have 5 county programs, 45 municipal electrical programs that have their own, and they're on the 2011 code. The Sarpy County is one that has taken a step like a few years back, the city of Hastings did, and adopted the code ahead of the state. They actually requested permission at our January board meeting to move forward at that meeting and start on January 15 of 2014. So Sarpy County, not Omaha itself but the surrounding area, is already on this code. There are people behind me that are going to testify about the code-making process. I know Senator Mello said I'd touch on it, but we do have a person here from that. So rather than waste your time saying it twice, I respectfully request that you advance LB680. Thank you. [LB680]

SENATOR KARPISEK: Thank you, Mr. Anderson. Any questions? Senator Crawford. [LB680]

SENATOR CRAWFORD: Thank you, Senator Karpisek. You had...there was a discussion earlier about the fact that there have been a lot of discussions, and Senator Mello had mentioned, you know, discussions with homebuilders and other folks. Could you talk a bit about what discussions you've had with other stakeholders? [LB680]

RANDY ANDERSON: On this code cycle I can honestly tell you I have not had one phone call against it, about it. The only questions I've received with this one is what date will it...when will it go into effect so they know on bidding jobs. We have reached out and we've met with homebuilders on past codes and they know that we're available to discuss anything with the board. But on this one we're told that they had no opposition or none that we know...that has been brought to our attention. [LB680]

SENATOR CRAWFORD: Thank you. [LB680]

SENATOR KARPISEK: Thank you, Senator Crawford. Any other questions? Senator Johnson. [LB680]

SENATOR JOHNSON: Thank you, Chairman. The relationship between the permit timing to upgrade to the new code, how does that relate to when the Fire Marshal Office goes out and does inspection? Are they still working on old code or are they ahead of that? [LB680]

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RANDY ANDERSON: We're two separate entities. The Fire Marshals are on a code later than us as far as the building goes, but we handle the electrical. We do have issues with medical institutions where we have to get together on the codes, but otherwise they're cycles behind us on their building. [LB680]

SENATOR JOHNSON: Okay. But you do have some correlation between the two on certain...medical. Is that the only one? [LB680]

RANDY ANDERSON: Yes, yes. If there is a question, we just had one on some receptacles in a nursing home, and myself, the Fire Marshal's Office discuss it and come up to an agreement of how it's going to be done in the state. [LB680]

SENATOR JOHNSON: Okay. Because I've heard there are instances where maybe one code book was used and another one was maybe on a different page, a different upgrade or something and changed some things. [LB680]

RANDY ANDERSON: That does happen, but what it will be on...I believe what you're probably referring to is when somebody gets a Medicare upgrade and they have to come in and be licensed to receive the payments. The Fire Marshal comes in and they have to go on another set of federal rules, and in some cases have to require what the federal government requires to renew their license. [LB680]

SENATOR JOHNSON: So that's stricter maybe than what the state code is at the present time. [LB680]

RANDY ANDERSON: Yes. We don't...the Electrical Act doesn't make anything come up to date unless you change it or unless we see a hazard. So if we walk into a building and the wiring was done per code 15 years ago, you don't have to change any of that. The only thing that has to meet the new code is what's wired now. My understanding is with Medicare and Medicaid that might not always be the case if you need a certain generator system or something for life safety. Even though the one you put in met code, it may not meet code today. [LB680]

SENATOR JOHNSON: So it would be better for the contractor or the contract, the builder, whatever, to probably rely more on the Fire Marshal code because they go maybe more current than the state? [LB680]

RANDY ANDERSON: Not as far as electrical. I would say it's kind of a gray issue because they're behind us on what they look at on the electrical code, but they're in some cases upholding things the federal government does for the life safety on a hospital. [LB680]

SENATOR JOHNSON: Okay. What I'm trying to get is a better correlation between the

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two so we don't have situations where they thought they were meeting code and then find out somebody else has a different set of rules or codes. [LB680]

RANDY ANDERSON: Yes, and honestly that has happened where there was a misunderstanding. I think in most cases people are...right at first there was some of that, but I think after they realized that the Fire Marshal was doing it for Medicaid and Medicare rules, I think it's gotten to where they understand that there may be something existing that might have to be updated. [LB680]

SENATOR JOHNSON: Okay. Thank you. [LB680]

SENATOR KARPISEK: Thank you, Senator Johnson. Senator Krist. [LB680]

SENATOR KRIST: You said that there was a code person behind you. [LB680]

RANDY ANDERSON: That's going to testify behind me, yes. [LB680]

SENATOR KRIST: And the person who's behind you can talk to me about international versus electric versus other building codes. [LB680]

RANDY ANDERSON: I believe so, yes. [LB680]

SENATOR KRIST: Okay. I will reserve my question. Thank you. [LB680]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you. [LB680]

RANDY ANDERSON: Thank you. [LB680]

SENATOR KARPISEK: Further proponents? And I neglected to say earlier we do not use the light system in here because I think if you came, we want to hear what you have to say. I don't want to cut you off. But we don't want you to hear...we don't want to hear you all day either. So if you're carrying on too long I may ask you to wrap it up. But Mr. Anderson did perfect. Welcome. [LB680]

DAN FROHBERG: (Exhibit 2) I'm going to follow with that. My name is Dan Frohberg, D-a-n F-r-o-h-b-e-r-g. I'm in my 33rd year as an electrical instructor at Northeast Community College, and I've held some form of state electrical license for 30 years. So I'm kind of hitting that from my standpoint as a contractor, but also from the college standpoint. If you look at basically the first sentence of the code book, the purpose of this code is the practical safeguarding of persons and property from the hazardous hazards arising from the use of electricity. Why that statement doesn't change too much from the past issues of the code, the safety portion has changed a lot in the last ten

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years. We have new equipment. We have new things that we can put into our system for that protection of persons and properties. Two-thousand fourteen goes a little further in providing GFCI, ground-fault circuit interrupter protection for kitchen circuits other than the counter-accessible ones. And then also we've expanded the arc fault protection. Some of the problems in the past I think were costs, as far as what the costs were to put this added safety means in. I'm kind of in a unique position out at the college. We can take these codes and I can give...we're doing our two resident houses on campus to the 2014. So it gives me an idea of the students. Here's the code, here's how we apply it. It also gives us some opportunity to show other contractors in our area. I do continuing education. I'm a member of the north-central and the northeast Wireman's Association. We've had meetings this January. We've discussed, most of the problem isn't the cost but how do we implement this. How are we going to do all this? So we've got some ideas that we can give to the contractors and some ways and we'll see if it works or not, and that's kind of where we're at on the student-built homes. You have a handout on cost from last year. The cost from the start of a residential project to auction, usually a two-year process, in materials only we have about \$90,000 into the structure. Maybe make a little side note that probably \$10,000 to \$15,000 may be countertops as far as the granite countertops that were put in. If I look at just to bring up those additional arc faults, ground-faults that we need in the kitchen and laundry areas, I've calculated six additional arc fault breakers at \$40 each for \$240. We're going to do some faceless ground-fault circuit interrupters because they have to be in an accessible location. They cannot be put into a cabinet or behind a refrigerator. So we're going to add those in our project at a cost of \$18 each for \$54. Total additional equipment is around \$300 to bring this up to 2014 specifications. This, if you looked at the total cost of the project, approximately is three-tenths of one percent that we're raising. So I don't think we need to compromise the safety portion. We shouldn't compromise the safety portion. And I could answer any other questions that you may have. [LB680]

SENATOR KARPISEK: Thank you. Any questions? Senator Bloomfield. [LB680]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. Just out of curiosity, if the project is started between under the old code and we upgrade this, if the project is not done do they need to go to the new code or if it's already started under the old code does is that supposed to... [LB680]

DAN FROHBERG: Once the permit is let, it is under that current...the code that the permit was let at. [LB680]

SENATOR BLOOMFIELD: Okay. Thank you. [LB680]

DAN FROHBERG: So if we started a project now and I'm under the 2011, it would stay under the 2011. [LB680]

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SENATOR BLOOMFIELD: Okay. Thank you. [LB680]

DAN FROHBERG: The code is a minimum set of requirements. So we can go stronger and we have in this just to try some of this new equipment out and new positions and locations, so yes. [LB680]

SENATOR KARPISEK: Good question, Senator Bloomfield. Any other questions? Seeing none, thank you. [LB680]

DAN FROHBERG: Thank you. [LB680]

SENATOR KARPISEK: Further proponents? Welcome. [LB680]

TIM McCLINTOCK: (Exhibit 3) Thank you. Well, good morning (sic). My name is Tim McClintock, T-i-m M-c-C-l-i-n-t-o-c-k, and I am a regional electrical code specialist with the National Fire Protection Association, and I'm here today in support of LB680, which amends the State Electrical Act to update from the 2011 edition of the National Electrical Code to the 2014 edition of the National Electrical Code. Well, the National Electrical Code, which is commonly referred to as the NEC, is developed and produced by the NFPA or the National Fire Protection Association, which is an independent, not-for-profit, standards development organization. And we are a mission-driven organization that our mission is to reduce the worldwide burden of fire and other hazards on the quality of life. Since 1911, NFPA has been the sponsor of the National Electrical Code and the requirements of this standard has continued to evolve over its 100-year history to reflect America's heavy reliance on reliable and safe use of electrical energy. The...as Mr. Anderson mentioned, I'm going to talk a little bit about the standards development process at the national level, which the NEC is one of several standards that are developed by the National Fire Protection Association, and that process is an open, transparent, and balanced process that is accredited by the American National Standards Institute. This includes balanced representation of industry experts that populate NFPA's technical committees, and it also includes a very broad cross-section of interest groups ranging from inspectors that sit on the technical committees, as well as, you know, the labor industry. There's actually two representatives from both the union and nonunion representation on each of their committees. There's also testing organizations such as Underwriters Laboratories, as well as Intertek testing labs. So it's...and it also includes manufacturer representation on the committees as well. Well, this balanced expertise ensures that new requirements are thoroughly vetted and establish an acceptable benchmark for the necessary level of safety. And one important key aspect of NFPA's codes and standards development process is that it is an open process that anybody from the public can submit a proposed change or submit for a new requirement. So that's just a testament or one of the cornerstones of that process, is it is open and you do not have to be a member of the NFPA to participate in that process. But as well as this codes and standards

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development process has worked, you know, the rubber kind of hits the road, if you will, rubber doesn't hit the road until, you know, legislative bodies like yourselves actually adopt that and put that into law. And Nebraska has been, you know, a long-recognized leader in the nation with your timely adoption and update of the National Electrical Code. And it's NFPA's hope that you will continue to move forward with that trend and update the 2011 to the 2014 edition. So with that, I know I had submitted written testimony that goes into a little bit more detail. But in the interest of time, I'll just leave it open to any questions, and thank you for the opportunity. [LB680]

SENATOR KARPISEK: Thank you, Mr. McClintock. Senator Krist. [LB680]

SENATOR KRIST: I don't want this to be a lesson in how codes are developed or how we adopt them, but we have some newer members and folks who haven't been around for many discussions. The International Building Code as we know covers a breadth of subject matter. Somewhere in the International Building Code there is reference to electrical standards across the board. That International Code relates to this NFPA code how? [LB680]

TIM McCLINTOCK: Well, ultimately, you know, if we're referring to, say, the Commercial or the International Building Code or the International Residential Code, you know, anyplace any requirement, you know, refers to electrical, typically what they do is reference the National Electrical Code. The NFPA is separate from the International Code Council, which is who publishes the International Building Code. NFPA publishes the National Electrical Code as well as many other codes and standards, but... [LB680]

SENATOR KRIST: So at any given time a jurisdiction in the state of Nebraska could have to comply with or could be looking at as many as four different electrical codes, starting with the international and right on down the line. Is that fair to say? [LB680]

TIM McCLINTOCK: Well, I don't believe that the International Building Code actually includes specific prescriptive electrical requirements, although I'm not an expert on the International Building Code. But generally what happens, you know, whether it's the state of Nebraska or another state, is when they adopt the NFPA 70 or the National Electrical Code for electrical installations, that is the code that you're required to comply with for electrical installation. So, you know, many codes have a provision in their administrative chapter that, you know, where there is a conflict between one code or the other, then, you know, this code takes precedence. [LB680]

