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General Affairs Committee
February 02, 2015

[LB204 LB339 LB439 LB460 LB486 LB619]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 2, 2015, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB439, LB204, LB486, LB619, LB339, and LB460. Senators present: Tyson Larson, Chairperson; Colby Coash, Vice Chairperson; Matt Hansen; Mark Kolterman; Bob Krist; Merv Riepe; and Ken Schilz. Senators absent: Dan Hughes.

SENATOR LARSON: Thank you, everybody. Welcome to the General Affairs Committee. I am Senator Tyson Larson of O'Neill, Chair of the committee. Throughout the committee, we're going to have a number of senators come in and out. To my far right, Senator Mark Kolterman from Seward. Senator Hansen, representing the 26th District, of Lincoln, will be joining us. Vice Chair Senator Coash, of Lincoln, will also be coming. My immediate right, I have Josh Eickmeier who is the committee's legal counsel. On my far left, Jeff Fryman, the committee clerk for General Affairs; Senator Riepe, of Ralston, representing the 12th District. Senator Hughes, of Venango, might not make it today. He was driving from Venango today and the inclement weather has held him up. So he might not make it today. Senator Krist from Omaha; and then to my immediate left, Senator Ken Schilz, representing the 40th District, from Ogallala. The pages helping us out today are Mariah Keech of Story City, Iowa, and Caitlin Welty of Omaha. I said 47th, I think. There...please be noticed...please notice there are three different sign-in sheets located on the tables at the back of the room. One sign-in sheet is for those not publicly testifying but want their presence and position noted as an exhibit in the official records of the committee. A second sign-in sheet is for those who are present at the committee hearing and who offered written testimony in lieu of testifying which will be noted on the committee statement. And the third sign-in sheet is for anyone planning to testify before the committee. When it is your turn to testify, please give your sign-in sheet to one of the pages so they can give it to the committee clerk. This will help us make a more accurate public record. After each bill introduction, the Chair will ask for testimony in support, opposition, and neutral. When you come up to testify, please speak clearly into the microphone. Please tell us your name, and please spell your first and last name. Also, please tell us whom you're representing, if anyone. We are using the light system for our hearings. Testifiers will have three minutes, which will be represented by a green light, when you begin, an amber light when you have one minute remaining, and a red light when your time is up. Senators will have unlimited time in their opening and closings to pitch their cases. Please turn your cell phones or any other electronic devices that you may...that may make noise on silent. Please keep your conversations to a minimum or take them out into the hallway. The General Affairs Committee is participating in a pilot program to go paperless; therefore, we are only accepting handouts and written testimony electronically. Due to this new policy, if you would like to submit something but only have paper copies, then we will try to accommodate you. We also do not allow any visual aids or other display items. Because this committee is going paperless, senators are allowed and even

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General Affairs Committee
February 02, 2015

encouraged to use electronic devices during the hearings. And thank you for your cooperation. We will begin today's hearings with LB439, which will be introduced by Senator Morfeld. Welcome to the General Affairs Committee, Senator Morfeld. [LB439]

SENATOR MORFELD: (Exhibits 1, 2, 3) Chairman Larson, members of the General Affairs Committee, my name is Adam Morfeld. For the record, that's A-d-a-m M-o-r-f-e-l-d, representing the "Fighting" 46th Legislative District which encompasses northeast Lincoln, downtown, and the University of Nebraska-Lincoln campus. And I'm here to introduce LB439 today. I do have some handouts, but we will send them electronically after the hearing, and I'll note for the record who those are from, as far as letters of support go. LB439 grants limited liability to minors seeking help for themselves or someone else in need of immediate medical attention due to an alcohol poisoning. The law will only apply to an individual who: (1) is intoxicated; (2) calls for medical assistance; and (3) stays on the scene and cooperates fully with law enforcement when medical attention arrives. This law would apply to the person calling and the person in need of medical attention; or, if the person calls for medical attention themselves, then only that individual. I believe this ensures that we are putting safety first while ensuring accountability. I introduced LB439 for a number of reasons: first, on behalf of the work that the Association of Students of the University of Nebraska has done statewide on this issue for the past year with numerous campuses across the state; second, in response to the recent tragic events due to alcohol poisoning in Lincoln and in my district in particular; and, third, the realization that we must put safety first and provide opportunities for young Nebraskans to seek critical medical attention when it is needed. Increasingly, in this age of easily accessible information via technology, getting a minor in possession and other misdemeanors are taken into strong consideration when decisions are made on acceptance to law enforcement training, medical school, law school, and other professions and trades, which makes students hesitant to contact law enforcement when alcohol medical emergency presents itself. Tragic accidental deaths can be avoided with policies such as this, and Nebraska would join 21 other states with similar laws if LB439 is passed. It is also important to note that the law would only apply to the issuance of a minor in possession and would not provide any protection for other crimes, such as acts of sexual violence, causing or threatening physical harm or damage, use of fake identification, procuring for a minor, or harassment and hazing. If the passage of this bill can save one life and encourage one person to make a call for medical assistance when needed, it will be worth it. Originally, the interim president of the University of Nebraska, Jim Linder, was going to testify, but he was unable to make it to Lincoln today because of the weather conditions. So I am submitting a letter of support from him to you today. I'm also submitting letters of support from the Nebraska Medical Association, Lancaster County Medical Society, and Linda Major, who is assistant to the vice chancellor for student affairs at the University of Nebraska-Lincoln. Thank you for your consideration, and I urge you to advance LB439 to the floor. I would be happy to answer any questions that you may have. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Thank you, Senator Morfeld, for your opening on LB439. Senator Coash. [LB439]

SENATOR COASH: Thank you, Chairman. Senator Morfeld, in your bill, does this immunity apply to criminal immunity--in other words, criminal case--or civil immunity if someone were to get injured and sued in civil court? [LB439]

SENATOR MORFELD: Just criminal immunity to the Class III misdemeanor that one would be charged with if they've got a minor in possession. [LB439]

SENATOR COASH: Okay. So somebody does what you're saying in the bill and they call for help. Right? Then that makes them immune to getting a ticket... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR COASH: ...for (inaudible)... [LB439]

SENATOR MORFELD: It's a Class III misdemeanor. I think it's given as a ticket and a fine. There might be a court hearing, actually, but... [LB439]

SENATOR COASH: Right. So that would say, no ticket. [LB439]

SENATOR MORFELD: No ticket, but only if they call for assistance and they cooperate fully with police and medical attention once they arrive. [LB439]

SENATOR COASH: What would happen if the minor--in this case, minor being under 21--called, was cooperative, but at the end of the day the person they're calling about really didn't need medical attention. I mean, what...I think you know what I'm getting at. How are we going to prevent this being...this provision that you're talking about in the bill from being used as a, hey, I don't want to an MIP. [LB439]

SENATOR MORFELD: Get-out-of-jail-free card, is that what you're talking about? [LB439]

SENATOR COASH: Yeah. [LB439]

SENATOR MORFELD: Yeah. No, I mean, I think, first off, if you put yourself in the shoes of somebody under 21, and when you're under 21 the last thing that you would want to do is end

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

General Affairs Committee
February 02, 2015

your night with police showing up, along with an ambulance. So in other states--there's 21 other states--that has not been a problem. It's only been used when there was something very serious or something very serious suspected. Obviously, these minors are not medical professionals, so maybe the person wasn't as drunk but they're still concerned about that individual, or maybe they were. We just haven't seen that happen in the 21 other states. So is there a possibility they could? Yes, but the likelihood of that: very low. Also hasn't happened in the other states that have it. And if you think about it, nobody wants to end their night, particularly somebody under the age of 21, with the police coming to their door and an ambulance unless it's really serious. [LB439]

SENATOR COASH: Right. Appreciate that clarification for the record. Let me ask you this with regard to immunity. Say you got two friends out...they're both minors out partying and drinking. One gets ill, so this is used. In other words, they call and ambulance shows up. And maybe the person who had the ambulance called on them really was sick and close to alcohol poisoning or something else, and maybe something really bad happens to that individual, and then... [LB439]

SENATOR MORFELD: The person that has alcohol poisoning? [LB439]

SENATOR COASH: The person...some...yeah... [LB439]

SENATOR MORFELD: Okay. [LB439]

SENATOR COASH: Yeah, something really bad, like alcohol poisoning or, worse yet, dies. Right? [LB439]

SENATOR MORFELD: Yep, yep. [LB439]

SENATOR COASH: Then the person who is injured or dies, their family says, you know what, it was his buddy who provided all the alcohol that got my son injured or killed. Does this bill prevent that person or their family member from suing civilly for the damages? [LB439]

SENATOR MORFELD: No. It only provides limited legal immunity from the MIP charge, the Class III misdemeanor MIP charge. If they were procuring, if they were doing anything else, even fake ID, they would still...this does not provide immunity to that charge...those charges, only the MIP. [LB439]

SENATOR COASH: Okay. Okay, we're talking about the criminal charges. I just want to make it clear for the record. What about the civil suit that could go forth where the parents of the man who...the kid who was injured or died said, you know what, I think this other guy is responsible

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

General Affairs Committee
February 02, 2015

for my son's death and I want to get damages because of what happened to him and I want to take him to civil court and see what I can get? Does this prevent that? [LB439]

SENATOR MORFELD: There...no. This provides no civil immunity for any actions that are carried out, only the MIP charge. [LB439]

SENATOR COASH: Okay. Thanks for making that clear for the record. [LB439]

SENATOR MORFELD: Great question, so. [LB439]

SENATOR COASH: Appreciate it. [LB439]

SENATOR LARSON: Senator Riepe. [LB439]

SENATOR RIEPE: Thank you, Senator Larson. Mine is a follow-up question to that. Does the good Samaritan clause play into this at all? [LB439]

SENATOR MORFELD: Well, this would be a special kind of good Samaritan clause. I know that there's other good Samaritan clauses for civil immunity dealing with roadside assistance, things like that, medical emergency. This...that should not be confused with this. This does not alter any of them. They do...it does not interact with any of them. It simply creates a carve-out for the MIP violation. [LB439]

SENATOR RIEPE: I was thinking only the good Samaritan piece might provide more incentive that they're not going to be, as Senator Coash points out, they might not be liable if the outcome is very bad. They tried to do what they could but were...it wasn't successful. But at least they're not then drawn into court for some liability. [LB439]

SENATOR MORFELD: Well,... [LB439]

SENATOR RIEPE: I don't know whether good Samaritan, which is on the books, could be stretched to that point or not. [LB439]

SENATOR MORFELD: Yeah, I mean, I would have to read the other good Samaritan law, Senator. But I do know that this bill only provides limited legal immunity from the MIP charge. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR RIEPE: Okay. [LB439]

SENATOR MORFELD: If somebody was procuring for that minor, if somebody was engaged in any other acts of drugs or anything like that, this doesn't have anything to do with that. It's simply...I mean, oftentimes, I think, particularly in my district, which encompasses the University of Nebraska-Lincoln, there's a lot of minors out there that are put in situations where they could help their friends but they're afraid of, number one, getting themselves in trouble and getting their friend in trouble. That's what the intent of this is to provide, is that limited legal...limited legal immunity. [LB439]

SENATOR LARSON: Thank you. Senator Coash. [LB439]

SENATOR COASH: Thank you, Senator Larson. Senator Morfeld, one final question because I want to make sure this is clear for the record. The immunity that's provided in your bill, you talk about it being applied to the person who would call. Would it also apply to the person they're calling about? [LB439]

SENATOR MORFELD: Yes. And if you look on page 2, right down here, if you look on page 2, "If the person requested emergency medical assistance for the possible alcohol overdose of the other person, such person," and then they go through the different things that they have to do. Actually, what you should go to is the small "i" on page 2, "Requested emergency medical assistance in response to the possible alcohol overdose of himself or herself or another person as soon..." [LB439]

SENATOR COASH: So it counts for both. [LB439]

SENATOR MORFELD: It counts for both of them. [LB439]

SENATOR COASH: Okay. And legal counsel is helping me with the bill here. I'm just going to throw something else out because I just want to make sure the record is clear of what you're trying to get done... [LB439]

SENATOR MORFELD: Absolutely. [LB439]

SENATOR COASH: ...with this bill or not. Let's say I'm one of the people affected by this bill and I, say, see my friend has maybe had too much and I'm worried about his health. What if I call his mom, say, hey, Mom, your kid here is wasted, I'm not sure if he's okay, we ought to check on him? Would that count here or do I have to call 911? [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR MORFELD: That's a great question. We could specify. There could be a question as to whether or not that that would constitute the necessary request for emergency medical assistance. [LB439]

SENATOR COASH: I only bring it up for something... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR COASH: ...for you to consider. I think we could "what if" ... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR COASH: ...this kind of legislation to death, and that's not my intent with these questions. I just want to make sure that we... [LB439]

SENATOR MORFELD: My... [LB439]

SENATOR COASH: ...we don't find a loophole that becomes a get-out-of-jail-free card and that it actually does what you want it to do. So I'll leave that up to you to take a look at, but... [LB439]

SENATOR MORFELD: Well, and, Senator, I'd be willing to entertain a committee amendment if we want to clear that up. And I'd be fine with saying "personally requested emergency medical assistance from 911" or whatever we would define the emergency medical authorities as. [LB439]

SENATOR COASH: Emergency medical assistance may be defined in another statute. Maybe it's already out there, so. [LB439]

SENATOR MORFELD: We can look into that. [LB439]

SENATOR COASH: All right. [LB439]

SENATOR MORFELD: I'd be more than willing to work with the committee to clear it up. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: Thank you, Senator. [LB439]

SENATOR LARSON: Thank you, Senator Coash. Senator Morfeld, and kind of piggybacking off of Senator Coash's, I guess, I have a similar concern. I know you talked about how it hasn't been done in the other 21 states. You know, I knew some very intelligent kids in colleges. If I'm under 21 and the cop is knocking on my door, I'm dialing 911 as fast as possible and saying that my best friend is sick. Are there...that's my only concern following this. Is there a way to protect...you get what I'm saying. Like, at that point, is it from the point I dial 911 that me and Josh here have immunity? Is it...you get what I'm saying? That's my simple concern. I hear the knock on the door... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR LARSON: ...and all of a sudden I say, oh, "explesitive," dial the...and... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR LARSON: Do you get what I'm saying? Are there... [LB439]

SENATOR MORFELD: Yeah, I mean, I see where you're going with it. We could specify it a little bit more. It might make the language a little bit more cumbersome, which could have the reverse effect, is that we could make it so narrow that people... [LB439]

SENATOR LARSON: I get it. I get it. [LB439]

SENATOR MORFELD: Yeah. I see what you're saying. I mean this, as worded, really only provides limited legal liability...or immunity, I should say, to two individuals, max. [LB439]

SENATOR LARSON: Yep. [LB439]

SENATOR MORFELD: And so you would have to pick which of the individuals all, you know, go down for this. [LB439]

SENATOR LARSON: Well, maybe I'm playing loud music in my apartment. [LB439]

SENATOR MORFELD: Yeah. Yeah. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: I've been called in. I mean those things...yeah. [LB439]

SENATOR MORFELD: Well, the loud music, you would still be able to get charged under whatever violation it was. [LB439]

SENATOR LARSON: For the loud music... [LB439]

SENATOR MORFELD: Yeah. [LB439]

SENATOR LARSON: ...but I'd also skip out on the MIPs. [LB439]

SENATOR MORFELD: I think that we could certainly go into the weasel of it, which I don't think is a bad thing because this could play out...I mean this will likely play out in real life, if we pass this into law, and we'll have to see. That being said, I think it's narrow and broad enough to encompass the situations that would be reasonable. And in this, if you look in sub (A) and sub (B), "Remained on the scene until the medical assistance arrived," and "Cooperated with medical assistance and law enforcement personnel," I think that the law enforcement would be able to make a judgment call as to whether or not somebody is trying to claim the immunity based on the intent of the statute or not. But that being said, there are some folks behind me that have worked with other states on this. My understanding, and in talking to other states that have worked with this law, that's...they don't have very many abuses of this. In fact, it's saved lives in other states. [LB439]

SENATOR LARSON: All right. Thank you, Senator Morfeld. Any further questions? Thank you. [LB439]

SENATOR MORFELD: Thank you. [LB439]

SENATOR LARSON: Will you be staying to close? [LB439]

SENATOR MORFELD: I will be staying to close. [LB439]

SENATOR LARSON: All right. With that, I'll start with the proponent testimony. How many proponents do we have? Can I get a show of hands? One, two, three, all right, four. [LB439]

SENATOR MORFELD: Four. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Sounds good. Welcome to the General Affairs Committee. [LB439]

KEVIN KNUDSON: Thank you. Senator Larson and General Affairs Committee, good afternoon. My name is Kevin Knudson, for the record K-e-v-i-n K-n-u-d-s-o-n, and I am the student body president and the student regent for the University of Nebraska-Lincoln. Today, I'm here to speak on behalf of the university and our students in support of LB439. Over the past year, members of our student government have teamed up with our counterparts at other Nebraska institutions to explore good Samaritan legislation. This past fall, we hosted the Nebraska Collegiate Alcohol Forum, where representatives from over 14 universities and colleges came together to discuss alcohol-related issues on our campuses. We have put much time, effort, and thought into the implementation of good Samaritan legislation in the state of Nebraska. We have talked to other Big Ten student governments who shared stories of students advocating for this policy within their own states. Currently, over 20 states have good Samaritan laws and many Nebraska institutions of higher education have good Samaritan language included within their student code of conduct, protecting students against on-campus sanctions. This concept is not entirely new. But without the passage of LB439, the benefits of good Samaritan policy will remain limited in their scope. LB439 can save lives because it eliminates one of the biggest barriers to seeking medical assistance in an alcohol-related emergency: fear, fear of legal ramifications, specifically, but I would go further and say fear of future barriers. In the society we live in today, our lives are perpetually documented. Businesses and other institutions are paying more attention now than they have ever before, and legal infractions are red flags for any organizations. For young people interested in becoming teachers, police officers, or involved in the medical field, a citation as small as a minor in possession can delay or completely derail these dreams. Actions have consequences, but sometimes the consequences of our actions pale in comparison to the consequences of our inaction. Failing to make the call in a medical emergency can be a matter of life and death. Passing LB439 sends a message to the young people of this state that we care more about them receiving lifesaving medical assistance than about them receiving an alcohol citation. Thank you for your time. [LB439]

SENATOR LARSON: Thank you, Mr. Knudson. Is there any questions from the committee? Seeing none, thank you for coming to the Legislature. [LB439]

KEVIN KNUDSON: Thank you. [LB439]

SENATOR LARSON: I'll take the next proponent for LB439. How are you? [LB439]

GERALDINE COTTER: I'm fine, thank you. How are you? [LB439]

SENATOR LARSON: I'm well. [LB439]

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

General Affairs Committee
February 02, 2015

GERALDINE COTTER: Good afternoon, Senator Larson, members of the General Affairs Committee. My name is Geraldine Cotter, for the record G-e-r-a-l-d-i-n-e C-o-t-t-e-r, and I'm here today to speak in support of LB439. I'm the associate dean of students at Nebraska Wesleyan University. However, today I'm here speaking in support of LB439 not on behalf of Nebraska Wesleyan but as a student affairs professional with over 25 years of experience in the field. I want to begin by emphasizing that the purpose of this bill is to save lives. It's meant to complement, but not replace, our efforts to educate young people regarding the dangers of high-risk drinking. It is meant to complement, but not replace, our attempts to help students develop realistic expectations of our campus norms regarding the use of alcohol. It is meant to complement, but not replace, our work with parents, reminding them of the power of a frank conversation with their son or daughter. It is meant to complement, but not replace, our outreach to Lincoln bar owners, urging them to provide an environment that promotes responsible drinking. It is meant to complement, but not replace, the numerous nonalcoholic alternatives that our campuses provide. Again, it is meant to save lives. You have in front of you various statistics pertaining to the proposed good Samaritan policy. Rather than focusing on the statistics, I would like to use my time to tell you about two situations, both of which, fortunately, turned out well, but I shudder to think what the outcome might have been had the students waited much longer to make the call. In the first instance, students concerned about a friend who had overconsumed alcohol, but also worried about possible repercussions from the criminal justice system both for themselves and the students in question, were reluctant to call 911 or any authority figure from the university. Instead, they called the student's mother, who immediately told them to call 911. But I can't help but wonder what might have happened had the student's mother not been available. How long would they have debated before making that critical call? More recently, I became aware of a situation where some students put one of their highly intoxicated peers to bed to sleep it off. Fortunately, one of them became worried and went back to check on his friend. He found the individual unresponsive with very labored breathing. He called 911. As mentioned, both of these situations ended positively, but they could just have...as easily have gone the other way. These are life-and-death decisions in which minutes make a difference. I ask for your support for LB439. I ask you to remove the barrier that might inhibit students from making that all-important call, and we'll work on teaching students to recognize the signs of acute alcohol intoxication. We'll also work on dispelling the myths that sleep, caffeine, or aspirin would resolve such an issue. Thank you. [LB439]

SENATOR LARSON: Thank you, Ms. Cotter. Do we have any questions from the committee? [LB439]

SENATOR RIEPE: I have a question. [LB439]

SENATOR LARSON: Senator Riepe. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR RIEPE: Senator Larson, thank you. My question would be this: Are the colleges and universities in the state, public or private, setting the example of saying no alcohol on campus? [LB439]

GERALDINE COTTER: Are they setting that example? Not all of them, no. [LB439]

SENATOR RIEPE: Okay. [LB439]

GERALDINE COTTER: In fact, I can speak about Nebraska Wesleyan's policy, if you'd like. Okay? [LB439]

SENATOR RIEPE: That would be fine. I'm familiar with Wesleyan's program. [LB439]

GERALDINE COTTER: Okay. Our policy is an alcohol-tolerant policy. So that means that, if students are over 21 and they live on campus, remembering that we have a three-year residency requirement so we have 21-year-olds on campus, our policy is if a student is 21 or older and if all individuals who reside in their living unit are 21 or older and if all individuals who lived in that unit sign an agreement that they will permit...that they are alcohol tolerant within that living unit, then those students may have alcohol, limited amounts. If they have a get-together, they may have at that get-together only double the number of residents who live there. So if four students live there, there can be no more than eight students present at the gathering, and all must be over 21. The designation that it is an alcohol-tolerant living unit is posted, has to be posted for individuals who are coming into it to see so they know in advance if it is an alcohol-tolerant unit or not. So we are an alcohol-tolerant campus, but all of our policies are consistent with the laws of the state of Nebraska. [LB439]

SENATOR RIEPE: Do you think that's pretty typical of other campuses, including UNL and UNO? [LB439]

GERALDINE COTTER: No, not... [LB439]

SENATOR RIEPE: Not necessarily. [LB439]

GERALDINE COTTER: No, no. I think it may be typical of private colleges that have a residential policy that extends beyond the first year. So when you have three years' requirement to live on campus, I do...I also think that it helps teach students to use alcohol responsibly. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR RIEPE: Okay. Thank you. [LB439]

GERALDINE COTTER: Thanks. Any other questions? [LB439]

SENATOR LARSON: Thank you, Senator Riepe. Any other...thank you, Ms. Cotter, for coming today. I'll take the next proponent. Welcome to the General Affairs Committee. [LB439]

MATTHEW HECKER: Thank you, Senator Larson. Members of the committee, my name is Matthew, for the record M-a-t-t-h-e-w, Hecker, H-e-c-k-e-r, and I'm the dean of students at the University of Nebraska-Lincoln. And I'm here to speak a little bit about our experience with that policy. We implemented this as part of our student code of conduct a number of years ago, and we've had, I would say, success with the policy, and we have not had what we had feared would be major problems or abuses with the policy. In fact, some of the senators...Coash, some of your questions resonated with me and other members of the university administration when we first considered this. And when we thought about how to best expand this, because, of course, we have many students who live off campus, not just our on-campus students, and we have this in place with our University Police Department, but in terms of trying to best serve our students, many of whom...the majority of whom live off campus, we thought we would approach the Lincoln Police Department about something similar. And it became very clear that an effort to do that really would require a change in state statute because we don't want to take the law out of the hands of law enforcement. So we were very clear about needing to move to this forum and the State Legislature. So I'm very grateful for Senator Morfeld's sponsorship for this bill. But in terms of best use of my time, perhaps, it's to help you in hearing what the university has done with this. And with that, I'll cede over my time to any questions that you may have. [LB439]

SENATOR LARSON: Senator Hansen. [LB439]

SENATOR HANSEN: Yes, thank you, Senator Larson. And just following up with Senator Riepe's questions earlier, can you explain what UNL does for their alcohol policy on campus? [LB439]

MATTHEW HECKER: UNL is officially an alcohol-free campus in terms of our student living units, residence halls, and our Greek living units. And so in that regard, alcohol does not have a place on campus. And we have both student code of conduct, as well as, clearly, state law, and that is enforced both with our residential students on campus and our Greek students. [LB439]

SENATOR HANSEN: Great. Thank you. [LB439]

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

General Affairs Committee
February 02, 2015

MATTHEW HECKER: Yes. [LB439]

SENATOR LARSON: Thank you. And following up on Senator Hansen's, do you...and Ms. Cotter as well, do you find that limiting alcohol on campus restricts maybe the possibility of, as Ms. Cotter said, an education of responsibly consuming alcohol in certain areas if you are over the age of 21, whether that be in the Greek facilities or the dorms or anything else? I know the university I attended, if you were 21, you could have alcohol on campus because you were...legally had that ability. Do you feel that limits the education and puts the taboo on alcohol that leads to situations that we're currently looking at because it turns more into binge drinking instead of the ability to responsibly use and consume product? [LB439]

MATTHEW HECKER: Yeah, I...it's a hard question to answer, Senator, because, of course, there are a lot of reasons why people will choose to consume alcohol. But, you know, categorically, when students tell me, you know, you're making us drink off campus, I reject that because the university hasn't done anything to force them to consume alcohol or to consume it off campus. And so in a very real sense, it still is their choice. But what we're really trying to do with this is remove some impediments to making an important call. When someone really is at risk, we want them to feel like the more valuable thing to do is make the call and not risk the well-being of your friend. [LB439]

SENATOR LARSON: And I think we can agree with the purpose of LB439. And like I said, I'm going off my own college experience which was more like Wesleyan's in the sense that they promoted responsible behavior. We had our own...we actually had our own ambulance system, our own hospital right there on campus, which was beneficial. But it allowed for a...you know, it took that taboo away and it allowed the university much more control over everything that was happening. And I feel that's one of the issues that I have with UNL in the sense that it feels like you guys lose control sometimes in the sense that, since it is that taboo and they can get in trouble, it's...it is forcing them off campus. It's forcing them to drive. It's forcing them to be everywhere else, whereas, where I was, they...the focus was everything is concentrated in this area. The police...the university police could control it. We registered our parties so they knew where exactly everything was, you know, where...you know, and the ambulance already knew where, if something was happening, and I think that's something that the university should look at. I understand the concept of underage drinking and making sure that doesn't happen. But if we're promoting safe, nonbinge-drinking consumption, I think the university is a little behind the times in pushing their students off campus, pushing them to drive, pushing them to consume alcohol in a nonresponsible fashion. So I would appreciate if you guys look at those because it's...if we're talking about responsibility, the university isn't helping that, by any means, in my opinion. So thank you. [LB439]

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Transcriber's Office

General Affairs Committee
February 02, 2015

MATTHEW HECKER: Thank you, Senator. I appreciate that admonition. [LB439]

SENATOR SCHILZ: Breathe. [LB439]

SENATOR LARSON: Thank you. I think we're done. [LB439]

BRIAN JACKSON: (Exhibit 4) Good afternoon, Chairman Larson and members of the General Affairs Committee. My name is Brian Jackson. That's B-r-i-a-n and it's J-a-c-k-s-o-n. And I am the assistant chief of police for the Lincoln Police Department, and I'm here to testify for the city of Lincoln in support of LB439. LB439 provides a reasonable safety net for youth who have consumed too much alcohol and may be in physical danger without immediate medical intervention. Occasionally, minors choose to consume alcohol while underage. These choices can sometimes lead to a serious medical condition, or even death, from alcohol poisoning. And unfortunately, Lincoln has experienced tragic occurrences of both. This bill provides a practical method for minors to obtain medical assistance for themselves or another without the fear of arrest. Eliminating the penalty for requesting emergency assistance at the time it is most needed is the right thing to do in the right time to do it. Alcohol use can impair good judgment. Youth may not call for help because they're afraid of the legal consequences, such as being cited, or thoughts of the negative aspects of a misdemeanor arrest. Although law enforcement officers rarely make an MIP arrest when there is a medical emergency, I understand the concerns these youth may have. This bill will give the assurances they need to make that important call for help without delay for those who cannot help themselves. The real need is to make sure no one loses their life from a poor decision in cases such as these. A number of other states have enacted similar legislation. These good Samaritan laws are a fairly new endeavor in the United States and no long-term statistical data is available yet. Nevertheless, I agree with...that there is no reason to delay enacting these provisions. If, upon implementation, minor problems or issues come up, and I have no reason to believe that they will, the legislation can be fine-tuned at a later time. We believe this is the right legislation at the right time. We believe this bill meets the stated intent of providing limited legal immunity to minors who seek out immediate emergency medical attention for themselves or others from alcohol poisoning and who will cooperate fully with public safety professionals. This legislation, if it saves even one life, will be well worth the time and effort. Thank you for this opportunity to testify. Thank you for...Senator Morfeld, for introducing LB439, and I ask the committee to advance this to the General File and be happy to answer any questions that you may have. [LB439]

SENATOR LARSON: Thank you, Mr. Jackson. Are there any questions? Senator Riepe. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR RIEPE: Senator Larson. Chief, can you tell me, would the individual who is the good Samaritan who is making the call, are they immune also if they have a belligerent "payout," if you will, or are they immune only from arrest under calling for help? That may be one that Senator Morfeld may want to address later, but I'm just curious. If there are other issues that they're in violation of, they're not immune from everything. [LB439]

BRIAN JACKSON: That's correct. [LB439]

SENATOR RIEPE: Okay. [LB439]

BRIAN JACKSON: That's my understanding of the bill, and they are only immune from a minor-in-possession charge... [LB439]

SENATOR RIEPE: Okay. Okay. [LB439]

BRIAN JACKSON: ...if they cooperate. So belligerence would then be counter to the bill itself. [LB439]

SENATOR RIEPE: A ride downtown. [LB439]

BRIAN JACKSON: Yeah. [LB439]

SENATOR RIEPE: Okay, thank you. Thank you. [LB439]

SENATOR LARSON: Thank you, Senator Riepe. Any others? [LB439]

BRIAN JACKSON: Thank you. [LB439]

SENATOR LARSON: (Exhibits 5, 6, 7, 8) Thank you for coming, Mr. Jackson. For the record, I would like to read support, proponents of LB439: Aaron Letzeiser from the Medical Amnesty Initiative; Seamus Mulcahy, a UNL student; William Stock--that was much easier--a UNL student; Julia Starkey of Aware Awake Alive; and Brian Jackson, assistant chief of police. With that, I'll take any opponents to LB439. Mr. Lindsay, trial attorney. [LB439]

JOHN LINDSAY: Senator Larson, members of the committee, for the record, my name is John Lindsay, L-i-n-d-s-a-y, appearing on behalf of the Nebraska Association of Trial Attorneys. The under...the thrust of the bill, we have no concern with. It's...call your attention to page 5, lines

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

General Affairs Committee
February 02, 2015

20-22, which is a...provides an immunity from liability. There's been some discussion about whether there is immunity from liability on behalf of whomever. The only immunity from civil liability that I see is this section that talks about immunity on the part of the law enforcement officer or employing agency. A couple of comments with respect to that: First is that under Article I, Section 13, of the Nebraska Constitution, all courts shall be open and every person, for any injury done him or her in his or her lands, goods, person, reputation, shall have a remedy by due course of law and justice. What this provision says is a person shall not initiate or maintain an action, which means it's closing off the courts, access to the courts, by any person based on the circumstances stated therein. I would suggest that, by doing that, it violates Article I, Section 13, which says you can't do that--every person shall have access to the courts. Secondly, I...general position on immunity from liability is that, first, remember, you're not liable unless you do something wrong. You're not liable just because somebody says, I got hurt so I'm going to file a lawsuit and I win. That's not the way it works. In order for you to be liable, other than intentional misconduct, you must be negligent, you must be careless. And in doing that, it's...the question of comparison is, what would a reasonable, a prudent person do under similar circumstances? And so it is a comparison of people who are acting in the same situation. The civil liability is different from the state saying, we're not going to prosecute. That's giving up something that the state has the exclusive right to do. What this is doing is saying, we give up individuals' rights; we're taking rights away from individuals who would have under Article I, Section 13, certain rights that they could exercise. We would ask that subsection (4) on page 5 be deleted and, as I mentioned, we have no position on the remainder of the bill. Senator Larson, I'd be happy to answer any questions. [LB439]

SENATOR LARSON: Thank you, Mr. Lindsay. Do we have any questions from the committee? Senator Riepe. [LB439]

SENATOR RIEPE: I have a question. Thank you, Senator Larson. My question is, can you be held immune from gross negligence, assuming that the other student had some participation in getting the student at the first party intoxicated? [LB439]

JOHN LINDSAY: You, under this provision, it doesn't address students' liability. This bill, on a civil side, addresses only liability of the law enforcement officer or the employing agency. So under the terms of this bill, the student would not be immune from negligence or gross negligence. This bill does not address that aspect of it. [LB439]

SENATOR RIEPE: Okay. [LB439]

JOHN LINDSAY: Now you mentioned earlier in some of your questioning questions of the good Samaritan law, which is a general...that's adopted for if you're...if an emergency situation arises.

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

General Affairs Committee
February 02, 2015

And the most clear one that's always used is you see somebody on the ground, ostensibly, having a heart attack, you perform CPR, and you break some of their ribs. There is no liability. That is a...the good Samaritan law says, in an emergency situation, you can take those actions that a reasonable person would take and you're not...and you will not be responsible for those. And so the good Samaritan, this does not change the good Samaritan law, so the general good Samaritan law would still be in effect with regard to any situation here. [LB439]

SENATOR RIEPE: Okay. Thank you. [LB439]

SENATOR LARSON: Thank you, Senator Riepe. Any other questions from the committee? Thank you, Mr. Lindsay. We always appreciate what the trial attorneys have to say. [LB439]

JOHN LINDSAY: I know you do, Senator. [LB439]

SENATOR LARSON: Any other opponents? Senator Morfeld, would you like to close or waive? [LB439]

SENATOR MORFELD: I'll waive, actually, if there's nothing else. [LB439]

SENATOR LARSON: Oh, wait. [LB439]

NICOLE CARRITT: I'm actually in the neutral. Is... [LB439]

SENATOR LARSON: Oh, I'm sorry. That's my own fault. Yes, neutral. I'm sorry. [LB439]

NICOLE CARRITT: Sorry, Senator. [LB439]

SENATOR LARSON: Nope, nope, that's my own fault. [LB439]

NICOLE CARRITT: Thank you. [LB439]

SENATOR LARSON: Thank you. [LB439]

NICOLE CARRITT: Good afternoon. [LB439]

SENATOR LARSON: No, no. [LB439]

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Transcriber's Office

General Affairs Committee
February 02, 2015

NICOLE CARRITT: Senator Larson and members of the committee, my name is Nicole Carritt, N-i-c-o-l-e C-a-r-r-i-t-t, and I'm the executive director of Project Extra Mile. And we're a network of partnerships across the state working to prevent underage drinking and youth access to alcohol, and we're here today in a neutral capacity on LB439 as introduced by Senator Morfeld. While the goal of LB439 is one we all share--protecting the lives of young people--our organization focuses on creating a community consensus that underage alcohol use is illegal, unhealthy, and unacceptable, as opposed to focusing on reducing the harms that occur when those underage consume alcohol. Our goal is to be proactive and prevent this illegal activity and its inadvertent consequences, instead of being reactive. We feel this proposed legislation sends unintended mixed messages to our youth about the state's tolerance of underage drinking and the importance of a minimum legal drinking age, particularly for those young people aged 19-20. As proposed, this legislation contains no requirement for follow-up counseling, educational interventions, or treatment for the young person who receives the medical treatment or the intoxicated minor collar. If this bill were to be considered further, we would respectfully request that it be amended to include such requirements and that, upon the completion of these required interventions, those individuals be eligible for immunity under this policy. We also have concerns from an enforcement perspective. Providing broad discretion for law enforcement to determine whether or not a clear alcohol-related emergency exists could prove difficult. Giving clear, unmistakable guidelines to law enforcement in these areas provides them with the tools they need to keep young people safe. Thank you for your consideration of our comments, and I'd be happy to answer any questions that you may have. [LB439]

SENATOR LARSON: Thank you, Ms. Carritt. And I'm sorry again... [LB439]

NICOLE CARRITT: That's okay. [LB439]

SENATOR LARSON: ...for the...for skipping over you, almost. [LB439]

NICOLE CARRITT: No problem. [LB439]

SENATOR LARSON: Any questions from the committee? [LB439]

NICOLE CARRITT: Thank you. [LB439]

SENATOR LARSON: Looks like there isn't. Thank you for coming. Senator Morfeld, would you like to close? Now he's closing. [LB439]

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

General Affairs Committee
February 02, 2015

SENATOR MORFELD: Certainly, I won't belabor the point too much, but just in response to a few things. I mean, the last testifier talked about unintended consequences. The only intent of this is to ensure that we save lives. So there are some unintended consequences to drinking, but the intent of this is to save lives. And I think that should supersede any other policy. The other thing is, is we did look at an educational requirement. However, to make that go statewide and work in all 93 counties, that would be a monumental undertaking from creating a uniform educational type of requirement. In addition, with all the schools that have been participating and having strong alcohol education programs across the state, we realized that that infrastructure is already in place. And after talking to the schools, even they were comfortable with not having an educational requirement here because, with their student codes of conduct and with their educational...alcohol educational components, they already felt as though they had a strong enough one. So with that, I'd be willing to answer any questions. [LB439]