SENATOR KRIST: And some of that is jurisdictional. I mean, it...you talk they talked about Sarpy, Sarpy, Douglas, different building codes can take different forms. Once we adopt...the point being, once we adopt this, which we should, then Sarpy is still ahead of it, as they say, or they will...we will have now caught up with Sarpy. [LB680]

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TIM McCLINTOCK: I'm not familiar with Sarpy. [LB680]

SENATOR KRIST: Okay. I guess the point is that you can...an individual jurisdiction can buy into a building code, can adopt a building code way in front of the state and the International Building Code has almost all areas of construction within it. We had...in the last few years, we've had several debates and votes on the floor where we have opted into a building code, yet we have not opted into a particular part of a building code. That's also our right as a state to opt in. So to say that you should be using the Fire Marshal's code or the International Code or any other code, that's up to the local jurisdictions. We simply say this is the code we're buying into as a state, and then the jurisdictions can go further in support ahead of the code, but never behind that code. That point needs to be made because there are jurisdictions out there. For example, when it has to do with the CMS Medicare/Medicaid kind of standards, you'd have to comply with something that would far exceed a local building code either by the state or by a jurisdiction. So I just want to make the point because...and the other point to be made is that when you carry a bill that has building codes or a change of any code, you oftentimes have to de-conflict with let's say the builders, for example. The builders in the state of Nebraska are very fragmented right now because some of them are off in one direction and some of them in another direction. So, again, it's where are we as a state. So thanks for letting me make the point and giving me some credibility in making the point. I appreciate it. Thanks for coming. [LB680]

TIM McCLINTOCK: Thank you. [LB680]

SENATOR KARPISEK: Thank you, Senator Krist. Any other questions? Seeing none, thank you. [LB680]

TIM McCLINTOCK: Thank you. [LB680]

SENATOR KARPISEK: Do we have further proponents? Do we have any opponents? Anyone neutral? Seeing none, Senator Mello has waived closing. So that will close the hearing on LB680. We will now move to LB771. Senator Wallman. Welcome, Senator Wallman. [LB680]

SENATOR WALLMAN: Thank you. Thank you, Senator Karpisek. [LB771]

SENATOR KARPISEK: Good to see you. I don't think we see you over here very often. [LB771]

SENATOR WALLMAN: No. Good afternoon. Glad to know you. And, members of the General Affairs Committee, for the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent District 30. I am here today to introduce LB771. And currently, under the Reduced Cigarette Ignition Propensity Act, each manufacturer must submit to the State

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Fire Marshal a written certification. This bill would change a recertification period to every three years instead of four. Someone from the State Fire Marshal's Office is here and they can explain why this change is needed much better than I can. Thank you. Any questions? [LB771]

SENATOR KARPISEK: Thank you, Senator Wallman. Does anybody have any questions? [LB771]

SENATOR BLOOMFIELD: No, but it'd be a lot more fun to make Norm squirm than ask him questions. (Laughter) [LB771]

SENATOR KARPISEK: It would be more fun to ask, but I have a bill up later that I'm going to do the same thing, so. Thank you, Senator Wallman. Proponents for LB771? Welcome. [LB771]

JIM HEINE: (Exhibit 4) Good afternoon, and thank you. Chairman Karpisek and members of the General Affairs Committee, for the record, my name is Jim Heine, J-i-m H-e-i-n-e, and I am the State Fire Marshal. I am here today to testify in support of LB771. The State Fire Marshal agency is required to perform certain activities under the Reduced Cigarette Ignition Propensity Act. A part of these requirements is maintaining a database for all of the certification information that must be submitted by cigarette manufacturers, as well as issuing certification once all the requirements are met. The agency also works collaboratively with the Revenue Department and the Attorney General's Office on various aspects of the act, as well as other tobacco-related settlements. The agency gathers, analyzes, and utilizes data regarding cigarettes related to fires to generate reports regarding the effectiveness of this act. The only aspect of the act that LB771 would change is the recertification period. The recertification period is currently four years and LB771 would change it to a three-year period. This change would help the agency and provide clarity to cigarette manufacturers. Every other state that has a listed recertification period has a three-year recertification period. Thank you for your time and consideration, and I'll be happy to answer any questions you may have. [LB771]

SENATOR KARPISEK: Thank you, Mr. Heine. Senator Coash. [LB771]

SENATOR COASH: Thank you, Senator Karpisek. Mr. Heine, what kind of information does the Fire...do the manufacturers submit to the Fire Marshal? I mean, they're submitting something and we're going to change the time frame. So I know we're changing the when's. What's the what's here? What is being submitted to the Fire Marshal? [LB771]

JIM HEINE: What they submit is a spreadsheet, and on that spreadsheet they have to demonstrate the brand length, the diameter, and the construction type of the cigarettes,

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and testing that shows they are in compliance with an adopted standard that comes to our agency. That's basically what they submit to us. [LB771]

SENATOR COASH: Okay. And does the Fire Marshal, do they...they just collect it and save it, right? They don't...do they do anything with the information like once they receive it or is it just received from the manufacturers and then stored in case you need to look something up? [LB771]

JIM HEINE: Oh, are you talking what we do with it? [LB771]

SENATOR COASH: Yes. [LB771]

JIM HEINE: Yes. Well, we are tasked by this act to show the effectiveness of the act that it is reducing careless smoking related fires. So we do track and document information on fires that resulted as careless smoking materials. And we then are required to report that to the legislation as the effectiveness of this act, that it's helping reduce the fires caused by a cigarette. [LB771]

SENATOR COASH: Okay. [LB771]

JIM HEINE: We also give data to any entity that requests it. We've had Health and Human Services request information on the safe cigarettes, that they are effectively working as designed. [LB771]

SENATOR COASH: Okay. When you get data from manufacturers as it is now every four years, does the data change that much? I mean, are you seeing fairly different reports from manufacturers every four years or are they pretty much giving you the same thing every four years? [LB771]

JIM HEINE: That's one thing with Nebraska. There's other states that have the propensity act, that have an act, and they require the manufacturers to test every recertification. We don't. If they tested at the initial certification on recertification, they just again submit that data. So it's easier in Nebraska essentially than it is in some of the other states. [LB771]

SENATOR COASH: So it's...since they don't have to retest it, it's pretty much the same data. [LB771]

JIM HEINE: Yes. [LB771]

SENATOR COASH: Okay. In your testimony, in your written testimony, I just circled a couple of things. You said this change would help the agency, and I assume you meant the Fire Marshal agency. [LB771]

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JIM HEINE: Yes. Yes, Senator. [LB771]

SENATOR COASH: How does it help the agency to increase this frequency? [LB771]

JIM HEINE: Well, because we're on a four-year cycle and we started this...this act started in 2010, they are required to recertify this year, 2014, December 31 of '13, and now they're going to start recertification. Actually last year in December, we had a large cigarette manufacturer when they did submit their paperwork and it causes some confusion for them because, as I said, the majority...the rest of the states are on a three-year cycle and we're on a four. So that would help our agency alleviate some of the confusion from the other states on a three-year cycle. [LB771]

SENATOR COASH: Are we 1 of 40, we 1 of 50 states that is on three or are we... [LB771]

JIM HEINE: I'm not exactly certain how many of the states, but I do...but I know that the states that have the propensity, the cigarette propensity act, are on three years. So I can't tell you how many states that are on that. [LB771]

SENATOR COASH: Okay. All right. Okay. Thank you very much. [LB771]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Krist, did you have a...okay. Senator Bloomfield. [LB771]

SENATOR BLOOMFIELD: Senator Coash pretty well asked my question, is are we going to this just so we can be the same as other states? [LB771]

JIM HEINE: To be consistent with the rest of the states that are on it, yes. [LB771]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Johnson. [LB771]

SENATOR JOHNSON: So if we go to three years, do they want it to be the same three...same year as everybody else so they do one certification blanket or...so, I mean, if everybody else is on 2013, for instance, do they want us to be going at 2016 and 2019 or do we start now with '14 and our next certification would be 2017? [LB771]

JIM HEINE: Actually because of the recertification starting now, we're going to recertify for four years. And then this bill then will become effective, but at that point then we'll switch to the three-year cycle. So it will remain on a four-year cycle because it's the timing. [LB771]

SENATOR JOHNSON: So they don't try and get everybody on the same year? [LB771]

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JIM HEINE: No, no. [LB771]

SENATOR JOHNSON: Okay. I thought maybe for their convenience it worked out nice, but. [LB771]

JIM HEINE: Well, not to my knowledge they're trying to do that, but, no. [LB771]

SENATOR JOHNSON: Okay. Thank you. [LB771]

SENATOR KARPISEK: Thank you, Senator Johnson. Senator Crawford. [LB771]

SENATOR CRAWFORD: Thank you, Chair. Now I noticed in the fiscal note that we get a thousand dollars when people register with us to do this. How does that price compare to other states and is that one of the reasons for the bill as well to generate more revenue? [LB771]

JIM HEINE: I'm not exactly sure where the other states are, but we are getting a thousand dollars per brand family, yes. And that roughly, as you can see in the fiscal note, figures out for the three-year cycle. [LB771]

SENATOR CRAWFORD: So we would be generating more revenue for the...because they'd be paying the same fee but they'd be paying every three years instead of every four years. [LB771]

JIM HEINE: Well, actually it does...it doesn't impact on the revenues. The amount that we collect would not change. And it would just be collected on a three-year instead of a four-year cycle. It isn't increasing anything. [LB771]

SENATOR CRAWFORD: The amount...okay. But the amount someone would pay over 12 years would be different. They're paying it every three years instead of every four years. [LB771]

JIM HEINE: Instead of... [LB771]

SENATOR CRAWFORD: Yes. All right. [LB771]

SENATOR KARPISEK: Thank you, Senator Crawford. Senator Bloomfield. [LB771]

SENATOR BLOOMFIELD: It's Monday and I'm a little more dense than (laughter) normal I suppose. But I don't see any reason to do this just because we would be the only state that isn't. There are no other states that have this form of government. But I don't see a good reason to change this. I was hoping somebody could give me one.

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[LB771]

SENATOR KARPISEK: Do you want to respond? [LB771]

JIM HEINE: Other than it does put us in line with all the other states that have adopted it. [LB771]

SENATOR KARPISEK: Any further questions? Seeing none, thank you. [LB771]

JIM HEINE: Thank you, Senators. [LB771]

SENATOR KARPISEK: Any further proponents for LB771? Any opponents? Anyone neutral? Seeing none, Senator Wallman, would you like to close? Senator Wallman is going to waive closing. He gets a gold star. (Laughter) Senator Wallman is up next with LB855. Welcome back, Senator Wallman. [LB771]

SENATOR WALLMAN: Good afternoon again, Chairman. And for the record, my name is Norm Wallman, W-a-l-l-m-a-n, and I represent District 30. I am here today to introduce LB855. This bill was brought to my office by a constituent. His mother wanted to be buried in a cemetery that is adjacent to his farm. Unfortunately, that cemetery was abandoned. And once a cemetery in a county is abandoned, there's no formal procedure to reopen it. So this bill would change provisions relating to the formation and operation of cemetery associations and to provide for the transfer of management and operation of certain cemeteries. And if there's any questions on this, I've got a cemetery abandoned by one of my farms. So it does affect some people in the county. [LB855]

SENATOR KARPISEK: Thank you, Senator Wallman. Any questions? Senator Coash. [LB855]

SENATOR COASH: Thank you, Senator Karpisek. Senator Wallman, if LB855 were made law and an abandoned cemetery were then reopened under the provisions that you put here, does the county then become on the hook for the maintenance of that cemetery moving forward? [LB855]

SENATOR WALLMAN: I suppose they could be. [LB855]

SENATOR COASH: Okay. And since Senator Krist didn't ask, I'll ask. (Laughter) Does this apply to just counties or are we applying this to second...you know, villages, sometimes... [LB855]

SENATOR WALLMAN: No, no. [LB855]

SENATOR COASH: Just counties only. [LB855]

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SENATOR WALLMAN: Yeah. [LB855]

SENATOR COASH: Okay. All right. Thanks, Senator Wallman. [LB855]