SENATOR LARSON: Thank you, Senator Morfeld. Seeing none, thank you for your time in General Affairs. [LB439]

SENATOR MORFELD: Thank you very much, Senator. [LB439]

SENATOR LARSON: With that, I'll close the hearing on LB439 and I'll move to LB204 and Senator Schilz. Thank you, Senator Schilz. Welcome to the General Affairs Committee. [LB439]

SENATOR SCHILZ: Good afternoon, Senator Larson and members of the General Affairs Committee. My name is Ken Schilz, spelled K-e-n S-c-h-i-l-z, and I'm introducing LB204. LB204 was introduced to take advantage of the growing market and popularity of craft beers in Nebraska. Since 2000, Nebraska has seen a steady uptick in local breweries. LB204 is intended to further encourage the growth of these unique economic ventures and to expand their economic impacts by encouraging them to work in partnership with local agriculture producers. LB204 would allow craft brewers to be given a credit towards a portion of their liquor taxes based on the amount of local grain--be it barley, hops, corn, wheat, or any other grain customarily used in the production of beer--they purchase for use in their products. If 10 percent to 40 percent of the production grain used is Nebraska grown they would receive a 15 percent tax credit. If it's between 40 percent and 70 percent of the production grain used, they would receive a 25 percent tax credit. And if 70 percent or more of the production grain is local, they would receive a 35 percent tax credit. By creating these credits and encouraging breweries to work with and incorporate local agriculture, this will further encourage economic development in Nebraska and help these businesses to thrive. There's other testifiers behind me that can further expand on how LB204 came into being. It would positively impact local business and local economies. But I would now be happy to try to answer any questions you might have. [LB204]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Thank you, Senator Schilz. Senator Riepe. [LB204]

SENATOR RIEPE: As usual, I have some questions. How many beer manufacturers are there in the state of Nebraska, do you know? [LB204]

SENATOR SCHILZ: You know, I don't know a hundred percent, but I think the last number that I saw was around 33. But I know there's people behind me that can bring that number to you. [LB204]

SENATOR RIEPE: Okay. Do we really want or need more? [LB204]

SENATOR SCHILZ: Absolutely. Why wouldn't we? Here's the point, Senator Riepe. If we can bring things like breweries to Nebraska, that brings economic investment, that brings tourism, that brings people to our state wanting to spend money with people that are producing something. In my world, that's a good scenario whenever it happens. [LB204]

SENATOR RIEPE: Do the existing brewers get the same tax advantage, tax credits? [LB204]

SENATOR SCHILZ: If they would do...if they would grow those products in Nebraska and use that and go through the--if this law gets into place--and goes through the process to make sure that they can prove that, then yeah, they would get these same credits. [LB204]

SENATOR RIEPE: Okay. Thank you, Senator. [LB204]

SENATOR SCHILZ: Yep. [LB204]

SENATOR LARSON: Thank you, Senator Riepe. Any other questions? Seeing none, thank you, Senator Schilz. How many proponents do I have on LB204? One. Excellent. [LB204]

BRIAN PODWINSKI: Thank you, Senator Larson and members of the General Affairs Committee. My name is Brian Podwinski, B-r-i-a-n, last name, P-o-d-w-i-n-s-k-i. I'm here as a representative of Nebraska Malt, urging the passage of LB204. The tax credit contained in this bill will help increase the use of Nebraska-grown agricultural products in the craft beer industry. Nebraska has a rich agricultural history, which makes it hard to believe that Nebraska brewers do not have access to locally grown malted barley. Now, many farmers use a two-crop rotation leaving out cereal grains, which we hope to change by providing a market for these grains. Use of Nebraska agricultural products in craft beer to date has been limited. Some brewers use

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

General Affairs Committee
February 02, 2015

locally sourced honey, fruit, and hops. However, use of Nebraska-grown grains has been almost nonexistent with millions of pounds of malted barley being brought into the state each year. Nebraska Malt has begun testing the malting process of using Nebraska-grown malting barley. Soon we will be providing locally grown barley to Nebraska breweries for use in their products. Unfortunately, it is difficult to compete in the market with large volumes when large volumes bring efficiency and economies of scale. This is where the challenge exists for us, being competitive in regards to price. While grain coming out of the field is the same expense, the increased cost due to lack of large-scale operations and thus higher overhead inhibit our competitive pricing with the larger malting companies. To help grow and build this industry, the proposed tax credit will help close the gap between the cost of local producers and large-scale brewing supply companies. Over the next five years, we hope to bring in nearly \$1 million in new grain sales in Nebraska-grown products. We feel this number can be even higher with your support today. Additionally, as the craft brewing industry grows, the demand for malting barley, hops, and other agricultural products will continue to increase. The growth of our industry in Nebraska can help meet demands for grain, hops, and other ag products. And we hope to forge partnerships with Nebraska growers, other malting companies, hop growers, and brewers to ensure quality Nebraska product throughout the process. Thank you for your time and consideration. [LB204]

SENATOR LARSON: Thank you, Mr. Podwinski. Do I have any questions from the committee? All right. [LB204]

SENATOR KOLTERMAN: I'll ask later. [LB204]

BRIAN PODWINSKI: Okay, thank you. [LB204]

SENATOR LARSON: (Exhibit 1) Thank you. Any other supporters? Are there any opponents to...excuse me, I have one letter of support from James Moylan and the Nebraska Licensed Beverage Association. Do I have any opponents? Any neutral testimony? Mr. Rupe. [LB204]

HOBERT RUPE: Thank you. Hobert Rupe, executive director of the Nebraska Liquor Control Commission. And I'll fill out the forms but I wasn't expecting to testify. Currently, there are 38 either L or LKs either licensed or in the process of applying for the state. The L is commonly called our brew pub or craft brewery license. That's where most of our manufacturers of beer come from. We don't have a true manufacturing license, you know, like a big Budweiser or one of those. We have in the past, we used to have multiple full on breweries in Omaha. But currently we have 38 of them, so. I guess I would be happy to answer any questions you have about the bill or any of the technical aspects. We were neutral on it. [LB204]

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

General Affairs Committee
February 02, 2015

SENATOR KOLTERMAN: Yeah, thank you for testifying. My question deals with, how do you prove that it's Nebraska grain? Do you just...you buy it from a wholesaler or retailer? [LB204]

HOBERT RUPE: Well, I believe the bill has avenues in there that there would have to be a certificate of tracking with the grain. That's one reason why you'll see our fiscal note has...we thought we probably would need two auditors. I think the other fiscal note has one auditor and an accountant because there would be a...we would have to do a lot more on-site locations for the brewing process, especially since you're looking at a tax clawback as in this one here. And I know that the Auditor's Office would be very keen in making sure that our records were highly up to date on anytime you're doing that kind of taxes. So we would probably would require us at least to have an auditor and a staff position. [LB204]

SENATOR KOLTERMAN: Okay, thank you. Any other questions? Thank you. [LB204]

HOBERT RUPE: Thank you. [LB204]

SENATOR KOLTERMAN: Anybody in the neutral position to testify? Senator Schilz, you're open to close here. [LB204]

SENATOR SCHILZ: Thank you, Senator Kolterman. And I just want to mention a couple of things. You asked how you would go about doing this. And we've, in other industries, in fact, the beef industry, we have affidavit processes that we go through for third-party verification to make sure that those...that what you say it really is, it really is. And so when he said he needed the auditor and stuff like that, there's other models out there to go through this and make it work. The question about how many there were, I got it wrong. I was off by five so that's pretty good for me. But I think it's important to know that if we have more growth in this industry around, we can use more grain, which puts more money in producers' pockets, because I can tell you if you're growing malting barley and you do it right and you've got a product you can sell, it is worth doing. So to increase how much you grow...if you're only growing five acres of it though, it's more of a headache than it is anything to actually garner any extra profits or anything from. So we need to get it big enough--and that's what this looks to do--to entice the brewers to actually go looking for Nebraska products. And with that, it should add both money to the producers as well as those that are brewing the beer. So with that, I'd appreciate your support and put this bill to the floor and see what happens. Thank you. [LB204]

SENATOR LARSON: Thank you, Senator Schilz. Any closing questions from the committee? With that, I'll close the hearing on LB204 and start the hearing on LB486 by Senator Schilz. [LB204 LB486]

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

General Affairs Committee
February 02, 2015

SENATOR SCHILZ: Thank you, Senator Larson. And my name is Ken Schilz, K-e-n S-c-h-i-l-z, and I represent District 47. LB486 was brought to me with the intent of expanding the scope of sale for craft beer and to help local breweries expand the audiences they can reach with their product. It would allow for the purchase of growlers of craft beer to be purchased and consumed away from the premises where it was served. A growler is a 64-ounce glass container intended to carry beer. And before I begin, I want to say that there is an amendment that's being worked on as we speak to be offered as a committee amendment that I would intend to take the place of the bill. We found that, upon review, LB486 would have placed an unintended and unnecessary fee on craft brewers. And in order to remove that we're working on this amendment, among other things. By allowing for the purchases and later consumption of craft beer with growlers, we're allowing these local brewers a chance for their product to reach a wider audience and allow those craft beer fans a wider access to purchase these brews. Upon discussion with the brewers, we have discussed additional language to amend the bill. And this would limit the size of the bottle that can be purchased from a nonbrewery location, like a restaurant, to what is referred to in the brewery business as a Boston rounder or a 32-ounce glass container. Sixty-four ounce growlers could still be purchased from brewery locations. Like I said, that's in discussion as we speak. Another provision would also state the container must be provided by the retailer. And this would allow the retailers the opportunity to clean and sanitize each container as it's brought in. This would make the rounders and growlers function much like the exchange of propane tanks. The purchaser exchanges an empty container for a full one. And there are those in the brewing and sales business that will testify after me that can further drill down to the detail of how this bill could help expand their markets. And I encourage you to ask questions and, in the end, support LB486 with the included amendments. Thank you very much. [LB486]

SENATOR LARSON: Thank you, Senator Schilz. And I look forward to those that follow you to give a good background. Are there any questions from the committee? Thank you. We'll take the first proponent. Welcome to the General Affairs Committee. [LB486]

LARISSA HIMES: Thank you. Good afternoon, Senator Larson and General Affairs Committee. My name is Larissa Himes, L-a-r-i-s-s-a H-i-m-e-s, I am the general manager of Blatt Beer and Table in north downtown Omaha. We are a craft beer bar specializing in unique craft beer and great pub food. We also just opened a second location in west Omaha. I am here today because we support LB486. There have been many times that guests have questioned where they can purchase the draft beer we sell in our restaurant or if they can purchase the beer from us to take home. Much of the time I must tell them they cannot find it in stores and I'm not able to sell it to them for off-premise consumption. I tell them it must be purchased and consumed in a bar such as ours. We are behind this bill for a few reasons. Many craft breweries are too small to have access to bottling or canning lines. In these cases, their beer is only available in keg form. By selling growlers to our customers, this would allow them access to beers they normally would not find in retail stores. Along with these smaller breweries larger breweries brew special batches

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

General Affairs Committee
February 02, 2015

or one-off batches that are only available in keg form as well. More often than not, these beers are very rare and very high in alcohol content. Consumers will go to a bar specifically to consume these beers. If we are able to sell them by growler, consumers can enjoy these higher alcohol beers in the comfort and safety of their own homes. Even if a beer is available in bottled form, many times it is in its best form as a draft beer. This will give the consumer the option to enjoy this beer in its best state. There have been worries about open containers or cleanliness of the container, both of which have been addressed in this bill. I do not believe there is a downside to passing LB486. Thank you for your time. [LB486]

SENATOR LARSON: Thank you, Ms. Himes. Are there any questions from the committee?
Senator Riepe. [LB486]

SENATOR RIEPE: Thank you, Senator Larson. This is one for my education. Is there a law in the state of Nebraska that you cannot have a bottle of alcohol in the car that has the seal broken?
[LB486]

LARISSA HIMES: I believe there is. I'm not sure in the car. Yes. [LB486]

SENATOR RIEPE: I know other states have that provision. I was just curious so that we have some assurance that people aren't buying it and drinking it. [LB486]

LARISSA HIMES: Correct, there would be a seal on the growler. [LB486]

SENATOR RIEPE: That they would be in violation if it was broken. [LB486]

LARISSA HIMES: Correct. [LB486]

SENATOR RIEPE: Okay, thank you. [LB486]

SENATOR LARSON: Senator Hansen. [LB486]

SENATOR HANSEN: Thank you. Ms. Himes, could you just walk us through...say this law is passed and someone orders a growler at your restaurant. Could you just walk us through the process? Do you literally just get a glass jug and fill it up from the tap behind the bar? [LB486]

LARISSA HIMES: Yep, we would have sanitized, labeled growlers in our restaurant. They would pay a deposit to get one of those or they could bring in another that they had already

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

General Affairs Committee
February 02, 2015

previously purchased and we would switch it out for a clean and sanitized growler. We would fill it up with the beer of their choosing, seal it with the appropriate measures stated in the bill, and then sell it to them for them to take home. [LB486]

SENATOR HANSEN: Okay. Thank you. [LB486]

SENATOR LARSON: Thank you, Senator Hansen. Any further questions from the committee? [LB486]

SENATOR KOLTERMAN: Yes, I have a question. [LB486]

SENATOR LARSON: Yep, Senator Kolterman. [LB486]

SENATOR KOLTERMAN: You sell food and you sell off-sale liquor as well? [LB486]

LARISSA HIMES: We do not sell off-sale right now. [LB486]

SENATOR KOLTERMAN: So this would be like selling off-sale in a certain regard. [LB486]

LARISSA HIMES: Correct. We would have to get the new license to sell off-sale. [LB486]

SENATOR KOLTERMAN: New license. And it's not manufactured at your facility, is it? [LB486]

LARISSA HIMES: No, it is not. [LB486]

SENATOR KOLTERMAN: So you'd have six or eight different growlers potentially at your facility. Is that what I'm hearing? Or just the ones you're marketing for? [LB486]

LARISSA HIMES: From what I understand of the bill, we could have a single type of growler and we could fill it up with whatever we have on tap. We have 24 beers on tap so potentially we could sell 24 different growlers. [LB486]

SENATOR KOLTERMAN: Okay. And the reason I'm asking, most of the growlers that I've utilized have been directly with the brewery. [LB486]

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Transcriber's Office

General Affairs Committee
February 02, 2015

LARISSA HIMES: Right. And that's the law as it is right now. You must make your own beer to be able to sell it in growler form. And we're trying to change that just to be able to expand. Yeah. [LB486]

SENATOR KOLTERMAN: Add it to your off-sale. Okay. Thank you. [LB486]

SENATOR LARSON: Thank you, Senator Kolterman. Other questions? Thank you, Ms. Himes. [LB486]

LARISSA HIMES: Thank you. [LB486]

SENATOR LARSON: Welcome to the General Affairs Committee, Mr. Kelley. [LB486]

MIKE KELLEY: Good afternoon, Mr. Chairman. For your record, my name is Mike Kelley, K-e-l-l-e-y. Again, Mr. Chairman and members of the committee, briefly, I just came up to straighten out a couple of things. I'm special lobbyist for Blatt Beer and Table which is also the same restaurant Larissa works at and I'm also a part owner. I'll call this "Amendment Gate" here. We had some confusion on the amendment which we've got the industry completely confused on. If you look at the green copy, we were originally trying to strike "or a craft brewery license." The craft brewers obviously don't need an endorsement. They can do this now and they can do it with 64 ounce growlers, whatever they want. So that was...unfortunately, the rest of that green copy got stricken that wasn't supposed to be, just the craft brewery spot. We also agreed, in the spirit of compromise, to only do 32 ounce growlers. So they would be able to still continue only being the ones doing the big ones; we would do the smaller ones or other craft breweries that would want to. And, yes, we have to go get a Class C license, Senator, to go ahead and be able to do this. We can't do it now, but presumably we'd be allowed to do that if this bill passed. So that's all I have. I just wanted to add that to clarify that on the amendment side. I think the industry is pretty well agreed, as long as what I just stated happens and I know Senator Schilz is supporting what I just said. So with that, I'm here for any questions. [LB486]

SENATOR LARSON: Thank you, Mr. Kelley. Are there any questions from the committee? Seeing none, thank you for coming. [LB486]

MIKE KELLEY: Thank you. [LB486]

SENATOR LARSON: (Exhibit 1) Do I have any more proponents to LB486? With that, I'll read a letter into the record from Kathy Siefken of the Nebraska Grocery and Industry Association as a proponent to LB486. Are there any opponents to LB486? Welcome. [LB486]

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

General Affairs Committee
February 02, 2015

NICOLE CARRITT: Good afternoon, again. Senator Larson and members of the committee, my name is Nicole Carritt, N-i-c-o-l-e C-a-r-r-i-t-t, and I'm the executive director of Project Extra Mile. And, again, we work to prevent underage drinking and youth access to alcohol across the state. As we've shared with you before, according to the CDC Nebraska ranks the number nine state in the country for adult binge drinking rates. And the connection between youth consumption and adult consumption is widely recognized. Furthermore, youth in Nebraska consumed over one quarter of all alcohol sold in the state in 2009. Some of our specific concerns regarding the bill as proposed include the ability of any on- and off-sale establishment to fill up containers to go from the tap--removing the intent of this practice from craft beers to any beer on tap--and the lack of the limited number of containers that can be purchased by any consumer at any one time. Youth access to alcohol through this practice is a proper concern, so if the proposal were to be considered further we would respectfully request an amendment to the bill that would limit the number of containers that can be purchased by any one individual at one time to no more than two. I'd be happy to answer any questions that you might have, but thank you for providing us the time and our comment. [LB486]

SENATOR LARSON: Thank you for coming, Ms. Carritt. Are there any questions from the committee? Seeing none, thank you for coming. [LB486]

NICOLE CARRITT: Thank you. [LB486]

SENATOR LARSON: (Exhibit 2) Are there any more opposition to LB486? With that, I'll read a letter into the record from James Moylan and the Nebraska Licensed Beverage Association as an opponent to LB486. Are there any neutral testifiers to LB486? Mr. Rupe. [LB486]

HOBERT RUPE: Thank you. Good afternoon, Chairman Larson, members of the General Affairs Committee, my name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission. [LB486]

SENATOR LARSON: Would you spell it? [LB486]

HOBERT RUPE: Pardon? [LB486]

SENATOR LARSON: Spell it, please. [LB486]

HOBERT RUPE: H-o-b-e-r-t R-u-p-e. The commission is neutral on this bill, as we were on the similar legislation last year and I believe that Mike addressed it. Our main concerns early on was brought up wasn't whether it should be done or not, that's a legislative decision, but it was on the