SENATOR KARPISEK: Thank you, Senator Coash. Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Thank you. I have a cemetery, similar to what Senator Wallman is talking about, about a mile and a half from my farm that has been taken over by the county, and that's what happens to them when they are so-called abandoned out in the...our part of the real world anyway, is the county comes in and once they get within two weeks of Memorial Day, they are required to mow it. They may mow it with a 200-horsepower tractor and a 30-foot shredder. So their mowing really doesn't amount to much. They go where there are no stones or trees or anything else, and they call that taking care of the cemetery. It isn't. They also, if you...it has become my choice to be buried in the cemetery that we're looking at, and I asked about buying a plot there from one of the county commissioners, and they don't know how to go about selling one or if they can sell one. They said when you die, have your wife come ask us and we'll go out and dig you a hole. (Laughter) That is not the way a cemetery should be operated. And I think Senator Wallman has taken a great step here toward making this to where somebody that lives in the area and may actually want to utilize that cemetery can wrest it back from the county. And I want to thank Senator Wallman for bringing this, and it may not be the ultimate answer but it's a step in the right direction. And if you've got anything more you'd like to say, I'd like to hear it. [LB855]

SENATOR WALLMAN: Thank you. [LB855]

SENATOR BLOOMFIELD: I was going to cosign onto this and I haven't yet, but. [LB855]

SENATOR WALLMAN: Well, thank you, Senator Bloomfield. Yes, I think it's a step in the right direction and we got to do something. [LB855]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Senator Krist. [LB855]

SENATOR KRIST: Occasionally I actually read these. (Laughter) So for the record, a county...this would be page 8, line 6, "A county which is maintaining an abandoned or neglected pioneer cemetery may transfer the management of the cemetery to a cemetery association formed under sections 12-501 to 12-530 and sections 1 and 2 of this act or to a cemetery district organized under sections 12-909 to 12-923 if," and then it gives some provisions. What we're talking about here is cemeteries that have gone abandoned, been turned over to the county so they are the county's responsibility now, and not being maintained well, to Senator Bloomfield's point. There would have to be

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somebody who really wants to do this. An association would have to come forward. They would have to present that to the county and say we want to reactivate. And currently in law there is no provision that this could ever happen legally. What you've done is a great thing. What you've done is said if we want to reopen that cemetery, we're going to have to maintain it probably to a standard well above what it's being maintained now, giving honor to the people who are both buried there and to the people who would come after. I'll continue just for the record. "The county has been maintaining the cemetery pursuant to sections 12," dah, dah, dah, dah, dah, "for at least five years." The planning commission appointed pursuant to section...if any, reviews the proposed transfer of; and the county board approves the transfer of the cemetery by resolution after a public hearing for which notice is provided. So I think we've given it all back to the local level. We've provided an opportunity for them to do what would want to be done there. And even in Douglas County, unincorporated parts of Douglas County, there is one or two of these cemeteries. So it's not just in the rural part of the world. And so with that, I would just say, Senator Wallman, you've done a good thing here and I will be hoping to push this out of committee myself. [LB855]

SENATOR KARPISEK: Thank you, Senator Krist. Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: It is my understanding--and, Senator Wallman, I would ask you--I think the counties are getting some money from the state now for this so-called maintenance. [LB855]

SENATOR WALLMAN: And I have a county commissioner behind me testify on this, so...and he... [LB855]

SENATOR BLOOMFIELD: Okay. If so, will that transfer to the new association or society, that they would receive those funds if they do in fact exist? And we'll ask your county commissioner when he comes up. [LB855]

SENATOR WALLMAN: Yeah. Okay. Thank you. [LB855]

SENATOR KARPISEK: Thank you, Senator Bloomfield. Any other questions? Seeing none, thank you, Senator Wallman. [LB855]

SENATOR WALLMAN: Thank you. [LB855]

SENATOR KARPISEK: Any proponents? I was hoping you were going to be a proponent. (Laughter) Welcome. [LB855]

MATT BAUMAN: Thank you. My name is Matt Bauman, M-a-t-t B-a-u-m-a-n, and I am the chairman of the Gage County Board of Supervisors, and I serve District 2 and I butt right up against Saline County and Jefferson County with my district. I'm a proponent of

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LB855 because of everything that was just said here. I probably could have stayed at home today but you've done such a wonderful job. And we have 16 abandoned cemeteries in Gage County and 5 of them are in my district, and just recently this summer we ran into the exact issue of a family member who wanted to be buried there. The county doesn't do a very good job. I'll take the heat for that. It's...I've had some numbers pulled by our county clerk and it looks like over ten years, we've spent roughly \$56,000 in mowing, basic mowing at best. We've checked with our liability insurance. Though it doesn't happen very often, from time to time we do have vandalism. We don't have any coverage for that. That would be...you would have to probably try and go back and find some previous family members. Having an approved cemetery association would be a recourse to continue to maintain this, which is part of our heritage, and be able to move forward to reinvigorate some of these cemeteries. Senator Wallman has one very near his home. The proponents and the family that will come up and speak after I am done have one just down the road, less than a half a mile from their house. And so there's a vested interest by actual real people out there to try and reinvigorate these, if you will. We did put a process in place so they have to go through the planning and zoning commission, they have to come before the county board. We will have public notice so that there's nothing underhanded being taken place here. We are sensitive that we want to make sure that there's no...I guess I come up with a term of a real estate carpetbagger where someone would come from out of state and try to snatch these up. So this would be on a case-by-case basis. It's county by county. If some counties don't want to touch it, they leave it alone. If a county sees that it's important and that there's merit there, then they can address it at that time. So we think that it's an opportunity to turn over what was previously private back to the private sector. There's cemetery association regulations that are set up by the state of Nebraska that they would have to fall behind or fall in line with. We're not creating more bureaucracy. We're using the system that's currently in place. [LB855]

SENATOR KARPISEK: Thank you, Mr. Bauman. Lots of questions for you. Senator Krist. [LB855]

SENATOR KRIST: Just clarify for us there's no state money coming to you to offset the care for those cemeteries. [LB855]

MATT BAUMAN: The information I could find, no, sir, is that you pay for these out of the general fund. I don't believe there's any state assistance that comes through this. [LB855]

SENATOR KRIST: So essentially you received an unfunded mandate to mow, and now you can get rid of that unfunded mandate. [LB855]

MATT BAUMAN: Correct. [LB855]

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SENATOR KRIST: Okay. And then the other question just for clarification, you said that another county doesn't have to do it. Currently, you have a process in place that you'd allow for to do it. I think more importantly, if this goes into statute, the citizens can decide whether or not they want to reopen and it's state statute. So they can take it to the county and I think it's a good thing. Again, we're returning the control back to the local population, the citizens who have some obligation or feel some obligation to reopen either because their own family members or someone wants to be there or they want to take particular care and reverence to the people who are already buried there. So, again, I compliment Senator Wallman. Thank you for coming to testify. [LB855]

MATT BAUMAN: Thank you. [LB855]

SENATOR KARPISEK: Thank you, Senator Krist. Senator Johnson. [LB855]

SENATOR JOHNSON: Thank you. I have another bill that's going to be introduced probably before Government Affairs that deals with townships and a situation where they cannot get a township board together. They don't have enough people to do that. I've read the bill but I haven't gone into the depth of forming a cemetery association under section 12-501. What's involved in an association? How many...how are they formed? How does that process work? [LB855]

MATT BAUMAN: Well, if I can I will yield that question to the proponent behind me because they've actually formed one. [LB855]

SENATOR JOHNSON: Okay. That's fine. [LB855]

MATT BAUMAN: Yes. They can answer that. Yes. [LB855]

SENATOR JOHNSON: I'll wait. Thank you. [LB855]

SENATOR KARPISEK: Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: I think I will wait at this time until the next gentleman comes up too. [LB855]

SENATOR KARPISEK: Thank you. Mr. Bauman, do you know, can you start a new cemetery? Do you know that... [LB855]

MATT BAUMAN: You know, I couldn't speak to that. Again, maybe the gentleman coming up behind me, maybe he can speak to that, the proponent. [LB855]

SENATOR KARPISEK: Hopefully. Maybe. Just thought of that, well, would that pertain. [LB855]

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MATT BAUMAN: Yeah. [LB855]

SENATOR COASH: Do you want one for yourself? [LB855]

SENATOR KARPSEK: Probably the only person that would come to the same one as me. It is a (laughter) little funny to talk about reinvigorating a cemetery,... [LB855]

MATT BAUMAN: I know. [LB855]

SENATOR KARPSEK: ...but I don't know what else you would call it. [LB855]

MATT BAUMAN: I've bounced around several different terms. But I...and I would invite, if you get out to the rural areas, to drive by these. And there are caretakers that are out there. They're trying to do their best and the counties do make efforts. But there's limited funds and there's limited access to those facilities. And so anytime there's an opportunity for somebody to be invested in their community and really make a difference, there's probably things they can do with their private dollars to really make them nice that we just couldn't do with local tax dollars. [LB855]

SENATOR KARPSEK: Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Just a statement. I don't really care if we make it nice, but I'd like to see the veterans' graves mowed at Memorial Day instead of maybe having the headstone run over by a large tractor and top of it sheered off by a big mower. That's far enough. [LB855]

SENATOR KARPSEK: Thank you, Senator Bloomfield. I think we all agree. Thank you, Mr. Bauman. Good to see you. [LB855]

MATT BAUMAN: Okay. Thank you very much. Thank you, all. [LB855]

SENATOR KARPSEK: Further proponents for LB855? Welcome. [LB855]

DAN CRAWFORD: Welcome. My name is Dan Crawford, D-a-n C-r-a-w-f-o-r-d. I guess I kind of got this whole ball rolling. But I'll start. My family bought the ground that I currently live on almost 30 years ago on 160 acres that we own now. On the corner of this is an abandoned cemetery. Over the years, my wife and I have always discussed where we would want to be buried. I always thought it would be nice to be buried in that same cemetery overlooking the countryside and the ground I grew up on. This dream kind of became a reality last January when my mom was diagnosed with cancer. When we started discussing burial sites, her wishes were to be buried in that same cemetery to be close to kids, grandkids, family. On June 18 of this last year, my mom passed away.

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With the grave already dug in that same cemetery, we were told one day before by the county that we could not bury her there because the county could not give us permission to bury that. So we had to find another cemetery within 24 hours. All over the state you see these abandoned cemeteries. I know there's 16 in ours. You drive by them. They are eyesores, fences falling down, stones pushed over. Yes, they mow them, but you've seen how they mow them. It's not good. They really are an eyesore. I guess my goal is to restore and preserve. In our cemetery on my corner is like 30, and it's interesting because there's actually some going back to the 1860s. I mean, it's really fascinating as you walk through there. And I guess I want to preserve that. By preserving that, we want to build new fences. We want to plant new trees, new shrubs. We want to make this a shrine not for the old but for the new ones that we want to bury there. We want to make this a place of pride. We have already went through and formed a cemetery association. We knew that was going to have to be done even before this even came to this. So we have already started it. There are state statutes that you have to go through. You have to form an S corp. We do have a tax ID. There are bylaws that you have to form. I'd be more than happy to list this here, leave this here, but you have to have so many board members. You have to...we had to determine a fee, what we're going to do for lots. So it's all in here what we had to do, but we have already formed our own. We're just waiting for this process, hopefully, that we can move forward with it. [LB855]

SENATOR KARPISEK: Thank you, Mr. Crawford. Any questions? [LB855]

SENATOR JOHNSON: I think mine is answered pretty well. Appreciate that. [LB855]

SENATOR KARPISEK: Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Senator Karpisek and I actually discussed this same thing a little bit last year outside of any bills being introduced because I had run into this same thing that you had ran into, not having somebody buried and having the hole dug and being told we couldn't utilize it, but what I had mentioned previously about, you know, when you die we'll decide whether or not you're going to be buried there. Again, I want to thank you guys for forcing this forward. I read your bylaws and whatnot. And it's not going to be a real easy thing that one family member can decide I'm going to do this. It takes five or six dedicated people to get this done, and that's probably as it should be so that we don't get started on something and then have the county have to take it over again right away. [LB855]

DAN CRAWFORD: Yeah, and the state says you have to have so much dollars. You have to have \$2,500 in this account. You have to keep so many dollar amount. But I have four or five people that are ready to be buried there. I have people already donate funds, people that may not even be buried there, because they want to see something like this, you know, preserved. So there's money, and it's going to come private dollars.