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

General Affairs Committee
February 02, 2015

sanitation and the marketing, just so we could know where the beer came from. The bill, I think if it's finally amended, the amendment would keep that information in there so we can track and know. The key thing would be is we'd want to know where the beer was bought and so if there's a problem we can backtrack it. A lot of time it's a...going back from incidents, especially in this case here. As of now, it is legal for a craft brewery to hold our Class L liquor license to do growlers, under which called the original packaging law. It's been our interpretation of that law, ever since the late '80s, that they can do it because they're the manufacturer. Therefore, they can designate what the original package is...was going to come in this format from a growler so that we would allow them to do it, sort of stretch it but it's the common practice for a brew pub. You're seeing a...in this case here our concern was, once you're taking that step outside beyond the people who are directly responsible for making the beer, we want to make sure that things are being done in a sanitary way. I can tell you that even before this bill we sort of held up on some rules and regulations which we're going to adopt or we were going to look at for craft breweries sort of adopting sort of the same thing as described for the propane exchange just to make sure that we know for sanitation and for accountability. With that, I'd be happy to answer any questions. [LB486]

SENATOR LARSON: Thank you, Mr. Rupe. Are there any questions from the committee? Seeing none, thank you. [LB486]

HOBERT RUPE: Thank you. [LB486]

SENATOR LARSON: Are there any more neutral testifiers on LB486? With that, I will close the hearing on LB486 and that takes us to LB619, which is my personal bill. And I will be having my legal counsel, Josh Eickmeier, introduce the bill and I will run the hearing myself moving forward with this. Welcome to General Affairs, Mr. Eickmeier. [LB486]

JOSHUA EICKMEIER: Good to be here. Good afternoon, committee members. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r, and I'm the legal counsel for the General Affairs Committee. I appear before you on behalf of Senator Larson to introduce LB619, which would authorize and regulate poker. There are two issues that I will address in my testimony. First, I will describe the licensure process including the distribution of revenue as contained in LB619. Second, I will discuss the constitutionality of this proposal and specifically the reasons why poker is a game of skill and not a game of chance. So what's in LB619? The bill includes legislative findings which state that poker is a game of skill and that there is more skill than luck in determining the outcome. The legislative intent is to specifically recognize draw and community card poker games as skill and goes on to describe how draw on community card poker games are played. LB619 creates a special designated poker license, SPL, that would be issued with a special designated liquor license, SDL. This would allow current liquor licensees

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

General Affairs Committee
February 02, 2015

and nonprofits that would otherwise qualify for an SDL to also apply for an SPL. LB619 requires players to be at least 21 years of age and prohibits players from also being employees of the licensee. It should also be noted that players cannot be extended credit to play and must play with cash. The application process for an SPL mirrors existing law regarding the application process for an SDL. This was done to streamline the process as much as possible and keeping it as familiar as possible for the licensees and the commission. For example, the application fee for an SPL with an SDL is \$40, which is the same cost for just getting the SDL under current law. Just like with an SDL application, an SPL application must also have the approval of the local governing body. As for the tax revenue, 10 percent of the gross proceeds of a poker tournament and 5 percent of the final amount in each pot of a cash game are to be remitted to the commission. However, rather than simply remitting the revenue to the General Fund, Senator Larson felt strongly that the revenue be put toward property tax relief as well as assisting local governing bodies with financial support. Therefore, half the taxes collected from these games and tournaments would go towards the Property Tax Credit Cash Fund with the remainder going back into the communities and counties where the games and tournaments were held. For example, if the tournament or cash game were held within a city or village, then the city or village would receive 24.5 percent and the county would receive 24.5 percent as well. If the tournament or cash game were held outside a city or village, then the county would receive the whole 49 percent. In both instances, the final 1 percent would go towards the Compulsive Gamblers Assistance Fund. That is essentially what the bill does. And now I will address LB619's constitutionality. Article III, Section 24(1) of the Nebraska Constitution states that, quote, except as provided in this section, the Legislature shall not authorize any game of chance or any lottery or gift enterprise when the consideration for a chance to participate involves the payment of money for the purchase of property, services, or a chance or admission ticket or requires an expenditure of substantial effort or time. The question then becomes, how does the court determine which is a game of chance and which is a game of skill. In a 2011 Nebraska Supreme Court Case, the court applied a predominance standard in determining whether a video gaming device called Bank Shot was a game of skill. In other words, the test was whether the game consisted of more skill than chance. This case demonstrated a recent example of the court's willingness to examine whether an activity is a game of skill or chance. Senator Larson believes that if given the opportunity, the court would apply the same predominance test and would have to acknowledge the level and diversified skill involved in poker and how the players control the game and patience increases the probability that he or she will win, just like in Bank Shot. The extent to which poker is a game of skill is articulated in a 2005 Law Review article entitled "Poker, Public Policy, Law, Mathematics, and the Future of an American Tradition," which the author concluded that poker contains a greater skill element than any other card game. In fact, poker is the only game where a skilled player may hold bad cards for hours and still win money. This is due to the diverse skill set required to play skilled poker. A skilled poker player can change the odds of the game in his or her favor by using position, psychology, bluffing, and other methods to increase his or her chances to win the pot and to increase the size of the pots he or

she wins. Experts agree that there are several components to the skill necessary to play poker well. These include mathematics, psychology, assessing competition, reading hands, recognizing tells, exploiting position, and money management. In another Law Review article, the author found that expert players do not rely on luck. They use their skills to minimize luck as much as possible. One way to distinguish games of skill from games of chance doesn't have to do with winning but actually losing. For example, it is possible to intentionally lose a poker game, but you can't intentionally lose at Baccarat, Roulette, or even calling a coin flip. This alternative viewpoint demonstrates a key difference between games of skill and games of chance. Namely that when given an element of control, a game normally dependent on chance alone turns into a competition where each player utilizes the skills available to him to outmaneuver his opponents. It should also be noted that one major distinction separating poker from all other casino games is that players do not go up against a house but compete against each other. The house cannot control the odds of a poker game in any way. With this said, it should be noted that there is a 1975 Nebraska Supreme Court case that reached a different conclusion. In that case, the court held that card games are games of chance even though the element of skill is more or less involved since the element of chance predominates. Senator Larson believes that the assertion that poker is more chance than skill is an overly simplistic and antiquated view of poker. To lump poker with other card games, as the court did in this instance, fails to fully understand and appreciate the nuances of the game and the skills required to be a successful poker player. The fact that there are professional poker players in the world disproves the court's assertion that there is more chance than skill in poker. Senator Larson believes that if given the opportunity again that the Nebraska Supreme Court would not reach the same conclusion as it did 40 years and that common sense would prevail. After all, a player could practice to become a better poker player, but you can't practice to be better at calling a coin flip because the former incorporates a predominance of skill and the latter, well, that's just luck. [LB619]

SENATOR LARSON: Thank you, Mr. Eickmeier. Are there any questions for Mr. Eickmeier? Mr. Hansen. [LB619]

SENATOR HANSEN: Yes, thank you, Chair. I had two questions about I guess the funds that will ultimately go to the municipalities. It says 10 percent of the gross proceeds of a poker tournament. What are the gross proceeds? Is there... [LB619]

JOSHUA EICKMEIER: For the tournament, it would more than likely be the admission fee to play in the tournament as opposed to a cash game where you have a pot that would change, you know, every time you play the hand. So that's why there's essentially a rake on the cash games but on the tournaments because you're not...you know, you go in a tournament and say you pay \$100 to be in a tournament. You're not going to spend any more money to keep playing because that \$100 bought you into the tournament. Does that make sense? [LB619]

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Transcriber's Office

General Affairs Committee
February 02, 2015

SENATOR HANSEN: Okay. So in a tournament everybody would have the same entry fee and, therefore, you'd be taking up one chunk as opposed to a cash game people are entering with varying amounts of money. Is that the distinction? [LB619]

JOSHUA EICKMEIER: In the concept that you described, yes. I don't know for a fact that, you know, it would be up to the licensee as to how they charged participation. I don't know that it would...I assumed it would be the same for every player or participant would pay the same amount like as an entry fee, but I also know there are some tournaments sometimes where you can buy back in at some stage of the tournament if you wanted to. And when I say tournaments, you know, typically, you know, a lot of these are like nonprofits raising...doing fund-raisers, for example. You know, oftentimes you'll see casino nights. But like right now if you have a casino night, you can't have a poker tournament the way that poker is typically played. Casino nights typically with poker for a fund-raiser is you pay a donation to participate that goes to the cause, and then you play but you can't win anything based on how you play. So at some point fatigue probably sets in and people just quit. You could win door prizes but, again, you can't win anything based on your performance. This would allow you to do that. [LB619]

SENATOR HANSEN: Okay. Thank you, Mr. Eickmeier. [LB619]

JOSHUA EICKMEIER: Yes. [LB619]

SENATOR LARSON: Senator Riepe. [LB619]

SENATOR RIEPE: Thank you, Chairman. My question is, does one need to be certified as skilled before being allowed to be a player? You had talked a little bit about skill and everything else. [LB619]

JOSHUA EICKMEIER: Sure. [LB619]

SENATOR RIEPE: Because my experience is that there's always one pigeon in a card game... [LB619]

JOSHUA EICKMEIER: Well, the adage does go if you look around the room... [LB619]

SENATOR RIEPE: ...in a good card game. [LB619]

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

General Affairs Committee
February 02, 2015

JOSHUA EICKMEIER: ...if you can't spot the poor poker player, I got bad news for you. You might be the bad poker player. You know, obviously the skill just like any skill is going to...there's going to be a spectrum, if you will, of some are going to be more skilled and some are going to be less skilled. And the point of this is simply to acknowledge that there is skill involved and, yes, you will...you know, most people can identify within their...not that you play poker, but let's say hypothetically you had a group that you played poker with, you typically know who the good poker players are, you typically know who aren't the good poker players because those are the ones that you call to make sure they're available to play that night (laughter) before. And then you tell everyone else, well, Josh is going to be there and then they all want to come play, so. [LB619]

SENATOR RIEPE: Inducement. [LB619]

JOSHUA EICKMEIER: What's that? [LB619]

SENATOR RIEPE: Inducement. [LB619]

JOSHUA EICKMEIER: Well, yeah. [LB619]

SENATOR LARSON: Thank you, Senator Riepe. [LB619]

SENATOR RIEPE: Thank you. [LB619]

SENATOR LARSON: Thank you, Mr. Eickmeier. With that, I'm going to invite Adam Clayman up first. He drove from Ogallala and has to get back on the road with the weather and, therefore, I'll invite him up first to testify. And if he wants to stay, I hope he can stay, but if he needs to leave, I'd understand that as well. [LB619]

ADAM CLAYMAN: Thank you, Chairman Larson and committee. Adam Clayman, A-d-a-m C-l-a-y-m-a-n. I'm here as an independent. Became a member of the Chicago Mercantile Exchange in 1981. So the question of gambling has always been forefront in asking and justifying the trading of commodities and stocks. And as my life progressed, I moved out to California where card casinos or card clubs were predominant and I became familiar with the game of poker as well as many trips to Las Vegas where I learned that I was a terrible gambler, so I would spend more time in the poker room because my money would last longer. I hopefully can shed some light on the question of skill versus chance to the committee. Don't really know where to go from there other than professional poker players will hire a coach, a tutor, so that they can improve their skills. And I think that inherently settles the question of whether poker is a game of skill.

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

General Affairs Committee
February 02, 2015

Courts around the country have ruled that it is a game of skill and not a game of chance, and I can tell you that to your question earlier, Senator Riepe, a person doesn't obtain the experience without the opportunity to play. And it's through that experience and your knowledge and your awareness levels that you become a better, more skilled poker player. I recently was on a trip where I was invited to play in a poker tournament at an adult park down in Arizona where the majority of the players were novices. And while I'm not an expert player, it was obvious to me that all I had to do was sit back and watch and play poker the way I know, that my skills have taught me, and when someone else was aggressive towards the pot because they were novices, they had a hand and I could just throw mine away and I saved a lot of money. I did end up winning that tournament. I've played in the World Series of Poker where I realized pretty quickly that I was outclassed. In other words, my skills were not up to snuff compared to the people I was playing with. So there we go. [LB619]

SENATOR LARSON: Thank you, Mr. Clayman. Are there any questions from the committee before I start? Thank you, Mr. Clayman. I wanted to draw to light a few things that you mentioned, to talk about the skill and moving forward. Your background is you were a board member of the Chicago Mercantile Exchange, correct? [LB619]

ADAM CLAYMAN: I was an independent floor trader and broker. [LB619]

SENATOR LARSON: Can you explain what the Chicago Mercantile Exchange was? [LB619]

ADAM CLAYMAN: Well, it's a futures exchange. And in 1981, they came up with an expansion program. And I borrowed some money from my siblings to get in on the ground floor of that first expansion. So I actually filled orders in the back months of the cattle pit for a year, and during that year they opened up the stock index futures. So they needed bodies in there to help fill the high demand for orders, so I moved there and filled orders and didn't trade really because I didn't have any skills as a trader. But over the years, became familiar with the terminology and the protocols and the risk assessments and would...became a trader also. [LB619]

SENATOR LARSON: Excellent. So you have background in both the stock market, futures, stock...not only stock futures, we're talking currency futures, we're talking credit...all these... [LB619]

ADAM CLAYMAN: Commodities, yes. [LB619]

SENATOR LARSON: ...you have a good experience, you would say a handle on all of that. [LB619]

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

General Affairs Committee
February 02, 2015

ADAM CLAYMAN: Nineteen eighty-one was a long time ago. [LB619]

SENATOR LARSON: 1981. Excellent. When we talk about skill, we read through the constitution and games of chance versus games of skill and a 40-year-old court case by the Nebraska Supreme Court, what brings skill into stock trading and the ability or even futures trading? What's the value? [LB619]

ADAM CLAYMAN: Well, the skill involved is similar to poker because you're under some stress usually, considerable amounts of stress and you have to think clearly and you have to adapt to what's going on. Back in those days when the pits were full of traders and people were trading their own accounts, providing liquidity for the market, you had to really be aware of what was going on. And so that's a big part of the skill in being a nimble trader, what we used to call scalping. As you get older, you learn more, you study more, you apply some economic theories to decisions you make to come up with a trade. It may just hit you that, you know, all of a sudden you see that the, you know, Japanese yen is out of whack and you go the other way. So the skill involved in being a trader was...it was a little different than being a skilled poker player, but fundamentally it really boils down to awareness, knowing yourself, and discipline. Those things were paramount in making sure you didn't...you could show up the next morning. [LB619]

SENATOR LARSON: Thank you. Had I been a trader in the early 2000's and I had looked at the...let's say and I put my life savings in a stock such as Enron. I lost everything in that stock, which people would say is an acceptable...would have I lost everything? [LB619]

ADAM CLAYMAN: Probably. But...you know, one of the things as a poker player and as a trader you learn to read the writing on the wall. And any money you invested in a company that had a crooked E as their logo, you know, is...it was just something I would never have touched. But that was their logo, was a crooked E. [LB619]

SENATOR LARSON: Well, I guess the point I'm beginning to make and I think you see the path that I'm walking you down in terms of looking at financials and regardless if it's someone that makes...starts their own stock brokerage or their dad started their own stock brokerage and built something from the ground up and has made...makes billions of dollars. There's elements of risk or chance in the stock market or commodities but there's also that element of skill in knowing the value of everything that you're doing and you can make intelligent decisions in that, correct? [LB619]

ADAM CLAYMAN: Firstly, you're...when you're trading a stock or a commodity, you don't assume the risk that it's worth something. It's a given that the 44,000 pounds of cattle I just bought, there's a value there. And when you put your money into a slot machine, there's no value

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

General Affairs Committee
February 02, 2015

there. But when you sit down at a poker table, you don't put money in the pot until you think there's value in your hand or you don't think your opponent has any value to his hand. Lots of axioms. When I was learning the game from people, they would say things, abstract things that I wouldn't understand because I didn't have the skill yet to understand it. One of those things was you're playing the person not the cards. So the truth is your cards don't matter. It's what the opponent's cards matter. So if I can get a read on you, then I have an a distinct advantage over you in any given moment. That doesn't mean I'm going to win every time, but over time if I pick up on your range of cards that you're going to play, then I'm going to have you at some point if I have patience and if I achieve my optimal skills. [LB619]

SENATOR LARSON: And I appreciate that. I think you bring up a great point when you talk about the value. When I buy Apple stock, every time my family and I buy a new Apple device because we're Apple integrated, I go buy more Apple stock. I see the value in that company. When you sit down and play a hand, as you've played many hands, you only buy into those hands that you see have value. [LB619]

ADAM CLAYMAN: And as the game progresses, as that hand progresses, your hand can either get better or worse. Pocket aces can quickly turn to garbage and a skilled player will realize that and throw them away, whereas a less skilled player may not appreciate what is happening in front of them and just think that, oh, pocket aces are the greatest thing and I can't lose. Well, that's...they lose a lot. [LB619]

SENATOR LARSON: Judging...continuing down that path as someone that's been in the pits, that's been on the Chicago Mercantile, has made a living on investing, would you say because of--we'll take the commodities markets, cattle or corn or any of those that Chicago deals with for the most part--that there are more factors that go into the probability whether or not beef or corn or wheat will rise and fall in terms of when you're out there predicting or your buying the October futures or the February futures or whatever it is, that there are more outside factors whether there's war in Argentina or the presidential elections or droughts or all that go into the price and essentially the betting, which futures essentially is, is a pure bet on where them... [LB619]

ADAM CLAYMAN: Well, that's the distinction, is that it's not betting. It's trading price because if we were betting, we'd be assuming the risk that corn is worth something. Okay. Going back to your Apple or your Enron analogy, trading is like a roach motel. It's easier to get in. The question is when do you get out. And the factors that determine that are all those things you mentioned about world economics, a flood in Brazil, all those things could happen while you have your trade on. Now if you add to your position and push it or do you get out of your position as

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

General Affairs Committee
February 02, 2015

quickly as possible? So those decisions you make, they can be split second or they could take time to realize, those will determine the size and breadth of your profit or loss. [LB619]

SENATOR LARSON: Do you think there's more than 52 variables when you're trading commodities? [LB619]

ADAM CLAYMAN: I think there's a lot of things. I think there's more than 52 variables. There's certainly more than 52 variables when you're playing poker. It's as a multifaceted game as golf which has so many levels, be it mental, physical, all those things factor into what makes a skilled poker player. You know, a lot of poker players nowadays are really on a health kick because they sit at a table for eight hours a day. They can't really be eating cheeseburgers and fries for every meal. And so they're taking care of their minds and their bodies because they want to be able to sit at that table, make the right decisions from the opening bell to the closing bell. And to do that over seven days or eight days at the World Series of Poker, that requires amazing skill. It doesn't mean that a novice...well, a novice would have a really tough time, but an amateur who comes in and is successful against a bunch of professionals, they're just self-proclaimed professionals. There's no card you fill out or test you have to pass. So that success of that amateur speaks directly to their skill. They have tremendous skills as an amateur player. They just choose not to play every day or make it their livelihood. [LB619]

SENATOR LARSON: So if I can get kind of where you're gauging, you're saying the skill is being able to accurately assess the situation and act accordingly whether you're playing poker or you're trading stocks or you're playing golf or you're, you know, my personal...wrestling, you assess what the situation is and you act accordingly in response to any situation. [LB619]

ADAM CLAYMAN: And when someone makes a mistake, you're there to capitalize on it. But if you don't have the skill to recognize that it was a mistake, then you've missed an opportunity. [LB619]

SENATOR LARSON: Can you...oh, I guess I was going to follow up, can you...following up on these, do you have that ability to assess a situation such as that in slot machines or roulette? [LB619]

ADAM CLAYMAN: No. All you really have are gut feelings that mean nothing and the...you're again assuming the risk when you put that money down on that blackjack, roulette, or slot machine. It's all risk. But in a poker game, especially hold 'em poker, you don't have to put a dime up until the blinds come around. That's a way to...that's a part of the game which forces the action. And how you manipulate the table with your either persona or your actions, you know, you might have deuce three off suit and you put in a big raise because you want a...you're going

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

General Affairs Committee
February 02, 2015

to get information from whatever happens next. The next player who plays, if he raises you, you pretty much know your deuce three is probably going to be no good. That doesn't mean you're not going to call, but it's a very weak starting hand. So part of the skill is knowing the starting hands and starting with premium hands. And if you don't start with premium hands, sometimes you're in the blind and you just happen to wake up with a hand, you need to know how to play it in order to try to maximize what you can get out of it. And there is a real skill, to be able to maximize how much...if I can extract some of your...more of your chips and your chips and your chips, then I'm a skilled player. That was a skilled play. And they blow them all on the next hand. [LB619]

SENATOR LARSON: Kind of like looking at a company's balance sheet or a commodity, seeing what's happening in Argentina with beef in a drought or a disease and capitalizing on anything that may be happening in that. Very similar skill. [LB619]

ADAM CLAYMAN: Certainly. You know, making...when you make a move, you're going to learn a lot from the result whether it's trading or playing poker. I don't trade big because I never wanted to lose the farm. I don't play poker big mostly because I'm not skilled enough yet. But I watch tutorials, I listen to things. I'm curious what the heck did that mean. And then I have to do research and find out what he's talking about. I have friends who have been in the industry for 50 years and I bend their ear and I try to learn so I can improve my skills. And I don't play that much. I have to drive to Colorado or South Dakota or...never played in Wyoming, but when I get to play, it's important. [LB619]

SENATOR LARSON: Thank you. Any further questions from the committee? I thank you for driving from Ogallala. I really appreciate it and I didn't ask you whether or not you thought Pete Carroll correctly assessed the situation last night on...but. [LB619]

ADAM CLAYMAN: Well, he may have (inaudible) hold off the...something nobody would have thought of, but it was Russell who threw it in the middle. [LB619]

SENATOR LARSON: But I appreciate you for coming and thank you for... [LB619]

ADAM CLAYMAN: Thank you. [LB619]

SENATOR LARSON: ...explaining the experiences that you've had, both in the Chicago Mercantile and really starting from the ground floor and building yourself, like so many other people have in this state, through the financial system and through stocks to make good of yourself. And being able to use that analogy of what you've done in the stock market and the

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Transcriber's Office

General Affairs Committee
February 02, 2015

commodities exchanges and compared that to how this works with the game of poker and the true skill. I really appreciate you coming. Thank you. [LB619]

ADAM CLAYMAN: Thank you. [LB619]

SENATOR LARSON: Any more proponents on LB619? [LB619]

MIKE KELLEY: Mr. Chairman, good afternoon again. My name is Mike Kelley, K-e-l-l-e-y. I'm here as a registered lobbyist on behalf of Horsemen's Park, which is Omaha Exposition and Racing. We support Senator Larson's bill here. Mr. Chairman, we support your bill for a couple of reasons. One, I think it recognizes that poker is definitely a skill. You didn't have to convince me with this hearing. I've known it for years because I never win, so I don't play. Clearly it's skill. So is horse racing, so we see the analogy in that and we like that analogy. A couple of practical points. If this bill moves forward, we'd like to talk about I think we would...as opposed to SDLs, we would like to see maybe an expensive license where someone could get it for the entire year so we wouldn't have to go back for SDLs all the time. Because Horsemen's Park is a big facility, 60,000-square-foot facility, we might have one of these a week or two a week. And then how you would tax it, I'm not sure if you'd do it per pot. It might be a lot more simpler to do it per hand or something with a small fee going per hand. Mr. Hosch, our general manager was concerned about how you would keep track of all of that. So simplifying the tax provision we think would be good, but other than that we're excited about the bill and we certainly support it and I'm here for any other questions you might have. [LB619]

SENATOR LARSON: Thank you, Mr. Kelley. And just for clarifying the record, we do have...we have the SDL portion but we also have kind of like the cigar bar license to where you can have it and operate in the current bill. It's an endorsement on a regular liquor license. So it'd just be SDLs for special events. So we've already taken care of that and would happy to talk to you about the rake portions in terms of the percentage we'd take. [LB619]

MIKE KELLEY: Okay. Great. [LB619]

SENATOR LARSON: But again I agree that horse racing is definitely similar to what Mr. Clayman talked about in terms of being able to assess and correctly analyze a situation with the horses. So I appreciate it. Any questions from the committee? Senator Riepe. [LB619]

SENATOR RIEPE: Do you know if it's Horsemen's Park intent to also have a cigar bar that they put in accommodation? [LB619]

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

General Affairs Committee
February 02, 2015

MIKE KELLEY: Would they also do a cigar bar? You know, actually they've talked about doing that when LB355 came through. They never did it. We actually lobbied to make that happen but then we never did it. They might still should the new LB118 pass, they might. Who knows. [LB619]

SENATOR RIEPE: Okay. [LB619]

MIKE KELLEY: They haven't just yet. [LB619]

SENATOR LARSON: Page 9 starting on line 29 we...the operating thing, so thank you. [LB619]

MIKE KELLEY: Thank you. [LB619]

SENATOR LARSON: And we'll work on it and have a nice day, Mr. Kelley. [LB619]

MIKE KELLEY: Thank you. [LB619]

SENATOR LARSON: Do we have any more supporters of LB619? Welcome to the General Affairs Committee. [LB619]

WILLIAM MALTAS: Good afternoon, Senator. Senators, my name is William Maltas, M-a-l-t-a-s. I am the Nebraska director of the Poker Players Alliance, which is a grass-roots lobbying group from Washington, D.C., that its primary intent is to legalize and tax and regulate both on-line and live poker, seeing it as a revenue stream that is happening anyway and should be...have the reins taken by the government so that...the United States government as well as local governments can make their own decisions and hopefully profit from the regulation and taxation of having legalized poker. Nebraska is steeped in poker history with the "Wild Bill" Hickok probably playing the most famous poker hand ever and having his own situations here in Nebraska where he was stationed just outside of Fairbury. So the history of poker in Nebraska goes back a long, long way. He was well known as a card player and gambler as I believe so was "Buffalo Bill" Cody. The game of poker itself has been around in some form or other since the late 1700's, been romanticized in western lore and literature. Currently, no less than five sitting presidents of the United States are a vowed poker player, including our current Commander and Chief, Barack Obama. Richard Nixon was famously quoted as saying, I don't trust anybody that doesn't know how to play poker. As recently as May 2014, several U.S. circuit courts have ruled that poker is a game of skill and that a skilled poker player...there is a study out there from 2010 where 750 from the World Series of Poker that were designated as being professionals were studied and their return on investment was measured versus 750 people that were not designated

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

General Affairs Committee
February 02, 2015

as skilled poker players. And it was found that the return on investment for the professional poker player was positive 35 percent; for the nonprofessional poker player it was negative 15 percent. So there was a 45...positive 30 and negative 15, so there was a 45 degree, percentage degree, in swing from what constitutes a professional poker player and a nonprofessional poker player, which is one of the arguments that gives it as being a game of skill. For the state of Nebraska, legalized poker would help bring in tourism dollars, having the ability to host tournaments both small and sometimes even major tournaments. If you can have a major tournament and even get a stop on the world poker tour, which is the poker equivalent of the PGA, then that can bring in thousands of dollars of revenue to the state. Hotel stays, taxation regulatory fees on the game itself, and again echoing what Mike said about having a position with the horse racing industry, I see it as being an absolute positive boon to those who sponsor the horse racing industry in Nebraska and could help to bolster that industry because poker players are well known to like to play the horses as well. So I thank you very much for having me in today and I will entertain any questions that you might have for me. [LB619]

SENATOR LARSON: Thank you, Mr. Maltas. Senator Kolterman. [LB619]

SENATOR KOLTERMAN: Thanks for coming, Mr. Maltas. My question is, in your mind, is poker gambling? [LB619]

WILLIAM MALTAS: Is poker gambling? Not in the same way that every other gambling form is. No different than playing the stock market. Because you can make good decisions. When you invest your money, you can make...you can study, but that doesn't mean that you're not going to find out two weeks later that, for example, Alibaba is producing up to 90 percent of the...or is selling up to 90 percent of the counterfeit goods in China and that their stock just tanked on Friday by 12 percent. That's something that you would not have known unless you were an insider. So to my mind, poker is the same exact type of thing. There is a return on investment. Will you win every single time? Absolutely not. Will you...over time, will the skilled player rule out? Yes. That will not happen in slot machines. It will not happen in blackjack. [LB619]

SENATOR KOLTERMAN: The analogy that you're using and the analogy that the previous individuals used keeps making the analogy of securities versus poker. I happen to be a securities-licensed individual and I have been for 30 years. I think there's a lot of difference and a lot more regulation towards securities than there is towards gambling and poker. [LB619]

WILLIAM MALTAS: There are, however, if that was entirely the case, then we wouldn't have things like penny stocks and things like that where they will vault up \$2 in a day and then go back down to absolutely worthless. That, to me...yes, there is a high degree of regulation, and poker could certainly also have a high degree of regulation as well. [LB619]

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

General Affairs Committee
February 02, 2015

SENATOR KOLTERMAN: Does it at the present time? [LB619]

WILLIAM MALTAS: It does not, and that's what we're asking for. [LB619]

SENATOR KOLTERMAN: Okay. Thank you. [LB619]

SENATOR LARSON: Senator Riepe. [LB619]

SENATOR RIEPE: Thank you, Senator Larson. In your testimony in the same breath you said that poker and horse racing were very much the same. So I see some conflict in that statement in the sense that clearly horse racing is not a game of skill. Also, if I heard you right in your testimony, please correct me if I'm wrong, but did you talk about on-line poker? Is that... [LB619]

WILLIAM MALTAS: Yes. [LB619]

SENATOR RIEPE: To me, that opens up a whole new discussion because my sense was sitting down here that we were talking about on-site poker parlors that...and I've learned today those might be combined with cigar bars and whatever. But to go on-line becomes significantly more concerning to me. [LB619]

WILLIAM MALTAS: Yep, and that's why we are working on that on a national level, not necessarily at the state level. [LB619]

SENATOR RIEPE: No, but this might be a door opener. [LB619]

WILLIAM MALTAS: And would that necessarily be a bad thing because it has been...the on-line version of it actually has been legalized in New Jersey, in I believe Idaho and I believe California is about to come on-line and the state of Nevada of course. [LB619]

SENATOR RIEPE: Three out of four states that I would not be real fond to be compared with. [LB619]

WILLIAM MALTAS: I see. Okay. So your question being? [LB619]

SENATOR RIEPE: That was a statement not a question. [LB619]

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

General Affairs Committee
February 02, 2015

WILLIAM MALTAS: No, I know. But you were...did you have question that you wanted me to answer as far as the... [LB619]

SENATOR RIEPE: Well, my statement was for clarification between as you saw it in the same sentence of using, you know, gambling in relationship to horse racing making them sound like they're siblings. And that's not what we heard in earlier testimony. [LB619]

WILLIAM MALTAS: Well, it kind of is. They...because I believe Adam said that the horse racing was very akin to poker. As far as horse racing being that can you affect the outcome? No, you cannot. Can you affect the outcome in poker? No, you cannot. But can you study the jockeys? Can you study the track conditions, do you buy the little sheets at the beginning of the race that tell you all of the past successes and failures of the horse, are they on Lasix, are they not on Lasix? I mean all of those things go into play when a lot of people make their bets at the racetrack. [LB619]

SENATOR RIEPE: Are you saying, sir, that the gambling skill levels is gray as opposed to black and white? [LB619]

WILLIAM MALTAS: I don't know that I would say that it's gray but it could be. I mean, as far as are you going to have people that are more skilled at playing the horses than others? That's something that I don't know. I've never quite studied that. But I have studied the fact that there are professional poker players and that there are people out there that are able to make their living and make quite a good living at it just like there are professional golfers. If we were to play in a Pro-am with Tiger Woods, is there...and I'm a good golf player, is there a possibility that I could win? Absolutely there is. Can an amateur win in a Pro-am? Most certainly. Would an amateur win in the long run? Probably not unless they made move to become a professional golfer. And they might very well be good enough. But Tiger Woods does not win every single tournament that he plays nor does Phil Mickelson, but we don't say that there is not a preponderance of skill there. [LB619]

SENATOR LARSON: Thank you, Maltas and Senator. [LB619]

SENATOR RIEPE: Thank you. [LB619]

SENATOR LARSON: Senator Schilz. Oh, you're okay. And to follow up on Senator Riepe's questioning, horse racing in terms of pure gambling, are there decisions that are made within a horse race whether by...we'll say by jockeys that can affect the outcome of the horse race,

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

General Affairs Committee
February 02, 2015

whether it's holding, when to let them go? Are there certain things that can happen that will affect the outcome of that horse race? [LB619]

WILLIAM MALTAS: I believe there are. You know... [LB619]

SENATOR LARSON: Are there certain things that you can do when you put your quarter into a slot machine and pull the lever that affect what the slot machine is going to come down as? [LB619]

WILLIAM MALTAS: No. [LB619]

SENATOR LARSON: Are there anything that you can do when you put \$50 on black that will affect whether it comes up black or red? [LB619]

WILLIAM MALTAS: Not really. [LB619]

SENATOR LARSON: I've been to casinos. I see the boards at the roulette table that say red, black, red, 19, 20, whatever it may be to try to get that pattern. Is there ever a pattern in roulette, a true pattern? [LB619]

WILLIAM MALTAS: No, although they like to make you think there is. [LB619]

SENATOR LARSON: Can there be by studying a horse's previous history, training times, race times, whether or not they're on Lasix, or anything of that nature, can you find patterns within horses on how they run the first furlong, the second furlong, the third furlong? [LB619]

WILLIAM MALTAS: You can absolutely get that far into it if you choose to. [LB619]

SENATOR LARSON: And so the ability to make intelligent decisions based on historical precedence with horse racing would lend to the concept that one can safely assess the value of that horse and make a proper assessment and then decide whether or not to take the risk or accept that value when they bet on that horse essentially, correct? [LB619]

WILLIAM MALTAS: That's correct. [LB619]

SENATOR LARSON: And when you're playing poker, when you receive pocket aces or whatnot or anything else, you can properly assess that hand a number of times, whether that's in, let's say,

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Transcriber's Office

General Affairs Committee
February 02, 2015

community draw after the flop or the turn or the river through betting processes you can properly assess the situation you're in and exit that game at any time, correct? [LB619]

WILLIAM MALTAS: That's true. [LB619]

SENATOR LARSON: Once you put that coin into a slot machine, can you exit and pull that? Can you stop or pull back from that? Once you...what? [LB619]

WILLIAM MALTAS: On a slot machine, you say? [LB619]

SENATOR LARSON: On a slot machine. [LB619]

WILLIAM MALTAS: No, unless you're playing a Skill Stop which are illegal in Oklahoma, but... [LB619]

SENATOR LARSON: I see. (Laugh) When you put money on black and they close it, can you pull that money back? [LB619]

WILLIAM MALTAS: No. [LB619]

SENATOR LARSON: But you can decide when to quit a poker hand? [LB619]

WILLIAM MALTAS: Any time. [LB619]

SENATOR LARSON: Thank you. Senator Riepe. [LB619]

SENATOR RIEPE: Thank you, Chairman. You've expressed a lot of opinions about horse racing and I would be curious as to your credentials as to your expertise in that area or is it simply your opinion? [LB619]

WILLIAM MALTAS: I'm strictly a lover of the activity. [LB619]

SENATOR RIEPE: I have no further questions. [LB619]

SENATOR LARSON: Thank you, Mr. Maltas. Any more questions? Nope. Thank you. [LB619]

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

General Affairs Committee
February 02, 2015

WILLIAM MALTAS: Thank you. [LB619]

SENATOR LARSON: (Exhibit 1) Are there any more supporters, proponents of LB619? I would like to read into the record a letter from James Moylan and the Nebraska Licensed Beverage Association as a supporter of LB619. With that, we'll begin on opposition. Welcome back to General Affairs, Mrs. Loontjer. [LB619]

PAT LOONTJER: (Exhibit 2) Thank you, Senator Larson. Hi. I'm Pat Loontjer, spelled L-o-o-n-t-j-e-r. I'm the executive director of Gambling with the Good Life for the last 20 years. It's a grass-roots group that's opposed to any form of expanded gambling. And we've testified already on the other two gambling bills, and so we're here today with the same goal in mind that this is expanded gambling. It's not going to benefit our families or our businesses. It's going to hurt them. And we urge you not to let this come out of committee. I just want to remind you that this is a 90-day session and that seems like a long time until you get down to the last days and you're going to find that, wow, a lot of work needs to be done in these 90 days. And the gambling bills that have come up in the past, and several of them were repeats from other years, they take up a lot of time. They invariably are filibustered. They invariably are vetoed by the Governors, and if they do pass they usually go into litigation. So it takes a lot of time on...that could be better spent doing good things for the state than to try to expand gambling. There's a number of states that have already been addressing the issue of the skill versus chance on the poker bill, and I would urge you to just let that thing rest until it's decided. Some of the verdicts have not come back yet as to what that is rather than to have us jump into something that the Supreme Court has already spoken on as far as cards being games of chance. Why would we want to put our time and energy into something like this? Just put it on the back burner and wait and see what happens with the other states before we pursue anything like this. I have a friend who is a dealer in one of the casinos and I asked her about this, and she said that it's definitely a game of chance. She said, the only way it could be a game of skill is if everyone got the same cards, then it would be truly a game of skill. But as long as there's different cards given to every player, there's a tremendous...just of chance involved. If this would pass, if it would go forward, and if it went into litigation, which it very possibly will, I want to remind you that anything that's legal in the state can be done by the Indians. And they will immediately whether this is tied up in litigation or not, they will be allowed to go ahead and open the poker parlors, the poker rooms. Right now we're protected against any form of that type of gambling or Class III gambling because the Indians can only have what's legal in a state. But if this gets passed, they'll be allowed. That will be unregulated and they're truly untaxed. So I would just urge the committee not allow any of the gambling bills out on the floor for this year. [LB619]

SENATOR LARSON: Thank you, Mrs. Loontjer. Do we have any questions from the committee? [LB619]

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

General Affairs Committee
February 02, 2015

SENATOR SCHILZ: Thank you, Ms. Loontjer, and thanks for coming in today. And in your testimony you talked about that your group and others, like-minded folks like you, don't want to see any more expanded gambling in the state, and you talk about gambling. And Senator Kolterman asked if this was gambling. And I think if we're honest with ourselves the true question isn't whether it's gambling or not; the true question really becomes whether it is seen as a game of chance or not. Because if it's not a game of chance and it includes skill, then that isn't precluded by the constitution. Is that correct? [LB619]