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We're not asking for any tax dollars. This is all private money that people are willing to put into it to preserve it. [LB855]

SENATOR BLOOMFIELD: He has a greater luxury than I do. Right now it's me. But I have, and as we mentioned, I've mowed this thing myself for the last four years just to get it looking halfway decent for Memorial Day. [LB855]

SENATOR KARPISEK: Any other questions? Thank you. I find it very interesting that for so long that this didn't come up, that so many did just go to the county and nobody really thought much of it and now people actually do want to go back. And I think that says a lot about our roots. [LB855]

DAN CRAWFORD: Well, the way they look now, nobody would want to be buried into them, you know, so that's...you know, it's going to take a lot of work, but there's people willing out there to do that. [LB855]

SENATOR KARPISEK: And, again, I think it takes some money away from the...off the counties,... [LB855]

DAN CRAWFORD: Exactly. [LB855]

SENATOR KARPISEK: ...what they have to do, so I really commend you too. Thank you. [LB855]

DAN CRAWFORD: Thank you. [LB855]

SENATOR KARPISEK: Further proponents. Good afternoon. [LB855]

ELAINE MENZEL: Good afternoon. Senator Karpisek and members of the General Affairs Committee--remember what committee I'm in (laughter)--my name is Elaine Menzel, M-e-n-z-e-l, and I'm here on behalf of the Nebraska Association of County Officials in support of LB855. And most of the issues that I was going to address were already previously discussed. I know a primary component of my testimony related to the protections that the county would have and the notification to the citizens, and Senator Krist identified those when he read from Section 12 of the bill. I will just open it up. If there's any questions, I will attempt to answer them. [LB855]

SENATOR KARPISEK: Thank you. Any questions? I guess I will ask do you know if there is a way that you can start a new cemetery? [LB855]

ELAINE MENZEL: Maybe, but in terms of when it was in a...fits the definition of abandoned and neglected cemetery, there's problems with it... [LB855]

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SENATOR KARPISEK: Sure. [LB855]

ELAINE MENZEL: ...and part of our research had shown that, and I think that that prompted in large part Gage County proceeding this method. [LB855]

SENATOR KARPISEK: Sure, sure, and I think someone behind you has the answer. And Senator Bloomfield and I did talk about this and Senator Wallman kind of stole the bill from us. (Laughter) [LB855]

ELAINE MENZEL: Well, we appreciated him doing so. [LB855]

SENATOR BLOOMFIELD: And he was pleased that he did it. [LB855]

SENATOR KARPISEK: Yeah, and we're not complaining that he did, but. [LB855]

ELAINE MENZEL: I'm not going to say we appreciate him stealing the concept, but we appreciated him moving forward and doing something. [LB855]

SENATOR KARPISEK: We do appreciate his stealing it. Thank you. [LB855]

ELAINE MENZEL: Thank you. [LB855]

SENATOR KARPISEK: Further proponents? Good afternoon. [LB855]

TRACY CRAWFORD: Good afternoon to you guys. I'm Tracy Crawford, T-r-a-c-y C-r-a-w-f-o-r-d. I'm not sure, but I think I'm related to your Senator Crawford here. If not, I might see if I can, so. [LB855]

SENATOR KARPISEK: I was going to ask if you were. (Laughter) [LB855]

TRACY CRAWFORD: First of all, I want to thank you for having us here, but also when I was sitting back there I wondered whether I was really wanting to do this, but you guys really make it easy to have somebody come up and talk, and I appreciate that. My son was the one that just spoke to you. Thirty years ago when wife and I bought this ground, it was actually 159 acres and then there was 1 acre of cemetery. And we had since divorced, but raised two kids together and grandkids and stayed pretty close. And after she found out a year ago she had cancer, one of her wishes was that we could be buried together. And I'm here today to try and honor that because that would be my wish too. And little did I know at that time that my son was already maybe trying to reestablish this, and as soon as he told us that, why, it obviously was a no-brainer for us. So appreciate your time. Thank you for any help you can give us. [LB855]

SENATOR KARPISEK: Thank you, Mr. Crawford. Senator Bloomfield. [LB855]

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SENATOR BLOOMFIELD: I'm going to get a little more personal than I should here. Have you been able to...were you able to go ahead with that burial on that plot after the county told you, you could not? [LB855]

TRACY CRAWFORD: No, we could not because the funeral home director called us and said he would be fined if we would bury her there. [LB855]

SENATOR BLOOMFIELD: If we get this bill done, are you going to be able to move her to where she would like to be? [LB855]

TRACY CRAWFORD: Yes, that's...in fact, the only place we could go in the last 24 hours is to the local cemetery there, and we actually told them we obviously don't have a plot here, just bury her somewhere because we will move her. [LB855]

SENATOR BLOOMFIELD: Okay. Thank you. [LB855]

TRACY CRAWFORD: So it's... [LB855]

SENATOR KARPISEK: Thank you, Senator Bloomfield, for asking that question too. I wanted to know but (laughter) usually I don't phrase things quite right. [LB855]

SENATOR BLOOMFIELD: You're more of a gentleman than I am. [LB855]

SENATOR KARPISEK: Well, I...anything else? [LB855]

TRACY CRAWFORD: And in defense of our local people down there, you know, they were just...you know, they did everything they thought they could and at one time they'd give us the okay to do it and then something come up, so it's nothing against them. [LB855]

SENATOR KARPISEK: A lot of times you just don't know when something like that comes up. [LB855]

TRACY CRAWFORD: No, and that's...nothing...yeah. [LB855]

SENATOR KARPISEK: Well, thank you for coming and helping out and thank you for saying that we're doing okay and to testify. I wish more people would come. But if you want to see it get a little more rambunctious, come back in a week or two. We'll be talking about some gambling then. (Laughter) [LB855]

TRACY CRAWFORD: Okay. Thank you very much. [LB855]

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SENATOR KARPISEK: Thank you. Further proponents? Opponents? Seeing none, neutral? [LB855]

GREG EASLEY: Thank you, Senators. My name is Greg Easley, E-a-s-l-e-y, and I'm the president of the Nebraska Cemetery Association, and I'm the past-president of the International Cemetery Association. And I see things like this happen not only in this state but all through the continental. And if this bill...I'm really kind of opposed to a few things in this bill because it dooms everybody here that wants to do it to immediate failure. And that's why I will ask the senator if you would, please make a few changes so it doesn't end up in a problem a few years from now. One is that they ask for an audit. I run a nonprofit--Forest Lawn Cemetery in Omaha, Nebraska. Our audits cost \$15,000 to \$18,000 a year. Now you might be able to get a CPA to go do a full audit for you, because you're just a small little cemetery, and to go through everything, but it's going to cost you some money. They ought to bring this down to a review or a, what is it, computation. There's three different things. Audit is the most stringent. Lower it down to a review so they can afford to do it. And...but if they go through it the way it is now, they'll be...they won't even be compliant with the law right off the bat. The other thing is, I think they ought to put into this law that every cemetery lot owners' association should be required to start a 501(c)(3) foundation. What that does is, and that...and I have friends out east, their cemeteries have \$400 million in these perpetual care and in foundations. This allows, such as the one gentleman got up here where his mother wanted to get buried there, people are donating money and things like this. That can be donated into that foundation and they get a 50 percent write-off on their taxes from the federal government. It makes it easy for them to make this work, and then that money can be used however they want to from year to year. So to save all these cemeteries, that's what they're doing in other states now. They're starting these foundations because without that, as soon as a couple of these gentlemen die, in another three or four generations they're back in the same problem again: Who's going to take care of this? And there's an example up in Senator Krist's from Omaha. We've got 42 cemeteries in Douglas County. I've been in this business for 40 years. I can only find 20. I have...some of them are probably half the size of this room, maybe the size of this room. And then, you know, if you leave ground alone, after about 15 years it reverts back to what it was. Saplings will be growing up. They can't see anything, and I think that was a problem they had at Potter's Field in Omaha, which is right next to us in Forest Lawn. It went...they closed it in 1954, and after about 10 or 15 years just all kinds of growth and shrubs growing up, up to your shoulder. They couldn't see it. Boy Scouts came in, let's do a little help and fix this place up. And some guy says, hey, I've got to bulldozer, I'll come over there. Oh, that's great. So Ralph brings his bulldozer over from the farm and they got a big ravine and they just shoved all those saplings and all those things over, and 400 tombstones went into the ditch never to be seen again. There's 4,000 souls buried in that cemetery, and if you can find 15 markers I'd be surprised. Now that's people trying to help, be helpful. And all these abandoned cemeteries, they're getting so overgrown you can't even see it and you wish somebody would step

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forward like them. But they've got to get rid of that audit. Please get rid of that audit because they can't afford to do all this. And that's not to say it's going to cost but I'll say it might cost them \$1,000. So are you going to come up with \$1,000 every year? Ask for a review; it might cost them 100 bucks, you know. The other thing is I would say they're doing this perpetual care. They talk about the 50 cents per square foot. It's been that way, jeez, for 70 years, 80 years. That's \$18--\$18. I've put in \$500 for every grave sold goes into perpetual care--\$500, okay, 25 percent. And I don't pay for it. The family pays for it. And that goes in there. And that's to build that perpetual care up. We've got over \$8 million in there. That takes care of 25 percent of my taking care of the cemetery--25 percent, the income off that \$8 million. So I know what it takes to run a cemetery. And the way they've fashioned this, we've got to do something about that. (A) Get rid of the audit, go down to a review, the smallest it can go to. Set up a foundation so all those people that want to help, they can throw the money in there, get a tax write-off. They're going to want to help. And that money then can be used from time to time. Now the perpetual care money goes in, say, I don't like that \$2,500. I wish you had it...I mean, that's half the cost of a heating and air-conditioning unit in your house. You know, it ought to be \$30,000, \$50,000, but, you know, I understand that these small areas and concerned citizens can't come up with that money. So I'm not worried about that as much as I am the foundation being set up. And can you start a new cemetery? I get two to three calls every year from a rancher or a farmer's attorney. How can I...I want to bury...they want to bury Aunt Margaret on top of the hill. So can I do it? Sure, you can. All you have to do is put 2,500 bucks. It's that easy to start a cemetery. And then they put their \$2,500, and then they set up a bunch of family members as the three trustees. That's what it says to do in here. It tells you what to do. I might have advised a few of these people. They might have called me. I don't know. But I get calls from everybody else trying to bring a cemetery association out of defunct. And I just tell them to start it up again, go over to the county, get set up everybody to do it. But I really would say why? Why are you doing that if they're going to make you do a full audit? Why would you do it if they're going to make you file for a bond? I don't know what you want to do with that, why they're filing this bond, but that's because that's just the way it's always been in this bill. They got to take that thing out of there too. And then...so now they can't afford to do all this and I'm trying to find a way to give them a revenue stream so they can make it work. So, yeah, I oppose the way this bill is written and I suggest a few things so they can succeed. Don't start a subchapter S. Keep it a lot owners' association, set up the foundation, because it has to be a lot owners' association, not a subchapter S. The people that...all these people call me up. One guy was from Fremont, the attorney was. I don't know where this rancher was, and he wanted to build a mausoleum. This thing was going to be a half-a-million-dollar mausoleum. And I says, well, you better put some money into the perpetual care to take care of this. We're going to be putting \$250,000 in. I said, oh, you're doing it right. So they're going to set up the trustees. They're going to set everything up. They're going to put the \$250,000 into perpetual care to take care of this for years down the deal. He is setting this thing up right. A year later he called me up, well, they decided not to do it. They're going to get

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buried in the local cemetery, and that's fine. But they were thinking. They're the only person in 40 years have set it right. All the rest of them said, so that's all I have to do is put \$2,500, get a bunch of aunt and uncles all to be the trustees and everything, go to the county, form this. Just do what it says right there. And they can start up now. What happens is in about 100 years, that changes hands a couple of times and now you've got some farmer that finds a tombstone out behind the shed or up on top of a hill and he doesn't know anything about this. What am I supposed to do with this thing? Well, the tombstone gets thrown away and they just become part of a field, and that has happened. I've had different cemetery associations call me up where the fence went down. Okay. The farmer is next door. And the farmer, you know, he might...he's been farming over there, but he sees the tombstone is right here. He says, well, I don't know where my land ends. So he plows up within 20 feet of the tombstone. Everything is fine. No, it's not fine because all those people that got buried 100 years ago had wooden plaques, you know. They were Civil War veterans or they weren't noted and now they've been plowed under. Okay. And the local people know this because they then go and find out the original chart and they get a survey done. They say wait a minute, you don't own this land. Well, I've been plowing it for 30 years. Is that eminent domain? I don't know what you call that when you maintain the ground for so long, are doing something. Does it belong to him? And they had a big squabble, big fight over that. And so it is important to put a fence up. Where are they going to get all this money? The foundation allows them to do that. (B) Don't be spending money on that audit. It's just a little local little cemetery. It probably could be done for a couple of hundred bucks on a review. [LB855]

SENATOR KARPISEK: Okay. [LB855]

GREG EASLEY: And also do either when they sell a grave do it for 10 percent or \$100, whichever is greater, whichever...not this \$18 or \$9. That's going to do nothing. That's it. [LB855]

SENATOR KARPISEK: Okay. Thank you. Senator Krist. [LB855]

SENATOR KRIST: Everybody that's sitting up here as a senator has a right to introduce. But oftentimes the quality of the product depends upon the lady that's sitting right next to Senator Wallman. I think she's done a great job bringing it forward. My suggestion, sir, and I've seen your cemetery and I know of your reputation, if you're as passionate about it as you've just told us, go visit Senator Wallman's office and help them make this perfect because... [LB855]

GREG EASLEY: Glad to. [LB855]

SENATOR KRIST: ...I think it's a wonderful, wonderful thing that we could help moving forward. And to your point, in 100 years somebody is going to do the same thing for my

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grave, so we got to keep trying to do this. So thanks for coming. [LB855]

GREG EASLEY: Yeah. [LB855]

SENATOR KRIST: Please by all means sit down with Senator Wallman's office and make this as good as it can be. [LB855]

GREG EASLEY: We can make it work. We just have to tweak something. [LB855]

SENATOR KARPISEK: Senator Johnson. [LB855]

SENATOR JOHNSON: Thank you. I echo Senator Krist's comments there and I totally applaud the audit. I guess my comment and this maybe can be worked in. I know there's some counties that do it this way. The county that I'm in I got to talk, the previous employment where I worked, they had a community foundation. And instead of setting up their own exempt, which costs some money, they contribute to the county foundation when that...which has what we call a bucket that has the name of this cemetery in it. And they have the money, they have the foundation set up for that, and whenever they need to draw out they can. But it does the same thing only they don't have to spend any money for setting up their own 501(c)(3). [LB855]

GREG EASLEY: Do they get a 50 percent write-off when they donate to that because it's like a foundation? Is that what you're saying? [LB855]

SENATOR JOHNSON: Yeah, they get the... [LB855]

GREG EASLEY: That's perfect. [LB855]

SENATOR JOHNSON: ...regular tax deduction... [LB855]

GREG EASLEY: Right. [LB855]

SENATOR JOHNSON: ...when they do that, and then there's I think 1 percent administrative cost to handle it. But they can actually make it grow then too. [LB855]

GREG EASLEY: What district do you represent? [LB855]

SENATOR JOHNSON: District 23, Butler, Saunders and... [LB855]

GREG EASLEY: Butler? [LB855]

SENATOR JOHNSON: Yeah. But the county that I'm referring to before was Polk County. [LB855]

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GREG EASLEY: Polk County? [LB855]

SENATOR JOHNSON: Um-hum. And they do have money that's contributed I believe to cemetery associations and run it through there. The one I'm involved right now is a community foundation and we have probably 30 different buckets of people that contribute to it and it's just a great service to those smaller groups. [LB855]

GREG EASLEY: Yes. [LB855]

SENATOR JOHNSON: So I would encourage if that...check that out. Thank you. [LB855]

GREG EASLEY: Very good. [LB855]

SENATOR KARPISEK: Thank you, Senator Johnson. I think the Nebraska Community Foundation does that. Senator Bloomfield. [LB855]

SENATOR BLOOMFIELD: Thank you. What do you get for a plot at Forest Lawn? [LB855]

GREG EASLEY: What do I what? [LB855]

SENATOR BLOOMFIELD: What's the cost to buy a plot at Forest... [LB855]

GREG EASLEY: Anywhere from \$890 to \$3,000 of which \$500 goes into perpetual care. [LB855]

SENATOR BLOOMFIELD: If you were to ask someone up in my part of the country to give you a thousand dollars for a place to be buried, they would go lay down in a ditch and cover themselves up. [LB855]

GREG EASLEY: Yep, they would. And I looked at all of those cemeteries out there. They're defunct because they don't have money in perpetual care, and that's why they're in ditches today because they did that. They didn't think of the future. They just thought of the present. [LB855]

SENATOR BLOOMFIELD: Under those numbers we would get no one buried into that cemetery to create a perpetual care fund. [LB855]

GREG EASLEY: Yeah. They do this in Lincoln. They do it... [LB855]

SENATOR BLOOMFIELD: I grant you the \$18 is a little light, but... [LB855]

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GREG EASLEY: Eighteen, that's why I suggest go to \$100 minimum or 10 percent, whatever it is, because the reason why places are in trouble is they don't have perpetual care funds, and that's the reason that they all look like ditches today because people aren't willing to take care of the future and preserve these cemeteries, and that's too bad. [LB855]

SENATOR BLOOMFIELD: If you will go work with Senator Wallman,... [LB855]

GREG EASLEY: I'd be glad to. [LB855]

SENATOR BLOOMFIELD: ...I'm sure he will work with the rest of us. Thank you. [LB855]

GREG EASLEY: Thank you. Is that it? Thank you. [LB855]

SENATOR KARPISEK: Thank you. Any further neutral-ish testimony? Senator Wallman to close. Senator Wallman gets two gold stars today. (Laughter) [LB855]

SENATOR BLOOMFIELD: I heard that advice clear up here. [LB855]

SENATOR KARPISEK: I saw her kicking you. That will end the hearing on LB855. Thank you, Senator Wallman. [LB855]

SENATOR COASH: All right. We'll let the room clear out here. And we are going to move on to LB861 introduced by our Chairman, Senator Karpisek. [LB861]

SENATOR KARPISEK: (Exhibit 5) Thank you, Senator Coash and members of the General Affairs Committee. It seems that I've chased a couple off. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, and I represent Legislative District 32. Also for the record, I'm from Wilber, Nebraska, W-i-l-b-e-r, that I like to do for the media that always spells it wrong. (Laughter) Well, we've got one that can get her right. I'm here today to introduce LB861, a bill to prohibit minors from using vapor products like electronic cigarettes. Legislatures often struggle keeping up with emerging technologies. Vapor products, like electronic cigarettes, are one such emerging technology. During the interim, I was made aware of a CDC report showing the use of electronic cigarettes by minors was on the rise. I was concerned to learn that there was nothing in Nebraska law to prevent a minor from purchasing and using such vapor products. This committee held an interim study hearing in order to gather additional information in preparing for what is becoming this bill. LB861 does the following. It prohibits minors from using vapor products and makes such use a Class V misdemeanor. It reduces retailers...I'm sorry, requires retailers to keep vapor and tobacco products behind the counter or in a locked display case with an exception for

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cigar bars and tobacco specialty shops. It also makes selling a vapor product a Class III misdemeanor and a subsequent offense within 12 months would result in a 6-month suspension of the retailer's tobacco license. My primary purpose with this bill is to keep electronic cigarettes and other similar products out of the hands of minors, and I believe this bill would accomplish this goal. Before answering questions, I...that you may have, I would add that since introducing the bill I have received additional suggestions coming from the other hearing, and I hope that there will be more from this hearing. Therefore, I hope to work with the committee and anyone else interested to help draft a committee amendment. I just want to make sure that everyone realizes this does not change the taxing rate on e-cigarettes. It doesn't talk about the flavors of the vapors that are used in e-cigarettes. It does not go into any of those things that a lot of people have asked me to do or asked about, I guess I should say. Some of that may come up, but that is not my intent. My intent is I just don't feel that there's been enough research on the e-cigs for minors to have them. I'm not saying that they're worse or the same as cigarette smoke. I think they are a better alternative, and I want to help that whole progress. But let's not let minors have them. With that, I'd be glad to try to take any questions. [LB861]

SENATOR COASH: All right. Thank you, Senator Karpisek. Senator Bloomfield has a question. [LB861]

SENATOR BLOOMFIELD: Thank you. I had lunch today with the superintendents of schools and some school board members and they were very intent that we keep these things out of the school system. I think this goes a long ways toward doing that. Because right now they're looking at creating new school regulations in hopes of doing that. I'm going to have to listen to a lot of testimony yet to find out where I'm going to go on this, but I think on the face of it this isn't a bad idea. And we'll learn more as we go along. [LB861]

SENATOR KARPISEK: Thank you, Senator Bloomfield, and you're right. I guess a lot of this, and I've heard from a lot of teachers: Well, what are we going to do then if...? Well, what do you do now? I remember when I was in high school we couldn't wear shorts and chew gum. So...I know things are a little different now but I think it falls kind of under the same thing and hopefully this would give them a little teeth not to have a fourth grader walking around with an e-cig. [LB861]

SENATOR COASH: Thank you, Senator Bloomfield. Senator Johnson. [LB861]

SENATOR JOHNSON: Thank you. I attended the interim hearing or study and I also, not at the same table with Senator Bloomfield but I attended the same event and discussion was the same. I guess the question came up, and I think it came up in the interim study, where a parent came in and said his son under 18...a child I think, I think it was his son, under 18 was addicted to cigarettes and wanted to be able for him to have access to e-cigarette. So this means we cannot sell to them. What is the...if the

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parent feels that the child needs this and is that still going to be okay? [LB861]

SENATOR KARPISEK: Well, I guess you can drink in your own home and you can't buy alcohol. But, no, I don't think that you could just get a note from your mom to go buy an e-cig. [LB861]

SENATOR JOHNSON: No. Yeah, I definitely support that. I'm thinking like on school...okay, might have to go off the school ground in order to smoke this e-cigarette if he's got this urge that he's got to have a cigarette. [LB861]

SENATOR KARPISEK: I would say that you'd have to do that now depending on the regulations of the school. But then even if you're off school grounds, this bill would say no. Because if that same person was smoking a cigarette off grounds if they were 16, they would be in violation of the law also. [LB861]

SENATOR JOHNSON: Yeah. So it doesn't make it lawful at all. [LB861]

SENATOR KARPISEK: Correct. [LB861]

SENATOR JOHNSON: Yeah. Thank you. [LB861]

SENATOR COASH: Thank you, Senator Johnson. I had the same question as Senator Johnson. You answered that, so I'm good there. So we will let you off and we'll start testimony on LB861. We'll start with proponents. Do we have some proponents of LB861? Come on up, Mr. Moylan. [LB861]

JIM MOYLAN: (Exhibits 6, 7, and 8) Mr. Chairman, members of the committee, I'm Jim Moylan, J-i-m M-o-y-l-a-n, attorney from Omaha representing Reynolds American who make R.J. Reynolds Tobacco Company. We are fully in support of the legislative bill. I do have an amendment or two that I would like to take. I got a kick out of Senator Karpisek talking about when he was in school you couldn't chew gum and you couldn't wear shorts. Well, when I was in school, if you couldn't chew gum and skip at the same time, you couldn't play athletics, so. Now the amendment I have here is regarding just clarification. It's to clarify that the stalk of a tobacco product is not...does not contain nicotine. And we just wanted to stick that in there to make sure that it clarifies it. Reynolds Tobacco Company recently purchased the assets and liabilities of a research company in Owensboro, Kentucky, and there's a resume of that company that I'm having handed out here. And what they do, they do research on a lot of products and primarily in the protein area. And they feel that, you know, the stalk of the tobacco does not contain nicotine. So they want to make sure if they have a protein that's coming into the state of Nebraska eventually that came from the stalk, you know, that it's not banned from coming into the state. And on the back part of that is a little additional information. Now kind of, I noticed there was a big hemp display out here as I was coming into the

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hearing room, you know. So the last handout I have is the definition of marijuana in the state. The definition of marijuana excludes the mature stalks of such plants. So I would think if our law can exempt the stalk of marijuana, we could sure exempt the stalks of tobacco products. I would ask that you advance the bill, number one, and accept our amendments. And if you have any questions, I'd be happy to answer them. [LB861]