PAT LOONTJER: Well, as far as when the Supreme Court talked about the game...that cards was a game of chance, I think it would fall under that. You'd have...litigation would go back to the Supreme Court and I believe they'd come out with the same decision. We're opposed to any form of expanded gambling. [LB619]

SENATOR SCHILZ: But the question was...excuse me, the question was in the constitution it can be gambling as long as it's not a game of chance. Correct? Because if not, we could get back to the point, well, can you trade stocks in Nebraska because I can tell you this. When I worked at a feed yard and I would buy and sell cattle, I gambled everyday on whether those things were going to do what they were supposed to do. So we need to be careful of that because we can run into a lot problems as to what is considered, quote, unquote, gambling, correct? [LB619]

PAT LOONTJER: Well, I wasn't referring to the constitution because the... [LB619]

SENATOR SCHILZ: But I was. [LB619]

PAT LOONTJER: ...the constitution deals with Class III gambling. This is an LB. This is not even going on the... [LB619]

SENATOR SCHILZ: And it wouldn't need constitutional approval if it is found to be a game of chance, correct? [LB619]

SENATOR LARSON: Game of skill. [LB619]

SENATOR SCHILZ: Game of skill. Right? Excuse me. [LB619]

PAT LOONTJER: (Laugh) I liked what you said the first time. [LB619]

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Transcriber's Office

General Affairs Committee
February 02, 2015

SENATOR SCHILZ: Well, either I'll take that too if you want. That's fine with me. But, I mean, I'm sorry, let's answer that question. We don't need a constitutional amendment if it can be proved to be a game of skill, correct? [LB619]

PAT LOONTJER: I believe that's true. [LB619]

SENATOR SCHILZ: Okay. Thank you very much. [LB619]

SENATOR LARSON: Thank you, Senator Schilz. Mrs. Loontjer... [LB619]

PAT LOONTJER: Whoops. Back again. [LB619]

SENATOR LARSON: Thank you. You brought up the Native Americans, I guess your words, Indians. Do you have a problem with the Native Americans possibly having card games? [LB619]

PAT LOONTJER: Absolutely. [LB619]

SENATOR LARSON: Do you have a problem with the Santee Sioux Tribe and what they're doing currently? [LB619]

PAT LOONTJER: Yes. [LB619]

SENATOR LARSON: Okay. Have you been to the Santee Casino? [LB619]

PAT LOONTJER: Oh, yeah. [LB619]

SENATOR LARSON: Have you been to Santee? [LB619]

PAT LOONTJER: Not recently. I believe I was there for some type of a powwow thing but that was years ago. [LB619]

SENATOR LARSON: I would encourage you to visit Santee and anyone in this room to visit Santee and understand the poverty and the hardship that that tribe has been put through, and the revenue and the jobs that are offered through that casino, and the pulling that tribe and those people out of poverty and what it has done with 50 hotel rooms, a convention center, a quality

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

General Affairs Committee
February 02, 2015

restaurant. There's a lot of good things and that tribe has been trodden on for a long time. And to limit their ability to grow is...and I represent the Santee Tribe and that's why I find this to be personal is when I see what we had done to them as a country for a century. And I knock on doors and I see a three-year-old pedalling down the street on their tricycle with no parents in sight because of the issues. Not because of gambling issues, more along the lines of just cultural issues that they have faced and it is something that that is all they have and that the only jobs available in the area. And so I find it personally offensive that you want to limit any opportunities for them. I appreciate the fact that you recognize that, you know, if this is found to be a game of skill it doesn't need the constitutional amendment. But I just kind of wanted to follow up on that, because I represent the Santee Sioux and I want to do whatever I can to help those people out of poverty. And that casino offers a lot of jobs and it does a lot of good for that community. I've seen more come out of there and more improvement over my time in the Legislature than any time. And so I just wanted that for the record. I find that offensive that we should do anything to harm them. Thank you. [LB619]

PAT LOONTJER: I don't...may I answer that? [LB619]

SENATOR LARSON: It wasn't necessarily a question. [LB619]

PAT LOONTJER: I know, I know. You didn't keep your three minutes. All right. [LB619]

SENATOR LARSON: Next opponent. [LB619]

LORETTA FAIRCHILD: (Exhibit 3) I am Loretta Fairchild, L-o-r-e-t-t-a F-a-i-r-c-h-i-l-d. I am a Ph.D. economist from the Panhandle. Thank you all for the difficult and important decisions you are making for this Legislature. This bill on poker seems full of contradictions to me. Currently, Nebraskans are playing poker whenever they want, getting together with others, setting their own buy-in levels and other rules. And all the money they put in goes to the winners in the group. This bill only seems to add allowing other people to make money by offering locations to those who want to play. It is hard to see this as libertarian in its approach since they don't usually want government to pick winners or losers if this bill hands this new monopoly power to the bar industry. Why? They aren't the neediest businesses in Nebraska. The focus in this bill is on the skill elements in poker. Anyone interested in being a card counter doesn't want to be using alcohol while they concentrate. A more libertarian approach would just auction off the rights or, better yet, let anyone who wants to offer this business. The need for costly regulation is still there. Since this new gambling...this is new gambling. Another big problem waving a red flag is the cash-only restrictions which is very unlibertarian. Cash only makes it harder to regulate and more tempting for various kinds of cheating, including organized crime to move in. Mr. Kelley just testified, if I understood him correctly, that keeping track of the pots looks like it's, "going to

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

General Affairs Committee
February 02, 2015

be challenging," and I heartily agree that's a regulation issue. Please put a great focus on the testimony by the two brave Nebraska business owners who are going to step up and tell you again about the damage continually bombarding businesses from the gambling we already have. They are giving you real and vital information. The damage to businesses and families and the cost of the state regulation, courts, and more will always be bigger than the taxes and the profits to local businesses combined. The evidence? Lots of research and not one counterexample. More gambling will not fix anything but will add much more harm. The trumpeting of great tax relief are only empty promises. Please don't be complacent about any of these three gambling proposals but instead resist the temptation to use them as throwaways where it's okay to trade your votes. Yes, they are trivial on their upsides but their downside is very, very negative. Please keep them in the Legislature. Oh, I almost forgot my best line. This bill feels to me like a solution in search of a problem. Thank you. Questions, I hope? [LB619]

SENATOR LARSON: Thank you, Mrs. Fairchild. Are there any questions from the committee? Yes, Senator Riepe. [LB619]

SENATOR RIEPE: Thank you, Senator Larson. Dr. Fairchild, I know you're a doctorate in economics, and so you're a well-learned person. Do you have some expertise in some area that relates to some studies that you've done that have looked into this in greater depth and done we've been exposed to? [LB619]

LORETTA FAIRCHILD: Yes, I have. My Ph.D. is in the area of public finance which includes how the government gets its money and how the government spends its money, and that is the lens that I bring to this always. So that's why this mistake that's continued in this bill that says we're going to designate the taxes into specific areas is simply bad fiscal policy. I hope this committee will repudiate that. I have supplied more testimony in writing and that I would like to be able to draw on and I hope that you all will be able to find the time to read that. [LB619]

SENATOR RIEPE: Okay. Thank you. Thank you, Chairman. [LB619]

SENATOR LARSON: Thank you, Senator Riepe. Any further questions? Thank you for your time, Mrs. Fairchild. Any further opponents? Welcome back, Mr. Wimmer. Would you like to stand again? [LB619]

DAVE WIMMER: No, I'll sit this time. Chairman Larson, thank you. My name is Dave Wimmer, D-a-v-e W-i-m-m-e-r. I live up in West Point in Cuming County. I'm here as a businessman, a community leader, father, grandfather, resident of a small town. I'm here in opposition to LB619. And, you know, the debate about skill versus luck, I guess my understanding of a poker game is that it cost you something to get in. And that might be an entry fee, it might be an ante for every

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Transcriber's Office

General Affairs Committee
February 02, 2015

game, but you make a bet of some kind that you're probably not going to get back when you start. You get some cards. You get a chance to look at them. You make another bet. You get some more cards or you get a chance to look at some more cards as a player and you can make another bet. At any time you have a chance to bow out of the game. But in the end, the remaining players with the best hand win the game. So to say that's not gambling or doesn't have a strong element of luck to it, I guess I'd kind of take the opposite view. Certainly we've heard a lot of things that say it has a lot to do with skill and perhaps there is some skill involved in it. But you still can dress it up, tax it, give some of that tax money to Mom and apple pie, but poker by definition includes an awful lot of betting and to me that makes it gambling. The second point I guess I'd like to discuss a little bit is that in a earlier hearing a week ago, Chairman Larson, you expressed a philosophy of government that I think said you thought it was the role of government to protect the citizens from others but not from themselves. I've thought about that. I've discussed it with my wife and she agrees with the second part. She really thinks that I have enough undesirable friends and enough bad habits that it would be really a waste of time of government resources to try to protect me from myself. But getting back to the first part, I believe that a government that enables poker parlors in this state regardless of whether they're skilled or luck really flies in the face of the latter part of this philosophy of protecting the citizens from others. Those poker parlors are an other right now that doesn't exist in Nebraska, and I really have a difficult time trying to figure out whether its good public policy to make an other like that exist. We're protected now. Why not leave us protected? Thank you. [LB619]

SENATOR LARSON: Thank you, Mr. Wimmer. Do we have any questions from the committee? I'll take one. And just for clarification for the record, you do know that not everybody...in a normal poker hand not everybody offers the ante up right at the beginning, correct, and then there's usually two that have blinds and everybody else doesn't have to bet unless they... [LB619]

DAVE WIMMER: Okay. [LB619]

SENATOR LARSON: So I just wanted...for correcting the record, a lot of times not everybody is in every hand and has a chance to bow out without ever putting any money down in traditional poker. Now your house poker game might be a little different where everybody has to ante up, but. [LB619]

DAVE WIMMER: My guys always make me ante. [LB619]

SENATOR LARSON: Yeah. (Laughter) I just wanted to clear that up for the record. [LB619]

DAVE WIMMER: Sure. [LB619]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: And second of all, just a quick question going along the ante sentiment, and we can agree to disagree with the...you know, protect people from themselves and how I view the libertarian philosophy. But...and going off kind of...Mr. Clayman in the conversation I had with him, and I think we've actually had this conversation maybe five years ago, four years ago in the Judiciary Committee, the state of Nebraska promotes the Nebraska Educational Savings Plan and Trust in which one could say everybody has to offer an ante. That's the 529 plan that the State Treasurer and Secretary of State have done a lot to promote, and that ante would be your investment into that plan and the state runs that plan. Is there a risk that you could lose that entire ante in that 529 plan that the state is currently promoting? [LB619]

DAVE WIMMER: Not near as high as the risk that I'd lose that I'd lose that ante if I was playing poker. [LB619]

SENATOR LARSON: Is there a risk? [LB619]

DAVE WIMMER: I don't know anything about the risk involved in that. Probably a slight risk, sure. [LB619]

SENATOR LARSON: All right. Thank you. Welcome back, Mrs. Carritt. [LB619]

NICOLE CARRITT: Thank you. Good afternoon again, Senator Larson and members of the committee. I'm Nicole Carritt and I'm here representing Project Extra Mile today. I bring a bit of concern from a different angle. We feel strongly that the Nebraska Liquor Control Commission's sole regulatory focus should be on promoting health, safety, and welfare of the people of the state by sound and careful control and regulation of the manufacture, distribution, and sale of alcoholic liquor and not overseeing and regulating poker games or tournaments because certain licensees wish to conduct such activities. Nebraska is facing some serious alcohol-related challenges and adding poker to the mix only seeks to dilute the commission's ability to address those issues further. So thank you for your consideration of our comments and I'd be happy to answer any questions that you might have. [LB619]

SENATOR LARSON: Anybody from the committee? If we were to supply the Nebraska Liquor Control Commission with the extra staff in order to oversee this, LB619, would that alleviate the concerns from Project Extra Mile? If we added staff and so all the current staff could continue on their current Liquor Control Commission duties? [LB619]

NICOLE CARRITT: Senator, I don't think it's just about the staffing piece. It's about their focus in terms of the mission, so it would be regulating the sale and distribution factor. [LB619]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: All right. Thank you. [LB619]

NICOLE CARRITT: You're welcome. Thanks. Any other questions? [LB619]

SENATOR LARSON: I think we're good. [LB619]

NICOLE CARRITT: Thank you. [LB619]

SENATOR LARSON: Have a nice day. Welcome back, Mr. Riskowski. [LB619]

AL RISKOWSKI: (Exhibit 4) Thank you, Senator Larson. That was very good pronunciation of my last name. I appreciate being here today with you in General Affairs. It's always a privilege to have the opportunity as a citizen to be here and testify. We're opposed. I'm Al Riskowski, the last name is spelled R-i-s-k-o-w-s-k-i. I'm executive director of Nebraska Family Alliance and do represent them being here today. I thought it was interesting. I'm not a poker player so I had to learn something about poker in order to be here today. And went on-line. I found that there are variations in regard to poker. It's called: wild cards with no wild cards, pot splitting, high-low, low spade in hole, nonstandard hands, big dog, little dog, round the corner straights, four flushes. Betting rules like ante, no ante, blinds, limits, openers. The possibility easily runs into triple digits, just a list of major game variations exceeds a few dozen and I even listed some and I'm not going to read them all for you to save you that time. But what you're doing in poker obviously is pitting one person against other individuals to take their money directly. And because of the wagering and the problems that can be involved with that is why this type of gaming was placed in the regulations, in our constitution as we have it today. As well as that, I have some major concerns with the bill itself because it does provide for unlimited licenses. Unlimited wagering is possible and, thus, as was messaged by the last individual here, the question is what are the guidelines and rules for legitimate wagering and who's going to be investigating all of those complaints as they begin coming in? Even as I was looking at the local governing body can establish criteria for approval of those license, no guidelines are provided. And even the legal consequences of cheating, what consequences are there other than you're losing your license. So we oppose this bill because I believe it becomes very complicated very quickly and can be a difficulty here in the state of Nebraska. So thank you for your time. [LB619]

SENATOR LARSON: Thank you, Mr. Riskowski. Do we have any questions for Mr. Riskowski? [LB619]

AL RISKOWSKI: Thank you. [LB619]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Do we have any more opponents? [LB619]

JENISE BROWN: Good afternoon, gentlemen. My name is Jenise Brown, J-e-n-i-s-e B-r-o-w-n, and I am here in opposition to this bill, LB619. I think you know most of my story already from last week. I would like to share a little bit more with you in regards to this bill, this particular bill. I grew up liking cards and I used to play with my dad a lot. And did I play poker a lot? No, but we played all forms...I've played poker before. And I could probably play a good hand of poker. But my 24-year-old son has also picked up that love of a card game. He's also got a minor in economics and he also has a very strong interest in securities and the bonds and trading. And I've talked to him very strongly about what that means and it is a form of gambling. The securities are a risk. And he's pretty...very careful in talking to his professor from college about...who's the gentleman that taught him about securities and bonds and why he has an interest in it. This is something totally different than that. And if...I will allow him to trade securities or to trade whatever because he's been educated in that. He's been shown how to do it. He's been shown how to do it responsibly by a professor in college. He loves to play cards with his buddies. And I have talked to him about that, too, and how strongly I do not want him betting money on cards. Because why? It leads to something else. It will lead to something else that can possibly get way out of control and way over his head. On the wall in your cafeteria here you have a big poster and it...a big picture of your raising the sower in 1930. And I was sitting there looking at that when I was waiting for this hearing and I have often talked to my kids about you reap what you sow. And I'm a firm believer in that. And if you pass these gambling bills, you are going to reap what you're sowing, I promise you. It's not going to be good for the state of Nebraska. Hosting tournaments means like you're talking and like the gentleman before me that talked in favor of this bill, you're going to be bringing in card sharks into the state of Nebraska. And I can just see my 24-year-old son who loves to play cards going to the bar. He's young. He loves beer too. And so he gets a beer in his hand and he sits down at the table and before you know it, he's bet way more and he's way in over his head. That's not the same thing as what trading. I have a lot of say. I believe the proponents to this bill sat here for a half hour talking about what they want. And I would request...I don't know if there is such a thing but I would request another three minutes from the committee. I believe that I've earned it in this state, that I took a big price to pay for gambling, and I would like another three minutes. Is that possible? [LB619]

SENATOR LARSON: Ma'am, if the...it's three minutes for everyone. If senators have questions for you, they can ask you questions. I have to keep it three minutes across the line. But if there are questions, that will be acceptable. Senator Kolterman, do you have a question? [LB619]

SENATOR KOLTERMAN: Tell us a little bit more about your story, if you would. [LB619]

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

General Affairs Committee
February 02, 2015

JENISE BROWN: Thank you. They talked about "Wild Bill" Hickok and "Buffalo Bill" Cody. I hope we're not trying to bring the wild, wild west back. You know why I'm so passionate about this but I'm passionate for my kids, I'm passionate for my grandkids, I'm passionate because I go up to Winnebago, which is an Indian reservation, quite often. My spiritual advisor is the director of the mission up there. And so I do see the benefit somewhat of that casino that's on the Indian reservation up there in that it brings in money to that town and to the Indian reservation. And I don't think Pat was trying to be disrespectful to your...to the Santee Indians. So I can understand the benefit that you think they're getting. There is another side to that coin and it is not a pretty one. And so I've been up to see those reservations and it really is not a windfall. There is a side to this that you're going to reap what you sow. And I'm asking you please to not vote this out of committee. The other thing I wanted to add, Senator, thank you very much for giving me the opportunity, is last week...well, I guess I'll save that. I can write that to you in a letter. So thank you. [LB619]

SENATOR KOLTERMAN: Thank you. [LB619]

SENATOR LARSON: Any further questions? I do have one question and I'm glad to hear that your son...can your son get better at trading securities? Can he become more in tune, more...can he become better at looking at the stock market? [LB619]

JENISE BROWN: Absolutely. [LB619]

SENATOR LARSON: Do you believe that he can become a better poker player with time? [LB619]

JENISE BROWN: He could. It's going probably take some money and he's going to lose some money and he's probably going to lose a lot of money. [LB619]

SENATOR LARSON: And the same with...I do the securities, too, and I do feel that I've gotten better over the years, but I lost a little when I was young doing the stock market. But thank you for your time. [LB619]

JENISE BROWN: I don't think that that's the same. There's an addiction factor. When you look at the pie, there's an addiction factor, and you ask the question so I'm going to answer it. My son probably wouldn't fall into that addiction factor but there's a percentage of people in our society that will get addicted to that game, and there's a percentage of people in our society that have mental health issues that need to be protected from having it so available that they can walk across the street and play every single night. That's the people that we are fighting back here. We