SENATOR COASH: All right. Thank you, Mr. Moylan. I don't see any questions. Thank you. [LB861]

JIM MOYLAN: Pardon? [LB861]

SENATOR COASH: I don't see any questions. You're good to go. [LB861]

JIM MOYLAN: Thank you. [LB861]

SENATOR COASH: Thank you. We'll take the next proponent. Welcome. [LB861]

MAX VELINSKY: Hi. My name is Max Velinsky, M-a-x V-e-l-i-n-s-k-y. I represent Generation V Electronic Cigarettes and Vape Bar. Our newest location is on 56th and South Street, and we're 100 percent proponents of having an age restriction on the sale of electronic cigarettes. We do that in all of our locations already regardless of if there's a law or not. And so as I said, we're 100 percent for that. However, I don't know...I have been listening to the past couple of people in the different bills here and having questions or amendments to the bills, I know one gentleman was directed to talk to another...a woman, and I'm not sure if that's what I should do here or not. But I just was asking for some clarity on what a tobacco specialty store means with tobacco products and if my store is involved or is classified as that currently. So that's really all I have to say for this. [LB861]

SENATOR COASH: All right. Thank you. And we'll make available our legal counsel here who works with Senator Karpisek's office to help you answer those questions. [LB861]

MAX VELINSKY: Great. Thanks. [LB861]

SENATOR COASH: Let's see if we have any questions for you. Senator Krist. [LB861]

SENATOR KRIST: I apologize, I had to step out for a second. But just to be clear, your stores and most stores that I've come across in the metropolitan area as well are imposing the 18-year-old restriction. And this really comes to the tobacco question. When I come in to you and my purpose is to stop smoking, if that's my purpose, you can customize the liquid that I'm going to use in my device. Is that correct? [LB861]

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MAX VELINSKY: Can you clarify what you mean by customize? [LB861]

SENATOR KRIST: I can have so much nicotine or so much product put in there. [LB861]

MAX VELINSKY: There's variable levels of it. [LB861]

SENATOR KRIST: Variable levels, and different tastes or fragrances that I would be...I'd like to have in there. [LB861]

MAX VELINSKY: Correct. [LB861]

SENATOR KRIST: Okay. It's been said on a number of occasions that depending upon how hard you hit it, gives you more of...a product, more of what is in your actual...more nicotine, more product that you have in. So my concern is that whether it's...and this is not to your age restriction, Senator Karpisek, but as we start looking at these things throughout, my concern is that you could actually be ingesting more of a product, whatever that product is in terms of customization, by the amount of time or the times that you actually hit on...that you "vape" as opposed to smoking. What protection do you think overall there is, even people who are over 18, do you talk to them about that potential that they are...that they need to limit themselves in terms of the actual inhalation of the product or is it just left up to the individual? [LB861]

MAX VELINSKY: Well, I mean, everyone has a choice of how many cigarettes they smoke or how much they're going to "vape." And because there are variable levels of nicotine, you know, that are available with the product, you know, one...a higher level of nicotine will, you know, satisfy someone's cigarette craving or their craving for that nicotine more so than a lower level which would...it's leveled by the nicotine percentage per milliliter of the liquid. So if it's a six-milligram bottle of nicotine, it's per milliliter. And then the cartridges, you know, fill out X amount of milliliters or whatever the case is. So, I mean, it's hard to say like what...how much someone is going to get or not going to get because, you know, with a cigarette, you light it, you burn it, and it's done at the end. You know, a lot of people chain smoke. So it's...I don't...to answer your question, I don't really have an answer. [LB861]

SENATOR KRIST: Okay. Well, specifically I guess and it's been...it's concerning that we are emptying the vapor based upon the liquid. So if you go through let's say, and you talk about the percentages, if I go through three of these in a day, I would be getting the equivalent of four packs of cigarettes. And I know that...I'm just using an arbitrary number. I'm not trying to say that that's where it is. We are educating people about what they're actually doing, I hope. As important as it is to say 18-year-olds are restricted, below 18 restricted, it is also important to me that those who are above 18 who should know better are educated in terms of how much they're ingesting based upon the

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amount of liquid or vapor that they're ingesting into their system. I would just hope that that was part of the equation as well. [LB861]

MAX VELINSKY: Yeah, absolutely. [LB861]

SENATOR KRIST: Because some of them, as I have talked to the folks who are "vaping," are doing it for one reason and one reason only. They want to quit smoking. So reducing the amount of nicotine you have is based upon how many milliliters that you're going through, and that equation I hope we're educating across the board as well in your industry. [LB861]

MAX VELINSKY: Right, which is the idea of having the variable levels to step down. And, yeah, it is...you know, we're a healthier alternative to smoking, you know. It's not something that...it's an education process. Someone comes in, they have no idea what it is. They just know that it's a better alternative or healthier alternative. So, yeah, there's plenty of education when it comes to getting someone set up with a new e-cig. [LB861]

SENATOR KRIST: Okay. Great. Thanks for coming. [LB861]

MAX VELINSKY: Absolutely. [LB861]

SENATOR COASH: Thank you, Senator Krist. Senator Bloomfield. [LB861]

SENATOR BLOOMFIELD: Thank you. One of the superintendents I was talking to today said the kids in his school couldn't afford these things anyway. We really didn't need to pass that law. But what does an e-cigarette cost and what's it cost to fill one up and smoke it? [LB861]

MAX VELINSKY: It depends. In my store, you know, we have a starter kit that starts at \$25, and it's rechargeable, refillable. So for someone who smokes cigarettes, you know, they buy a pack a day or whatever the case is, and the pack of cigarettes is probably, I don't know, \$8 now or something, \$7, \$8. I haven't bought cigarettes in a long time. So the initial expense is a little high but then the refill for it, since it's rechargeable, refillable, is anywhere from \$5 to \$16, \$17, depending upon the amount of liquid that you buy. [LB861]

SENATOR BLOOMFIELD: Okay. When you say \$5, is that the equivalent to a pack again? [LB861]

MAX VELINSKY: It's hard to quantify, you know, versus a pack of cigarettes to liquid. Just...it depends on the cigarette that you smoke because a Marlboro red has more nicotine than a Marlboro light, you know. So it's really hard to quantify that. [LB861]

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SENATOR BLOOMFIELD: Okay. [LB861]

SENATOR COASH: All right. Thank you, Senator Bloomfield. Seeing no other questions, we'll let you off and you can follow up with legal counsel. [LB861]

MAX VELINSKY: Appreciate it. Thank you. [LB861]

SENATOR COASH: All right. Thank you. We'll take the next proponent. [LB861]

SENATOR JOHNSON: Mr. Chairman, I'm not leaving. My back just tells me I've got to stand up for a while. [LB861]

SENATOR COASH: Welcome. [LB861]

MICK MINES: Thank you, Senator Coash, members of the committee. My name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist today representing the Nebraska Grocery Industry Association. Very short and sweet, we support this legislation, particularly the part of the bill that does restrict selling of this product to anyone under the age of 18. Senator Krist, to your dialogue, we don't know...there's so much about this product that we don't know yet, and we look to the Food and Drug Administration to set standards upon...about the quantities, the quality. You can buy from China and there's a question about quality and quantity. So we focus on restricting people under the age of 18. We think this bill does that, and we fully support it. Thank you. [LB861]

SENATOR COASH: Thank you, Senator Mines. Senator Krist. [LB861]

SENATOR KRIST: Thanks for coming, and I appreciate the clarification. I just share you with one further on concern, and that would be that some of the specialty shops will be educating people in terms of how to use it and how not to use it. I trust that that was the point that I made and they took that. I'm not sure if it's on the general shelf in your grocers with a refill cartridge next to it that that same advice would be given. And I look forward to the day when Food and Drug would actually say when you read the label this is what it is, which is, again, an overreach of the federal government. But oh well. That's the way it goes. [LB861]

MICK MINES: Yeah. [LB861]

SENATOR KRIST: But that would be additional concern is that just taking it off the shelf and not having any expert advice would be one. So my question to you is the intention is to put them on the shelf in an environment, will they be in the pharmacies? Will they be in the tobacco section? Will it just be in the front counter? [LB861]

MICK MINES: They'll be behind the front counter, according to the bill the way it's

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written. But from a quality/quantity standpoint, we certainly don't know what's in the product. We just know that it has not been clearly defined by the FDA, and that it's legal to sell. It's not a tobacco product, but it is a nicotine product and this bill puts it behind the counter. So we're going to treat it just like a tobacco product. [LB861]

SENATOR KRIST: Thank you. Thanks for coming. [LB861]

SENATOR COASH: Thank you, Senator Krist. Seeing no other questions, thank you. [LB861]

MICK MINES: Thanks. [LB861]

SENATOR COASH: We'll take the next proponent. You can come on up and get on deck. Welcome. [LB861]

TIM KEIGHER: Good afternoon, Senator Coash, members of the committee. My name is Tim Keigher, that is K-e-i-g-h-e-r. I appear before you today as the executive director and registered lobbyist from the Nebraska Petroleum Marketers and Convenience Store Association. I guess I'm just here to say that, you know, we, too, are supportive of this measure, putting them behind the counter and restricting the age, so. With that, that's all I need to add. [LB861]

SENATOR COASH: Okay. Thank you, Tim. I don't see any questions. [LB861]

TIM KEIGHER: Thanks. [LB861]

SENATOR COASH: Okay. We'll take the next proponent. Welcome. [LB861]

SENATOR KRIST: Hurry. [LB861]

TIM BOWEN: Hi. Good afternoon. My name is Tim Bowen, that's B-o-w-e-n. Funny thing happened to me on the way to Lincoln this morning. I forgot my glasses. I represent Plumes, which is Omaha's dominant e-cigarette store. And I am here really first and foremost to say thank you for the amendment for the 18 and under legislation. We believe it is very, very necessary. We probably stop four, maybe, youngsters a week in our stores. We have really four ways of doing that. We aggressively target a younger person for identification. We ask them for that. We ask them at the point that somebody purchases an e-juice from us. We have another face-to-face with them in which we have an opportunity to identify or assess what that individual's age is. We encourage our employees to...and we recognize them, by the way, for turning away somebody that is under the age of 18. And then the fourth way is at the checkout. When they're finally paying for their purchase, we're able to again ask for some sort of identification should there be any doubt of their age. So that part of the bill is all great. The other parts of it

are what concern me. We are a different prototype, a different animal as far as vapor stores, e-cigarette shops, etcetera, go. We are a mass merchandiser. In looking at the way the bill is written, it states that accessories, tanks, the batteries themselves, these devices would be all considered vapor products. Vapor products cannot be out in front of a customer. When you walk into my stores, it's kind of like walking into a Walgreens, a Target. We did it differently and we did it really for the adult consumer. What we have found is that the adult consumer and the very great majority of our customers are between the ages of 35 and like 55, 57 years old. They walk in. They're afraid. They don't know. They know somebody that's got one that it seems to have worked. They're not sure of things like the nicotine content that Senator Krist had mentioned earlier. It's very new. It's a new technology. So we put it out there in front of them. We take the mystique away from them. Imagine, if you will, a wall behind me that is 22 feet long and 7 feet tall and has got accessories. It has the tanks for the e-juice. It has lanyards that you can put your electronic cigarette in. It has drip tips. So if you want to customize them you may do that. It has accessories that go along with part of the e-cigarette devices, the wicks that combust the vapor, cartomizers. I know I'm missing a lot of things. But many things make up this 22-foot wall. And Plumes is very proud of the way we do things. We put our name on all of our merchandise. And, again, it's more of a reassurance. I don't know how I would do business necessarily if I can't put it out. Right now, I have 200 flavors of e-juice and all of those are on display. But none, zero, of them are on display with nicotine in the bottles. At our store, after we counsel an individual on the use of an e-cigarette, and we ask them leading questions, some of which you've heard here already: What brand of cigarette are you smoking now? Is it a full flavor? Is it a light? Is it a filterless? Is it filtered? Are you a cigar smoker or a chewer? We suggest a specific nicotine level. Okay. So the average, I would say 31 percent of all of our e-juice sales, are at 11 milligrams or less. That is the equivalent of a light cigarette, okay, 31 percent of our total e-juice sales. Now when I was here and I saw you all several months ago, I told you that at that time we had about 400 of our customers that were at zero nicotine juice. In other words, they weren't "vaping" anything with nicotine in it whatsoever, just zero. All they're getting is the flavor in their mouth and they blow a little smoke. Well, that has grown now to somewhere between 1,200 and 1,400 in the last few short months, which means either more people are using the devices as a cessation product or we have an influx of people that really aren't interested in taking nicotine in their systems but they want to be social and maybe at a bar they'll pull out their little e-cigarette and they'll "vape" or something with a nonnicotine juice. I tend to think that it is more and more people that are weaning themselves off of nicotine. I know that you all know the difference between smoking and what we call "vaping." Smoking is tobacco. It is combustible. It is breathing in carbon dioxide, carbon monoxide, combusted chemicals. I think I used the analogy the last time I was in front of you that we don't go into our front yards, rake our leaves up on the ground, set them on fire, stick our heads over them and inhale. We don't do that. But that's what we, me as a smoker for almost 30 years, have been doing. We combust something. We have ingested it into our systems. And all of us are old enough, except

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maybe you, to remember the black lung pictures that we used to see in biology books and Life Magazine, etcetera, that were the result of tars that were inhaled by cigarette smoke. Okay. To date we cannot definitively say, definitively say that e-cigarettes pose no health risk. But every indication is that they are 98 percent safer than a cigarette. As I looked over the bill, I saw that a minor can get out of being prosecuted if they simply testify and help the authorities by telling them, you know, who it is that sold you this or who did you...who gave this to you. Senator Johnson, going back to you, I think, you know, it's mom and dads. I have more parents that come to see us during a week than I have the 17-year-old student that wants to, you know, be cool and have an e-cig. But I have the parents every week. And I can't imagine a child being, you know, being told either give up your parents or else. And I don't even know what a level two, three, four misdemeanor is. All I know is, well, you know, I smoked at home. My mom and dad thought this would be better for me so they got it for me. That's what we hear at Plumes. I don't think that vapor products should be prohibited and I don't think that the distribution should be prohibited. I have an issue with the merchandising and the display, and I was a retailer for almost 40 years. And I came to Plumes as a customer because I could hardly speak anymore without coughing. And they fixed me pretty much. So I thought if I could spend what time I have left helping some other people, I would do that. There are a lot of point-of-sale displays that you'll find in Walgreens, that you'll find at major grocery stores. When you're at the express lanes, you'll look down and there will be a certain brand of electronic cigarette there. Some will be at, you know, an \$8.99 price point, others will be at a \$4.99 price point. And it's an impulse to get the cigarette smoker to just pick one up. There's really good margin in those, by the way, really good margin. But my first electronic cigarette was an impulse item like that. I picked it up. I bought it, \$8.99. I went, I puffed it. I said, you know what, this isn't too bad and I really didn't need to smoke while I was using it. If...I was at a convenience store that I stopped by for lunch here today and I was able to walk by an eight-foot display of alcohol that was readily available. And I asked myself why this wouldn't be behind...why is it open and available and yet we're saying something like an e-cigarette should not be, cannot be. I'm glad you guys get the big bucks for making those decisions because I can't. [LB861]

SENATOR COASH: All right. Thank you very much. [LB861]

TIM BOWEN: I'm sorry. [LB861]

SENATOR COASH: Let's see if we have any questions. Senator Krist. [LB861]

SENATOR KRIST: Okay. To your point and to the young man who's going to get clarification--young because you're younger than me. Okay. All right. To the young man that's going to get clarification from the legal counsel, you can't have it both ways. [LB861]

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TIM BOWEN: Okay. [LB861]

SENATOR KRIST: Okay. And in my mind you're a tobacco specialty store, and if you want us to change page 2, line 19, (2) Tobacco specialty/"vaping" specialty stores or whatever language you want us to put in there and you want to restrict the people coming in your establishment to be 18 years old or older... [LB861]

TIM BOWEN: We can do that. [LB861]

SENATOR KRIST: ...then you can have it all over. You can do exactly what you need to do. That's Bob Krist. You know, we have to talk about it. But I think there's a clear, subtle definition in this piece of legislation. I said before occasionally I read these things. On page 2, (2), it says: Tobacco specialty store means a retail store that derives at least 75 percent of, dah, dah, dah, dah, dah. Okay. Then it goes on into section...on page 3, Section 4, line 16, Section 4: Except as provided in subsection (2). Okay. So you don't have to have it behind the counter. That's the way I read this green copy. And once again, I would refer both of you to legal counsel to make sure that I'm on track. [LB861]

TIM BOWEN: Okay. [LB861]

SENATOR KRIST: But you can't have a room where anybody can walk in and do what they need to do. You can now. Don't get me wrong. [LB861]

TIM BOWEN: No, no, I understand. [LB861]

SENATOR KRIST: But if this legislation passes, you would be a speciality store which we would define. And I would suggest, given your situation and others, that may be an amendment to this bill that we want to look at because we're saying tobacco specialty...this is an evolution. This is a revolution. This is getting into the next place we're going to be. Forget the FDA stuff. I'm still concerned about it. But let's just come back to where we are, restricting it to 18. That would be my strongest argument, and I understand and I've been in your store. Did a little research myself and I think it is...into Plumes, and I think it's displayed correctly, but you've got to have 18-year-olds, like a bar, not come in the front door and then you can display it I think wherever it needs to be. [LB861]

TIM BOWEN: Okay. [LB861]

SENATOR KRIST: And once again, I would defer to legal counsel for that. The other thing I just want to make very clear because I've had this discussion I think with people who...in the industry who know, the actual concentration in the liquid that we are "vaping" from can be no worse than a light cigarette. But if I continually suck the vapor in, I'm going to get more than a light cigarette. [LB861]

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TIM BOWEN: That's true. You're absolutely true. If an individual smokes a 10 mil bottle of 24 nicotine, they're at the limit for, I don't want to say toxicity, but it becomes detrimental to them at that point essentially. [LB861]

SENATOR KRIST: So, please, in your specialty stores and in your profession, try to educate people so that we're protecting...you're not going to protect people from themselves, but that needs to be understood. The other thing that I think is extremely important and I'm just not clear because I don't think there's enough research been done. Years ago they said don't talk on your phone while you're pumping gas. Well, here's an ignition source that has to be within this thing, if I understand it correctly. There's another potential there. And the last thing I will mention just for the record, there are a lot of bars, a lot of establishments, a lot of restaurants that are going through the drill of can you smoke, can you "vape." And the signs now, I'm seeing more come up, you know, if we ask you to stop "vaping" because the person next to you, something like that,... [LB861]

TIM BOWEN: Yes, sir. [LB861]

SENATOR KRIST: ...that we have the right to ask you to stop "vaping." So just for the record, just there. But I think your strongest argument in terms of continuing to do business the way you are, it's already implied in here. [LB861]

TIM BOWEN: Awesome. [LB861]

SENATOR KRIST: If you're a speciality store, and maybe it needs to be clarified, again, I defer to legal counsel. [LB861]

SENATOR COASH: Thank you, Senator Krist. I've a quick question for you. Under the current law, would you sell a e-cigarette with the e-juice as you mentioned it with no nicotine in it? [LB861]

TIME BOWEN: You said do we? [LB861]

SENATOR COASH: Would you? [LB861]

TIM BOWEN: Oh, yes, we do. [LB861]

SENATOR COASH: So you will sell to a minor. [LB861]

TIM BOWEN: Oh no, no, no, no, no. No, not to a minor. [LB861]

SENATOR COASH: I'm sorry. You won't even sell it under the current law... [LB861]

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TIM BOWEN: No. [LB861]

SENATOR COASH: ...even if they...if somebody said I just want to try it. Give me one of your cartridges without any nicotine in it. [LB861]

TIM BOWEN: Yeah. No, we don't do that. [LB861]

SENATOR COASH: You wouldn't do that. [LB861]

TIM BOWEN: We wouldn't do that. We do not sell it even at the zero nicotine level to a minor. No. [LB861]

SENATOR COASH: Okay. Thank you. Seeing no other questions, thank you very much. [LB861]

TIM BOWEN: All right. Thank you, gentlemen, ladies and gentlemen. [LB861]

SENATOR COASH: Is there any more proponents? Come on up. Welcome. [LB861]

ANN ELLIOTT: Hi. My name is Ann Elliott, A-n-n E-l-l-i-o-t-t, and I am not a public speaker. This is the first time I've ever done anything like this, so bear with me, steer me in the right direction. I'll keep it short because I don't like to talk in front of crowds. I work and live here in Lincoln, Nebraska. I'm a customer of a couple of the "vape" shops in town. Prior to November of 2012, I was a tobacco smoker for over 30 years, and over that time had several failed attempts at quitting smoking using gums and patches and medications. Then I decided to give the vapor cigarette a try, and I'm happy to say that since December of 2012, for a little over a year now, I've been smoke free and reducing my nicotine level slowly. I have also seen friends and relatives that, I think seeing my success, have decided to try this. So I encourage them as much as I can and I think it's a positive change, lifestyle change. As a member of the community, I do fully support restrictions of the availability of the e-cigarettes to minors. As a customer of the "vape" shops, I do have concerns regarding the parts of the ban on in-store, self-service displays and hope that the specialty shops would be exempt from those bans. From my experience, being able to test and sample those products in the store, hands on, gave me a distinct...you know, gave me a better success rate to actually try the product and know what I'm getting and ask questions. And I would like any adult that chooses to try this alternative to have the same opportunity for success that I did. Allowing the "vape" shops to provide service to their customer gives them a distinct advantage over all the on-line retailers that are out there. There's a lot of them. And being able to go actually into a brick-and-mortar store and try these products generates revenue for the small businesses in town and keeps revenue in our state. I thank you for your time and consideration and I'd be happy to answer any questions if I can. [LB861]

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SENATOR COASH: Thank you very much, Ms. Elliott. Let's see if we have any questions. Nope. Oh, Senator Johnson does. [LB861]

SENATOR JOHNSON: No question. Just compliment you on coming forward with your positive story. You did well. [LB861]

ANN ELLIOTT: Thank you. [LB861]

SENATOR COASH: Yeah, you did a great job. Thanks so much. All right. We'll take the next proponent. Seeing no other proponents, we'll take opponent testimony. Welcome. [LB861]

BILL PETERS: (Exhibit 9) Mr. Chairman, members of the committee, my name is Bill Peters, B-i-l-l P-e-t-e-r-s. I appear in front of you today as a lobbyist for the Cigar Association of America. Let me first say that we have no opposition to the proposals regarding the vapor products. I appear in opposition because of the inclusion of cigars and pipe tobacco in the self-service display provisions. I've distributed amendments that I believe address our concerns on self-service while not legalizing the sale or use of cigars and pipe tobacco to minors. They would still remain illegal to sell them and to use them. Minors, of course, can possess under our law. There are several minor points I would bring up. First, our concern is on the specialty shop. The definition of a specialty shop would take most shops that sell the e-cig product. It does provide a problem for traditional cigar stores. The full cigar store with a humidor has a problem in that we require...this bill requires the monitoring of the age of potential customers. We do not believe that there is a problem with minors being in the store. The way the language is drafted, it's impossible to enforce. Though my point would be if there's not much...there's no problem being presented. The problem with the language is a minor can't be in the store unless accompanied by a guardian or a parent, a parent or legal guardian. How's the one-man tobacco shop going to discover if that, quote, minor is there legally? Secondly, I would suggest that you take...that committee counsel take another look at the definition of minor before we get into another one of those floor debates on the age of majority. Most places when we want a minor to be 18 in the statute, we say as we do in the rest of the tobacco sections, a person of 18 or a minor of 18. However, the age of majority in Nebraska is still 19. So that will be a hang up that somebody can spend some legislative time. The requirement, again going back to the tobacco store of being able to control whether or not there's a minor in there, in the store, they already do their best to keep those who would have a tendency to steal away from the self-service display. But the specialty shop inclusion would take care of most of the bigger one-man tobacco places that have a humidor. But when a person...a customer is in a humidor, there's no way a person running the cash register is going to be able to comply with the self-service. So it'd be our request that this bill be modified so that if it moves, it does not directly change the law with regard to cigars and pipe

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tobacco. I'll anticipate the question of what about other forms of tobacco. The answer is simple. I don't represent them. (Laughter) [LB861]

SENATOR COASH: All right. Thank you, Mr. Peters. Any questions? Seeing none, thank you for your testimony. [LB861]