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

General Affairs Committee
February 02, 2015

are fighting to keep it from being so available to those people. Why? Because it's in their best interests for it not to be across the street from them. I can go over to the casinos in Council Bluffs and gamble and gamble and gamble and I'll probably lose 10 bucks because I'll be playing the nickel machines. But there is an addiction factor that...and you're not only hurting that person, you're hurting the money they steal from their mother. You're hurting the money they steal from their grandmother. You're hurting their brothers and their sisters because they've finagled them into paying their rent for them. I mean, the families are extremely being hurt from these...from this...from gambling. And I will tell you it's very intimidating to be here. I had to muster up a lot of...I had to muster up a lot to be here because it is an intimidating environment. There are a ton of families in our state that because it's just 30 miles away have been hurt, but they're not standing here because they're either embarrassed about what happened, that they let it happen, that it was themselves, or that it was within their family and why couldn't I control it? Why couldn't I make that person stay home? Why couldn't I watch them every single night to make sure that they were not going...they said they were going to church but they didn't really go to church. They went across the river. And it's exhausting for those people. And they deserve...that's what government should be doing. We should be making it easier for these people. [LB619]

SENATOR LARSON: Thank you very much. Any further questions? Seeing none, are there any more opponents to LB619? Seeing none, any neutral testimony? All right. With that, I'll close the hearing on LB619. And we'll move on to LB339, and Senator Howard. Welcome to the General Affairs Committee, Senator Howard. [LB619]

SENATOR HOWARD: (Exhibit 1) Thank you, Chairman Larson. I understand you've gone paperless, but I have brought things just in case. [LB339]

SENATOR LARSON: And you can hand them to the committee clerk or please have...or e-mail them, but we won't distribute them during the hearing. [LB339]

SENATOR HOWARD: Perfect. Thank you. Okay. Mr. Chairman and members of the General Affairs Committee, I am Senator Sara Howard, H-o-w-a-r-d, and I represent District 9. I am pleased to be here today to introduce LB339 on behalf of constituents in my district and residents of other Nebraska communities who wish to be able to express concerns before the Liquor Control Commission without having to pay for the opportunity to be heard. That's the right number, right? [LB339]

SENATOR LARSON: LB339. [LB339]

SENATOR COASH: You're good. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR HOWARD: Okay, just checking. This issue was brought to the public's attention last year by a Lincoln Journal Star story which I have provided by e-mail to the committee, but I also have handouts for later. The story was about a \$25 bill that six Lincoln residents received from the Liquor Control Commission after they provided testimony before the commission concerning the proposed liquor license for the Lincoln Grand Cinema. They were told they had five business days to pay the fee or it would be turned over to the legal division. My concern here is twofold, both that citizens have to pay to express their views to their government and the heavy-handed threat of legal action. The Legislature has granted the Liquor Control Commission great authority when it comes to the regulation and licensure of alcohol. With this power, the Liquor Control Commission has a duty to actively seek input from citizens who are directly impacted by their decisions. The Legislature was very clear when it passed the Liquor Control Act that citizen participation was intended to be a vital part of the application process. Nebraska Revised Statute 53-132(3) states ten specific criteria that the Liquor Control Commission shall consider when making a determination as to whether a liquor license should be granted. The first criteria is the recommendation of the local governing body, which makes sense since that governmental body had held a public hearing on the license. The second criteria is the existence of citizens' protest. In fact, the Nebraska Supreme Court was very clear in the Orchard Hill Neighborhood v. Orchard Hill Mercantile decision of August 17, 2007, about the importance of citizen protest when it comes to liquor licenses. In that decision the Nebraska Supreme Court upheld the district court decision reversing the granting of a liquor license by the Liquor Control Commission. And in their Opinion, which I have also provided by e-mail, the Supreme Court said that the existence of a strong proactive citizen protest made the case that another liquor license was not needed in that neighborhood. Nebraska Revised Statute 53-133(1)(b) specifically provides that the commission shall set a hearing if it receives in writing from not less than three persons residing within the city, town, or village where the license is located. They have to submit these protests within ten days after the receipt of a recommendation from the city, village, or county. The Nebraska law specifically states that hearings may receive evidence, including testimony and documentary evidence and may hear and question witnesses concerning the application. My concern is, how is the Liquor Control Commission supposed to obtain this type of evidence from citizens if they don't want to speak up to the commission for fear they will have to pay a bill or face legal action? When this issue was brought to my attention, I was curious as to how many citizen protests are actually filed with the Liquor Control Commission. I wanted to see if this was a significant source of revenue or if there were an abundantly large number of citizen protests creating a burden. And in all of 2014 and including January of 2015, there were four hearings that involved citizen protests. Two of the four cases, including one from my own legislative district, had local governing body denial recommendations which triggered automatic hearings regardless of whether or not there was a citizens' protest. Of the four hearings, three involved a show cause action initiated by the State Patrol which also triggered a hearing. And the only case that had a hearing triggered exclusively by a citizens' protest was the Lincoln Grand Cinema. So of all of the citizen protests, there was only one citizen group that was required to

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

General Affairs Committee
February 02, 2015

pay the \$25. Because a hearing was triggered by other entities, either the governing body or the state patrol, those citizen protests were not asked to pay a fee. So they collected \$25 last year from citizen protests. Cathy Hiemer, one of the Lincoln theater testifiers, said that after her experience, she doesn't know if she'd ever want to go through it again, speaking up in front of the Liquor Control Commission. And I don't think this is how we want the citizens of our state to feel about being involved with their state government. I would think that we would want to encourage their participation. LB339 is a good first step to restore citizen confidence that they can go before the Liquor Control Commission without the fear of being sent a bill or a threat of legal action being taken against them. The Lincoln Journal Star summed it up best in a December 1, 2014, editorial when they stated: In a democratic form of government, people should be able to speak their minds without being sent a bill. The bill as written, it was pointed out to me by Mr. Rupe from the Liquor Control Commission, is a sledge hammer. And I think that I wanted to be more targeted in the way that we considered the fees. And so he graciously suggested amendment language that I love, which parcels out and specifies that citizens would not have to pay a fee for that initial complaint if they were the only ones protesting by themselves. So I have also e-mailed the amendment. I have a copy, as well, for the clerk. But I appreciate your consideration of LB339 and I look forward to working with this committee to enhance citizen participation in our government to address this issue. [LB339]

SENATOR LARSON: Thank you, Senator Howard. Senator Coash. [LB339]

SENATOR COASH: Thank you, Chairman Larson. Senator Howard, I want to make sure a couple of things are clear for the record because I think there might be some misconceptions out there about what your bill or doesn't do or about what you intend or don't intend. When a licensee is going through their application, it does go through the city council. Correct? [LB339]

SENATOR HOWARD: Right. [LB339]

SENATOR COASH: Okay. Do citizens who have concern about that licensee's approval or nonapproval have an opportunity to address those concerns with their city council? [LB339]

SENATOR HOWARD: I believe so, yes. [LB339]

SENATOR COASH: Does the city council charge them to voice those concerns? [LB339]

SENATOR HOWARD: Not to my knowledge. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: So there is an opportunity here for citizens to say, hold on, this is not for my neighborhood, this is not what I want. And they get to do that through the city council. Right? [LB339]

SENATOR HOWARD: Certainly. [LB339]

SENATOR COASH: So, but what you're trying to do is to say when they go to the next step, which is when that licensee goes through the Liquor Control Commission, that they ought to be able to do this, in essence, is the same thing, talk to the commission in this case and voice their concerns. But I want to make sure it's clear that they do have a free, if you will, opportunity to address their grievances in front of their, in this case, elected officials whereas the commission is a bunch of appointees who are not accountable, so...to the voter, anyway. [LB339]

SENATOR HOWARD: Absolutely. [LB339]

SENATOR COASH: Okay. The...I think you understand that the...what happens at the city council I guess would be a hearing? Or, I mean, it has to go in front of the council, each licensee has to show up and say, this is what I'm doing. Or if it's a renewal, this is what I want to continue to do. So that's a hearing. And when we go to the council, it's quasi judicial. In other words, although the commissioners are not judges, you know, we don't call them "Your Honor," but it is a quasi-judicial function because they do have some powers over that licensee. They can...they have power to revoke license, grant license, put sanctions, fines, things like that. And so it is a legal proceeding. And I think the reason that that fee is in there is because if you want to be a party to that legal proceeding, you've got to participate as a party, which is different than participating as a citizen. And you're an attorney, so I just want to ask you what you would think if other judicial proceedings, courts, were just subject to anybody who wanted to come in and say what they thought about a case without actually having to become a party to the case, which is my concern. If people want to be a party to the case, they should go through the channels, pay, be a party in the case. But if they just want to have their voices heard, I think that's the reason the Legislature put the city council as a buffer between the applicant and ultimately the commission. So that's my concern and I'll give you a chance to respond. [LB339]

SENATOR HOWARD: Sure. Thank you, Senator Coash. I suppose I would start in that I can't think of a judicial proceeding where there's a barrier of you having to have two of your neighbors sign on with you. I think the Legislature put in that procedure to make sure that there wasn't just one person who wanted to become a party to this proceeding and sort of go nuts on every single liquor license application. I think the bar is already there for citizen protest with three people having to come together from that neighborhood, from that city. And so sort of creating an additional barrier is, I don't feel, in the best interest of the Liquor Commission. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: All right. Thank you. [LB339]

SENATOR HOWARD: Thank you. [LB339]

SENATOR LARSON: Any further questions? I have one, Senator Howard... [LB339]

SENATOR HOWARD: Yes. [LB339]

SENATOR LARSON: ...or two, kind of piggybacking off of Senator Coash. As he said, they have the ability to go to the city council and let their voice be heard to their elected official free there. But the Liquor Commission is a quasi-judicial proceeding. When there's a party and when they pay to be that party, those citizens do have the right to appeal that decision to district court currently. Correct? [LB339]

SENATOR HOWARD: Certainly. And once they go to court, all court fees would be, of course, a part of what they would have to do during that appeals process. [LB339]

SENATOR LARSON: So, but do you know of any process through the court system where quasi-judicial or regular, that you don't have to pay to be a party or have those rights? [LB339]

SENATOR HOWARD: Certainly. So I have done some sort of investigation as to what other quasi-judicial bodies the state has created. Other comparisons would be like the State Board of Education, the Public Service Commission, or the Board of Health where they solicit public comment on the work that they're doing without charging a fee, although an appeals process may be initiated that would take them into a courtroom. [LB339]

SENATOR LARSON: So at the Public Service Commission you can appeal...a citizen can appeal a decision of the Public Service Commission to district court? [LB339]

SENATOR HOWARD: So there's a \$50 hearing fee for regulated businesses and public comment and input is allowed with no fees. I don't know for sure if they take them to the district court, but I'm certain there's an appeals process. [LB339]

SENATOR LARSON: You know for sure there's an appeals process to a higher court? [LB339]

SENATOR HOWARD: Yes. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Okay. Do you know if the citizen, themselves, can initiate that appeals to a higher court or... [LB339]

SENATOR HOWARD: That I do not know. [LB339]

SENATOR LARSON: Okay. And for the record, do you feel that there is...I know you've talked about the possible amendment with Mr. Rupe and setting individuals apart from the city entities or those types. Do you feel that there's possibly an equal protections clause there in terms of treating individuals or parties differently? One party doesn't have to pay, but another party that wants to bring an appeal does have to pay. [LB339]

SENATOR HOWARD: Certainly. I'm so glad you asked the question and thank you for mentioning it this morning. Okay. And I had to literally brush up on every constitutional law class I ever survived. So what's interesting is, that I think we all have the same understanding of the equal protection clause is, that it's not that everybody gets equal protection, but that the law is applied equally across all parties. And so the parties in this would presumably be anybody who's able to bring an appeal, which would be both citizens. Governmental agencies are not protected by equal protection. Corporations, under Citizens United, may be considered persons that would have some protections under equal protection. And then, obviously, the sort of the owners of the bars that are looking for their application, they're able to appeal as well. But interestingly enough, there was a case last year in the Nebraska Supreme Court which was a smoking ban case, Big John's Billiards. [LB339]

SENATOR COASH: We've heard of it. [LB339]

SENATOR HOWARD: Heard of it, okay. But it's really interesting because the court very definitively explained why you're able to treat one group differently than another. So equal protection, there are two bases for consideration. One is strict, which are equal protection around discriminatory groups that sort of had historical discrimination, so gender, race, disability. Those are considered very strictly held to or sort of they're given strict scrutiny. Any other group is based on a rational basis. So when we look at what the court decided in Big John's Billiards, they actually used a lot of language where they, and I quote, a legislative body's distinctive treatment of a class is proper if the class has some reasonable distinction from other subjects of a like general character. So as a legislative body, we could choose to treat citizens differently even though they have a like general character, which is an interest in the Liquor Control Commission because their interest is around free speech, whereas sort of the bar owner's interest is around property rights. They also said something really interesting is that a statute is presumed to be constitutional and all reasonable doubts are resolved in favor of its constitutionality. And the burden of establishing unconstitutionality of a statute is on the one attacking its validity. And so I

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

General Affairs Committee
February 02, 2015

would argue that if this amendment is adopted, if this bill is sent to General File--which I very much hope it is with the amendment--we would be able to see that there is no constitutional issue here, both based on the Nebraska Supreme Court, but also based on how the federal Supreme Court has managed equal protection rules and the rational basis behind them. [LB339]

SENATOR LARSON: Sounds good. Thank you, Senator Howard. Any other questions? [LB339]

SENATOR HOWARD: Any other questions? [LB339]

SENATOR LARSON: Senator Coash. [LB339]

SENATOR COASH: Thank you, Senator Larson. I just want to...I am struggling with this. And what I'm trying to figure out, Senator Howard, is what did those who would want to be a party to the Liquor Control Commission procedures want that they're not getting through their opportunity to go to the city council when their license is up? [LB339]

SENATOR HOWARD: And I think that may be a better question for the folks who are behind me who have taken the time to really share their feelings with their city council. [LB339]

SENATOR COASH: Okay, that's fine. I'll tee that up for them to answer. But that's what I'm trying to wrap my head around. [LB339]

SENATOR HOWARD: And I'll bear that in mind for closing, as well. [LB339]

SENATOR COASH: Okay, sounds good. Thanks. [LB339]

SENATOR HOWARD: Thank you. Any other questions? [LB339]

SENATOR LARSON: Doesn't look like it. Thank you, Senator Howard. [LB339]

SENATOR HOWARD: Okay. Thank you, Senator Larson. [LB339]

SENATOR LARSON: I'll begin with proponents to LB339. Thank you. Welcome to the General Affairs Committee. [LB339]

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

General Affairs Committee
February 02, 2015

CATHY HIEMER: (Exhibit 2) Good afternoon. My name is Cathy Hiemer, Cathy, C-a-t-h-y, Hiemer, H-i-e-m-e-r, I am from Lincoln, I'm here representing myself. I'm in support of LB339 to eliminate the fees charged for proceedings to appeal before the Nebraska Liquor Control Commission. I went before the Liquor Commission with my friend, Deb Hicks, last summer to protest the Grand Theater's application for a liquor license. At that time, when we went to protest, I was sick the day they did city council 101. I didn't realize that at that time city council was meeting on that and so when we saw that we had an opportunity to go protest at the...in front of the Liquor Commission we decided to do that. Several months later I received a letter from the commission stating that I owed \$25 for protesting, a fee that I was unaware of. The letter did not state where to mail the check or who to make it out to. After e-mailing the commission, this was clarified but it was still unclear why we were being charged and if the fee was per person or per group protesting. At this time, we still have not received an exact answer if it's \$25 for the group that protested or if it was divided up by the amount of people who protested. I did write a letter to the editor of the Journal and received many encouraging comments from the community in support of passing a bill to eliminate the fee. Everyone deserves to have their voice heard without having to pay a fee when protesting to the Liquor Commission. And the fee would have been an inconvenience for me but for some others, it may be an undue hardship. And I would just appreciate and urge you to consider passing this bill. Thank you. [LB339]

SENATOR LARSON: Thank you, Ms. Hiemer. Do we have any questions from the committee? Seeing none, have a nice day. Any further supporters? Welcome to the General Affairs Committee. [LB339]

DEBRA HICKS: (Exhibit 3) Senators, I am Deb Hicks, well, Debra Hicks, D-e-b-r-a H-i-c-k-s, I am a psychotherapist here in Lincoln in private practice. I assure you that I am here today not in a frivolous nature. I had to cancel my entire afternoon to be here and being self employed, I do not have sick leave. I appeared before the Liquor Commission last summer to oppose the Marcus Grand liquor license. Those of us who opposed that day lost. My testifying that day has led to my being here today. I am here for two reasons. The first being that, based on my dealings with the Liquor Control Commission, I am left wondering if charging the \$25 is a good use of the funds allocated them. I received a bill from the Liquor Commission shortly after testifying. The letter accompanying the bill was unclear to me. I was not sure if I owed \$25 or if the protestants combined owed \$25. Thus began a series of e-mails between myself and Mr. Hobert Rupe. Mr. Rupe's last response to me was on November 25, 2014. It read: We recognize that the e-mail that was sent to you and other citizen protesters in the Marcus Theater matter was not clear in regards to the allocation of costs. The total cost of the hearing is \$25 pursuant to our contract with the court reporter. The cost should have been prorated among all citizen protesters, so your portion would be \$2.50. We have made note of this to avoid such confusion in the future and will be notifying the other citizen protesters in this proceeding. It is my experience with speaking with Cathy that that did not occur. I sent a e-mail in response to this information. Mine said: If there

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

General Affairs Committee
February 02, 2015

were six protestants, each being charged \$2.50, who makes up the difference to come to the equal cost of \$25? I have never heard back from Mr. Rupe and, hence, have not paid my \$2.50. My second reason for being here today and, for me, my most important reason--I think that has to do with my social work background--is that I do not agree with a law that demands payment for a person's right to testify before the Liquor Commission. After I testified at the Liquor Commission and lost, I was still satisfied in my having voiced my opinion in opposition to the Grand having a liquor license. It is empowering to have a voice and to have that voice be heard. When I later received the bill from the Liquor Commission, it became a legal and social justice issue for me. This \$25 charge just does not resonate well with me. It goes against everything that I believe in our country and our state are working toward. It feels as though it is in direct violation to our civil rights and assuring that there is justice for all. Please know that this charge will prohibit some people from speaking up about issues that they care about, for some do not even have the financial means to pay \$2.50. Is their concern not as legitimate as one who has the financial resources? It is my belief that whenever a fee is charged there is no way to get equal representation in a community. It seems to me that hearings in front of the Nebraska Liquor Control Commission should be free. Thank you. [LB339]

SENATOR LARSON: Thank you. Any questions from the committee? Did you say you were a lawyer? [LB339]

DEBRA HICKS: I'm a therapist. [LB339]

SENATOR LARSON: Therapist, okay, I missed it at the beginning. [LB339]

DEBRA HICKS: No, lawyer would be helpful. [LB339]

SENATOR LARSON: I just wanted to...and definitely I can understand why they want to be free. Would you be okay if we...if the committee were to come up with an amendment that made your ability to testify in front of the commission free, but you waived your appeal of rights to the district court? That would...so you would testify for free but you wouldn't be able to appeal to a higher court. [LB339]

DEBRA HICKS: But now I...you mean if I pay I can appeal to a higher court? [LB339]

SENATOR LARSON: Yeah. Right now, like if you pay the \$2.50... [LB339]