BILL PETERS: Thank you. [LB861]

SENATOR COASH: We'll take the next testimony in opposition. Seeing none, we'll move on to neutral testimony. Welcome. [LB861]

DAVID HOLMQUIST: Thank you. Good afternoon, Vice Chairman Coash and the rest of the committee. My name is David Holmquist, that is spelled D-a-v-i-d H-o-l-m-q-u-i-s-t. I represent the American Cancer Society Cancer Action Network as director of government relations in Nebraska. I appreciate the opportunity to testify on LB861 today. Offering some general thoughts on the bill, some suggestions that we believe would make important changes and some concerns we have with the bill as introduced. Let me begin by saying that we strongly support the FDA regulation of all electronic smoking devices, including restricting sales to minors. While e-cigarettes are in the short term less likely harmful than cigarettes, there are concerns that they may create new tobacco users and reverse efforts that have been made in smoke...made in making smoking socially unacceptable. We do not recommend e-cigarettes as a cessation tool. More research is needed to determine the safety of e-cigarettes, especially over the long term and their efficacy as a cessation tool. The American Cancer Society Cancer Action Network is concerned with any legislation that does not define electronic smoking devices as tobacco products. This concern stems out of the ruling by the U.S. Court of Appeals in Washington, D.C., that restricts the Food and Drug Administration, FDA, from regulating e-cigarettes under the drug and device provisions of the Food, Drug and Cosmetic Act absent therapeutic claims. Instead, the ruling states e-cigarettes can be regulated as tobacco products under the Family Smoking Prevention and Tobacco Control Act. Any state legislation that defines them in a manner other than tobacco products creates an inconsistency that could further delay regulation. In addition, not including electronic smoking devices in the definition of tobacco products sets the stage for these products to be treated differently than other tobacco products in Nebraska. NACS CAN opposes attempts to change laws for e-cigarettes that could in the short or long term undermine existing effective tobacco control laws and the positive steps that have been made in Nebraska and across the country to make smoking and tobacco use socially unacceptable and reduce the harm caused by tobacco use. Nebraska should take a cautious approach to changing existing law that could be in conflict with rulings to be issued by the FDA. Now I'd like to offer some brief comments about language in the bill as introduced. Our most important concern is the definition of vapor products as written in that it doesn't cover all devices currently on the market and they are not included in the definition of tobacco products. Here are some other comments on

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specific sections in the bill. Section 1, section 28-1418, we would suggest changing the words "use vapor products" to "use electronic cigarettes." In this section, it also appears that the word "evidence" has been inadvertently left out and should be included after the word "furnishes." Section 2(1) creates a new definition of self-service display. This definition would be weaker than local ordinances already in place in municipalities, including Omaha and Papillion. Section 2(2), this language defines a tobacco specialty store based on a percentage of sales, 75 percent of revenue from tobacco products. In this language, who would make the determination about meeting the 75 percent threshold? This definition should be much more explicit and refer to tobacco and products directly related to tobacco as well as giving examples of products that are not directly related to tobacco such as soft drinks, snack foods, and other like products. Now obviously this would be different in a grocery store, but in a tobacco specialty store, we want to make sure that places like Plumes are allowed to stay in business for the time that it is a legal product but have a better definition of what a tobacco product store is. Section 4(1) and (2) provide definitions of products. We believe that vapor products would better be defined as electronic smoking devices to ensure sales to minors of all devices, even those...to ensure that we do not make sales to minors of all devices, even those that do not contain nicotine. And we want to make sure that that's prohibited. Finally, on page 4, line 6, violations are addressed by the revocation or suspension of a license. E-cigarette retailers are not currently required to obtain a license and there is no process in law to provide such a license. We would also want to add exemption language for products that are designated by the FDA as tobacco cessation products and are marketed and sold solely for that purpose, for instance, the patch or the gum. I appreciate Senator Karpisek's concern about allowing minors to purchase and use electronic cigarettes. As drafted, we cannot support this bill. As a representative of the American Cancer Society Cancer Action Network, I'd be happy to make myself available to try to work out language for the bill that we could support. We do support the exclusion for minors being able to purchase the product, but we have some problems in the technical language. That's all I have today and I'm open to questions that I hope I can answer, and if I can't, I'll get answers. Thank you. [LB861]

SENATOR COASH: Thank you, Mr. Holmquist. Senator Krist. [LB861]

SENATOR KRIST: We may not...you may not be able to answer this today, but from what I take from your testimony is that given what's happening on the federal level and law that we may be in conflict with in future adjustments by the FDA or other agencies that this...we need to be consistent in calling an e-cig a tobacco product in order to go forward. [LB861]

DAVID HOLMQUIST: Right. Yes. [LB861]

SENATOR KRIST: And my challenge is that what we've heard here is that some of those have no tobacco or tobacco derivative or nicotine in them. They are simply

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smoking froufrou juice. Right? [LB861]

DAVID HOLMQUIST: Right. Yes. [LB861]

SENATOR KRIST: So we have a challenge if we're going to be...if we're going to remain consistent. Have you or has your organization on a national level engaged in that conversation? [LB861]

DAVID HOLMQUIST: We have engaged with letters to the FDA encouraging them to come out with some rules and regs. To address the specific issue that you came up with, Senator Krist, I think there could be language included that would call a product that contained no nicotine a "vaping" product. Our concern with a nonnicotine "vaping" product in the hands of a 16-year-old is that it gives them the sense of having smoked or the feel of having smoked. You know, I smoked for 25 years. I was lucky I was able to quit on my own at the age of 38. But not everybody can do that. [LB861]

SENATOR KRIST: Right. [LB861]

DAVID HOLMQUIST: And tobacco and its derivatives, i.e., nicotine, are addictive products. So we want to make sure that the social aspects of smoking for kids, because it's a cinnamon and a raspberry or some other flavor, doesn't conflict with our work to try to keep them from smoking a tobacco product. So there I think would be the possibility to suggest that a "vaping" product is a product that doesn't contain any nicotine, but an electronic cigarette does contain nicotine. And I'm...that's off the top of my head. I have no...I have no... [LB861]

SENATOR KRIST: Wow. Talk about regulating that. [LB861]

DAVID HOLMQUIST: Yeah, I know, I know. So, and we'd like to make it easier rather than harder, so I think that's a conundrum we have to address. [LB861]

SENATOR COASH: Thank you, Senator Krist. Thank you, Mr. Holmquist. Senator Johnson. [LB861]

SENATOR JOHNSON: Thank you. May follow up on a comment you made and I'll use myself as an example. I'm not a smoker, but I want to go into Plumes or one of the other testifiers that operates specialty. And I say tell me the story about e-cigarettes. And so they ask the questions of me. What type of cigarette do you smoke now? And I say, well, I don't smoke now. I just want this whatever it is that's going to make me feel better or be more socially acceptable somewhere. So in other words, I just want it for the kicks and the joy, whatever. [LB861]

DAVID HOLMQUIST: Right. [LB861]

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SENATOR JOHNSON: And you're concerned about the fantasizing of the sale of that. Would you see that as something that they should not sell me? [LB861]

DAVID HOLMQUIST: No, I don't want to suggest that. What we're suggesting is that when...the younger we are, the more impressionable we are. [LB861]

SENATOR JOHNSON: Right. [LB861]

DAVID HOLMQUIST: So if an 18-year-old or a college student comes in and goes through that, we believe there's a possibility that it could turn that person to smoking. There isn't a lot of science--there's very little science at this point--behind what the effects on the short term and the longer term might be with the use of electronic cigarettes or "vaping" devices, whichever way we want to define it. So that's a concern. I have to say I appreciate that Plumes is offering suggestions as to how this product might help people quit. But we have no empirical evidence other than, you know, the lady who was here who said it helped her quit. And it's great if it works for some people like that. But until we have some evidence that this is going to be a product that will have a large impact on the American public who smoke, we're not willing to make statements. That's why we're depending upon the FDA to come out with some regulations that would help us all better understand the product. Did I answer your question or did I go around the barn three times? I'm not sure. [LB861]

SENATOR JOHNSON: Yeah. Good enough. Thank you. [LB861]

SENATOR COASH: Do you have any sense as to when we might get some direction from the FDA? [LB861]

DAVID HOLMQUIST: You know, we have sent them letters and we actually also sent a letter to the president encouraging him to direct the FDA to work harder on this. I was at a meeting the first week in December in Washington, D.C. We expected to talk about e-cigarettes for two days. We didn't talk much about e-cigarettes because there wasn't...we're still trying to figure it out. I will be perfectly, you know, candid with you. We're all trying to figure it out. I think that retailers are trying to figure it out. The manufacturers are trying to figure it out. They have problems with, you know, with nicotine coming from China, for instance. We do too. And we don't think that we should rush into wholesale changes in the law, but we would support the exclusion of anyone under the age of 18 being able to purchase these products and we would much prefer them to be called electronic cigarettes. That's kind of the bottom line. [LB861]

SENATOR COASH: Okay. Thank you. I don't see any other questions. [LB861]

DAVID HOLMQUIST: Okay. [LB861]

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SENATOR COASH: Thank you, Mr. Holmquist. [LB861]

DAVID HOLMQUIST: Thank you. [LB861]

SENATOR COASH: Any further neutral testimony? Seeing none, Senator Karpisek, you can close if you want to. [LB861]

SENATOR KARPISEK: I always have to get the last word. Thank you, committee, and thank you for the testifiers, especially Ms. Elliott, a real person that came and talked about her use of the e-cigs. [LB861]

SENATOR COASH: Are you saying lobbyists aren't real people? (Laughter) [LB861]

SENATOR KARPISEK: Yes. Well, they didn't really use them. That's...they're real people. They just didn't use them. [LB861]

SENATOR COASH: I understand. Okay. [LB861]

SENATOR KARPISEK: The talk about the specialty shops, I think legal counsel already has an amendment drawn up to include them. We can talk about that in committee. I have no problem with that. I think it only makes sense. I guess in my mind, when we were drawing the bill up and we talked about specialty shop, they were included. But obviously they probably don't meet that definition as we have it now. Senator Bloomfield, to the superintendent who said they can't afford them, he hasn't bought cigarettes lately I guess. I think somebody told me they're between \$5 and \$6 and higher a pack. I might know that guy if you want to talk to him later, that, you know, a carton of cigarettes is \$50. And depending on how much you smoke, that doesn't take you long to go through. So that...I've made the argument before on the floor too. I don't think it's us that are wearing \$100 jeans either. I think it's the kids that usually do that. So they have the money. I also don't doubt that there's going to be further legislation on this as we go forward. I think as we heard, there's just not a lot of science yet behind it, and that's no one's fault. And the last thing I want to do in this bill is hurt the sales of e-cigs. That's not my intention at all. I want to try to help them actually. I just...as we talked about maybe people trying it and then it's one step closer to smoking, exactly why I think it should be someone under 18. Right now, if you are 18, you can go buy a pack of cigarettes. Well, that's going to turn you on to smoking also because it is smoking. The cigars and pipe tobacco, I don't know, we can talk about that, but I think the exemption is okay for them. I don't know about a one-man store doing that. We can talk about that, but I see a lot of C-stores manned by one person and they sell alcohol. Again, a lot of good points brought up, and I know that more will have to be done. This is probably a little bit of term limits coming in too. Before I have to leave, I'd like to see something done on this, and just trying to help the industry look and be more

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professional. And I'd be glad to take any more questions. [LB861]

SENATOR COASH: Senator Bloomfield. [LB861]

SENATOR BLOOMFIELD: I would just throw out a comment. I used to think that only the federal government could take a product that had no tobacco in it or anything else and regulate it as a tobacco product. But after watching us in session for the last week and a half, I've changed my mind on that. We can do it too. [LB861]

SENATOR KARPISEK: Does that mean we're getting better? [LB861]

SENATOR BLOOMFIELD: No. [LB861]

SENATOR KARPISEK: No, I didn't think so. [LB861]

SENATOR KRIST: Senator Bloomfield, I resemble that remark. (Laughter) [LB861]

SENATOR COASH: (See also Exhibits 10, 11 and 12) All right. Seeing no other questions, that will be it. [LB861]

SENATOR KARPISEK: All right. [LB861]

SENATOR COASH: We'll close the hearing on LB861. [LB861]