DEBRA HICKS: Right. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: ...and the decision wasn't what you wanted, you could appeal that to the higher court. [LB339]

DEBRA HICKS: Okay. My understanding was, once the Liquor Commission decided, that it was over. [LB339]

SENATOR LARSON: No, you can appeal it to the higher court. You can appeal that to district court. So you get what I'm saying? [LB339]

DEBRA HICKS: I get what you're saying. [LB339]

SENATOR LARSON: Would you be okay waiving the fee if you can you waive...if, that way, that makes you essentially a nonjudicial party than more than just a witness, let's say. [LB339]

DEBRA HICKS: Okay, here's my concern with that. I mean, I can pay the \$25, right? I mean, I get that. However, there are people that can't pay the \$25. And once it's gone through city council, the next step is to go to the Liquor Commission. And I have a good friend on the city council and I asked her. I was not there that day. I didn't even know that it was going to be open that day. But I asked her, had I been there, would it have made a difference in the city council ruling? And she said, no. So my next step would have been, if I had the means, the financial means to, yes, go to the Liquor Commission...the reason I think Mr. Rupe did not get back to me--and he can certainly address that, he's in the room--is I don't think it became cost effective for him to keep answering e-mails that I had questions for. I mean, honestly, how much does \$25...you go through it pretty quick. [LB339]

SENATOR LARSON: Well, thank you. I'm just trying to find a little bit of middle ground here in terms of ensuring that all citizens have the ability to testify as you've stated. I mean, you can come back here and testify in front of General Affairs Committee for free but if the committee chooses to let the bill out when you disagree or we chose to kill it when you're sitting in support, you can't appeal that decision. So I'm just trying to find that middle balance in terms of...that quasi-judicial balance. And I appreciate your concerns and... [LB339]

DEBRA HICKS: I guess my thought is there is no...I just would hope that this bill passes. [LB339]

SENATOR LARSON: Okay. Thank you so much. [LB339]

DEBRA HICKS: Thank you. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Senator Kolterman. [LB339]

SENATOR KOLTERMAN: I just have a comment. First of all, thank you for coming and taking off the afternoon to testify because that was expensive, I know. [LB339]

DEBRA HICKS: Thank you. [LB339]

SENATOR KOLTERMAN: And I've sat in that chair in the same capacity. Also, just for your information, if it makes you feel any better, we're not going to charge you. [LB339]

DEBRA HICKS: I know. I get to be heard in this room for free. [LB339]

SENATOR KOLTERMAN: Seriously, thank you for coming. [LB339]

DEBRA HICKS: Thank you, Senator. [LB339]

SENATOR LARSON: Thank you for your time, Ms. Hicks. [LB339]

DEBRA HICKS: Thank you. [LB339]

SENATOR LARSON: Other supporters? Welcome to the General Affairs Committee. [LB339]

MARGIE MAGNUSON: Good afternoon. My name is Margie Magnuson, that's M-a-g-n-u-s-o-n. I'm a spokesperson for LOCAL, which means Let Omaha Control Its Alcohol Landscape. LOCAL is a grass-roots organization comprised of neighborhood leaders in Omaha working to address neighborhood problems and issues that arise from alcohol businesses. I'm here today in support of LB339 as introduced and amended by Senator Howard. Our organization started eight years ago when a new owner bought nine convenience stores in Omaha and applied for liquor licenses. Neighbors were concerned about the oversaturation of liquor licenses in their neighborhoods where public safety and the quality of life issues related to alcohol were already causing an abundance of problems. Neighbors banded together to take their concerns first to the Omaha City Council and then, finally, to the Nebraska Liquor Control Commission. They did this not because they had idle time on their hands or wished to tie up the city or state commission with frivolous concerns, but because they cared deeply about their neighborhoods and their community and wanted their voices heard by their local and state government. These neighbors took personal time off from work to attend hearings. They carpooled to save on gas to travel to Lincoln. And we held fund-raisers to help pay for costs for copies and to hire an expert witness.

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

General Affairs Committee
February 02, 2015

During a four-year period when we actively sought to oppose certain liquor applications, we lost more times than we won in front of the Nebraska Liquor Control Commission. With the loss of those protests, we were sent a bill asking to pay costs for the hearings. It seems unfair to bill residents whose only concern and motivation is to protect the health and safety of their community while the attorneys, the commissioners, the court reporters were paid to be at the hearing. Neighbors were using their personal time and their money to bring their concerns to the attention of the governing bodies whose mission is to protect the health and safety of the citizens of this state. When that final bill arrived, literally it felt like a slap in the face to be charged for exercising our democratic right to voice our opinions in front of a state commission. We ask that you support Senator Howard's proposal as amended and not to penalize residents wanting just to have a say what their community looks like. And to address Senator Coash, as far as going to the city council, you're right, we go to the city council. But the city council can only make a recommendation. I mean, we've been told time and time again, it doesn't matter what the city says, it's up to the Liquor Control Commission. So if you really want to have a say you have to go to the Liquor Control Commission. That is what I have recommended to any neighbor who has come to our organization asking for our help or asking for an opinion. [LB339]

SENATOR LARSON: Thank you, Ms. Magnuson. Senator Coash. [LB339]

SENATOR COASH: Thank you, Chairman Larson. So if that's...if the city council really doesn't have...and they're charged under the act with recommendation powers, right? [LB339]

MARGIE MAGNUSON: Recommendations, right. [LB339]

SENATOR COASH: If it's your testimony that it doesn't matter, should we just erase that check out of it so that if you have a problem, skip the city council and go right to the commission, fee or not? [LB339]

MARGIE MAGNUSON: Well, I'm not sure I would want to do that. I mean, there have been times...and when we've come with concerns, that the city did side with the neighbors. And there are some people in the neighborhood who can only take off like maybe an hour. And so coming down to the city council is the only time that they can come and speak their opinion. You know, some people don't have that opportunity to take off personal time or anything like that to come down to the Liquor Control Commission. So I guess I wouldn't want to eliminate that. It is frustrating because I think 90 percent of the residents in Nebraska do not realize that local bodies can only recommend. And so a lot of times people just go to the city thinking, oh, the city voted for or against it and it's a done deal. And it's not in that case. And I don't think people realize that. So, no, I wouldn't want to recommend it. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: Okay, thank you. [LB339]

MARGIE MAGNUSON: And I guess I also wanted...and you were asking the other proponents about getting rid of the idea of an appeal. I wouldn't want that either. I mean, whether you pay a fee or not. [LB339]

SENATOR LARSON: Yeah, if you waived the fee. [LB339]

MARGIE MAGNUSON: Yeah, if you waive the fee you should have a right to be able to appeal. We have appealed on to the district court, so I wouldn't want to eliminate that. [LB339]

SENATOR LARSON: All right. Thank you for your time. [LB339]

MARGIE MAGNUSON: Thank you. [LB339]

SENATOR LARSON: Welcome back, Ms. Carritt. [LB339]

NICOLE CARRITT: Thank you. Good afternoon again, Senator Larson and members of the committee. My name is Nicole Carritt and I'm the executive director of Project Extra Mile. And we work to prevent underage drinking and youth access to alcohol across the state. We're here today in support of LB339 as introduced by Senator Howard and would be in support of the proposed amendment. We thank her for proposing it on behalf of the citizens of her district and residents across Nebraska. Our organization has worked with residents in multiple communities across the state in our nearly 20-year history as they've attempted to address critical liquor licensing issues. Some of these issues included the oversaturation of liquor licenses in their challenged neighborhoods as well as problematic, unhealthy liquor license outlets. These businesses have frequently caused additional struggles for already challenged neighborhoods. These residents have dealt with quality of life issues as well as countless threats to their physical safety, including assaults, shootings, and hundreds of police calls for service at some licensed establishments. What we began to see with increasing frequency and certainty was the utilization of the formal rules of evidence for cases before the Liquor Control Commission by the applicant or licensee. This standard of hearing requires a higher level of presentation and evidence on the part of the protestant and, perhaps unintentionally, the process seemed a form of intimidation used to discourage protest by residents of liquor licenses. Unfortunately, it's not uncommon for residents to lose a case before the commission in an attempt to protect their neighborhood. Instead, business interests often win over the interests of the residents and families. With the loss of the protest, the residents and citizens are required to pay the costs for that hearing. This practice seems unfair and does not seem to allow for the open participation in the licensing

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

General Affairs Committee
February 02, 2015

process. In summary, there's rational justification and very good reason for the Legislature to consider such a change. These protesters are less likely to have the resources necessary for overcoming such barriers. Additionally, they're not acting on their own self interests, but rather for the greater good and protection of their communities and neighborhoods. We ask that you support Senator Howard's effort to remove the obstacles of community participation in the licensing process by voting for LB339. Residents have to be able to define what they want their communities to look like and are facing a daunting foe oftentimes. They need to know that they aren't facing unfair and burdensome costs along the way. With that, thank you for listening to our comments. And I'd be happy to answer any questions that you may have. [LB339]

SENATOR LARSON: Thank you, Ms. Carritt. Is there any questions from the committee? Seeing none, thank you. [LB339]

NICOLE CARRITT: Thank you. [LB339]

SENATOR LARSON: Do I have any more opponents? We're past the proponents. Proponents, I'm sorry, you're right. [LB339]

SENATOR COASH: We're not used to seeing Ms. Carritt up here. [LB339]

SENATOR LARSON: I know. That was a slip. That's the second time I've done that to you, Ms. Carritt. I'm sorry. [LB339]

RICH HALVORSEN: My name is Richard Halvorsen, H-a-l-v-o-r-s-e-n, and I'm here representing myself. And I was at the city council hearing and I was at the State Liquor Control Commission hearing. And the city council makes it clear that this is not the final step. However, for Senator Coash to eliminate that, for one thing, would probably lead to a bigger workload for the state office. Plus, see, if there's no dissent, there's no hearing and it's purely advisory. But let's say if the neighbors hadn't written their letters of dissent, there would have been no hearing. I think...I guess they rubber stamp it, I don't know. But that was also made clear, too, if nobody files a written dissent there's no hearing, so I imagine it's...maybe rubber stamp is not the right word but they approve it without a hearing. Again, we're not talking about a large fee. In fact, it used to be it would be \$100 if you wanted to file a case. That was for a person. I don't know if each person. But I filed a case years ago and luckily they've done away with that, I mean, thankfully. And I didn't know at the hearing, it wasn't made clear--of course, not being a lawyer--that we had the right to appeal the case. Again, I, like some of the others, thought this was a done deal. Again, not being a lawyer and not really wanting to spend a whole lot of money (inaudible.) I got the impression at the hearing that, you know, this was it. This was a done deal. Again, I just think that for the...I think, at least according to the paper, the Liquor Commission

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

General Affairs Committee
February 02, 2015

said, well, we're bound to do this. It does sound like we spend a lot of time and money through e-mails and letters to collect a real small amount, so it's really not that cost efficient to do that. So I think, recommend to do that away. But basically, I think a citizen's right to appear before a public commission, I don't think should be taxed in any way. Thank you for your time. [LB339]

SENATOR LARSON: Thank you for your time. Do we have any questions from the committee. Seeing none, thank you for your time today. [LB339]

RICH HALVORSEN: All right. [LB339]

SENATOR LARSON: Do we have any more proponents? Seeing none, are there any opponents to LB339? Anybody in a neutral capacity? Mr. Rupe, welcome back to the General Affairs Committee. [LB339]

HOBERT RUPE: Thank you, Chairman Larson. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, I serve as executive director of the Nebraska Liquor Control Commission. And I want to thank Senator Howard for talking to me last week about some of the bill so I could appear in my normal capacity as neutral instead of in opposition. As originally drafted the bill, as she used it, is a sledge hammer to swat a fly because what it does is not just keep the commission from assessing costs of the hearing against an individual opponent, it keeps us from assessing costs period, which is to the tune of about \$15,000 per year. Also in there in attempt to...it also as it's drafted now, if any amendment you look at you'll probably want to look at page 4, line 10 and get rid of that because it also keeps the district court from assessing any hearing costs at all against an appeal coming out of 53-1,115, of which the vast majority of those appeals are denials of licensing or cancellation of a liquor license or a fine or a suspension because as drafted, like I said, it's smacking it completely which was not the senator's intent. The first thing I want to make clear that I think...and it's always dangerous to pick fights with newspapers. The Journal Star's reporting on this, especially the editorial, was very...well, wrong. It made it sound like we were charging a fee to testify. There is no fee to testify in front of the commission if you're called as a witness at a quasi-judicial function. What happens when you file a citizen protest and you are automatically able to get a hearing, you are basically an interpleader into it and become a party to the case with all the attendant rights and liabilities. And the liability is, under both our act and then also under the APA, it says costs shall be assessed against the nonprevailing party. Through a couple of audits from Mr. Foley's office when he was Auditor, I was told numerous times that "shall" means we shall send those letters out attempting to collect the \$25. The way it works is, the original costs are assessed in the order that goes out, which means they probably didn't see them, because it was part of the order. They saw the part that said they lost. Then after a certain amount of time if we did not get that, we send out the follow-up letters saying we will send this to our legal division. We send those to the Attorney General's Office and I have yet to

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

General Affairs Committee
February 02, 2015

see them file a lawsuit for \$25. However, we have now performed all of our duties by seeking to recoup the taxpayers' money. In most cases where there's a citizen protestant, it is also accompanied by another reason, i.e., a recommendation from the city or a show cause hearing either set by myself or requested by the Nebraska State Patrol. If we are the nonprevailing party, we pay for those. The way it works currently is, we pay for all the costs and fees. Mostly it's \$25. That's the cost that we are charged per hearing by our court reporter. There can be other attendant fees at that time which would include, if there's a subpoena cost or witness cost, with normally capping in contested cases, i.e., administrative sanctions against the licensee. And I see I'm out of time so I'll have to stop unless there's any questions. [LB339]

SENATOR LARSON: Senator Coash. [LB339]

SENATOR COASH: Thank you, Senator Larson. Hobie, I was pulling up the...one of the articles and you're quoted in there saying, take it up with the Legislature. So I appreciate you pointing them in the right direction. [LB339]

HOBERT RUPE: I actually follow the law when it says, "shall." [LB339]

SENATOR COASH: Well, we appreciate that. And I don't think anybody...this is a problem with policy, not the way it's... [LB339]

HOBERT RUPE: Yeah. [LB339]

SENATOR COASH: But I do want to ask you some questions that came up with some of the testifiers just about the commission's internal procedures. When one of these groups comes in and they want to protest...you call it a citizen protest? [LB339]

HOBERT RUPE: It's called a citizen protest. [LB339]

SENATOR COASH: Okay. When they want to--would filing be the right term--file a citizen protesters or...they've got to let the commission know that that's their intent, right? [LB339]

HOBERT RUPE: Yeah, yeah. In the past, we've always done it by letters. But if nothing else--and I think Senator Howard brought this up--is we don't get a lot of these. And so as part of this, if nothing else it made me revisit our internal policies. And what we've done now is, we actually have a form on our form site which requires information...sets forth. I made sure that's changed. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: Do they have to...do the protesters, do they just show up at the hearing or is there some requirement put upon them to let the commission know that they're showing up? [LB339]

HOBERT RUPE: The form does say whether they'll show up. If we get three or more the statute says we shall have a hearing. Generally, the way we do it, because they are not generally represented by counsel--if you've ever been to one of our committees, I serve as a hearing officer--so I let them go first--although the burden still rests upon the licensee--to state what are their objections to the issuance of the proposed license. They can also, as you heard from Ms. Magnuson, introduce and call other witnesses. As a party, they can call an expert witness. They can introduce other testimony other than their own testimony. If either party requests the formal rules of evidence within 72 hours prior to the hearing, the commission is bound by the rules of evidence as found in the district court. Other than that, it's a little more loose because then it's basically whether it's relevant and whether it's more probative than prejudicial testimony is a pretty easy burden on objections. But often, sometimes we have done those under the formal rules of evidence. Where I'm...in fact, in the case of Ms. Magnuson (inaudible) was the first time I had, as a hearing officer, had to make a Daubert decision on whether her expert witness was qualified as an expert witness to testify. And she was. So it is more than just coming, like, in front of a city council or in front of this hearing where you're looking at policy. It is more of a quasi-judicial nature and it can become very judicial in nature. What we have done is, we have restructured internally our policies and how the apportionment goes. The problem on the apportionment issue is, oftentimes it will be a group will testify and then we'll just send it to the group and they'll pay it. I will let you know that we would generally send it to the cities first because if they've recommended denial because they're also a party and so they will generally pick up the fees first. So it has made us look internally how we're doing it. So I hope that answered the question. [LB339]

SENATOR COASH: So will you get, once in a while, like a...if the city recommends denial, which happens from time to time, you'll have a hearing based on that, correct? [LB339]

HOBERT RUPE: Yes, that's correct. [LB339]

SENATOR COASH: Will a city representative then come and testify in front of the commission if they...? [LB339]

HOBERT RUPE: Hopefully. They have a much better chance of winning if they do. [LB339]

SENATOR COASH: But that's normal, right? [LB339]

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

General Affairs Committee
February 02, 2015

HOBERT RUPE: It's normal. [LB339]

SENATOR COASH: So would that be the mayor that shows up, a city councilmember or...?
[LB339]

HOBERT RUPE: We've had mayors, we've had city clerks, we've had city councilmen, we've had the local police chief, especially if it was primarily from the recommendation why the city council adopted a recommendation of denial. I've also said you guys pay those city attorneys a retainer for some reason, make them show up and present your case. For instance, when the city of Omaha recommends denial, Mr. Tom Mumgaard almost always shows up in front of the hearings and he will question and introduce evidence. [LB339]

SENATOR COASH: Okay. Well, I think you were getting there but I want to make sure. Regardless of what we do with this bill, it seems like the commission is taking a look at, I guess, the communication and the message that goes out so that...I mean, \$25 is what you have to charge. You don't have a choice in that unless we change the law. But we ought to at least be up front with the citizens who want to testify so that it's at least...I mean, they may feel like they were kicked in the gut, but at least they know it's coming. [LB339]

HOBERT RUPE: Exactly. And it's clear on the new form. I mean, and there's no mandate they use the form. They can do it. But we make it available and because it's trying to make sure the form gets their name, their address, their phone number, whether they would agree to receive notices and things electronically because it's better and more efficient. It also has them put the reason why, so we could sort of streamline the process. But there also are things that... [LB339]

SENATOR COASH: Is there some part on the form that says... [LB339]

HOBERT RUPE: ...there's a line on it that says, the nonprevailing will be assessed fees. [LB339]

SENATOR COASH: Okay. So at least the commission is making steps to be a little more up front with some of these groups. [LB339]

HOBERT RUPE: Exactly. [LB339]

SENATOR COASH: With...just two more quick questions. Do you...does the commission accept written testimony, letters, from citizens on a licensee? [LB339]

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

General Affairs Committee
February 02, 2015

HOBERT RUPE: Generally, we will do so. There is a problem, of course, if the request for the formal rules of evidence are applied because then they are possibly subject to a hearsay objection. [LB339]

SENATOR COASH: Okay. [LB339]

HOBERT RUPE: But normally, they're not and so we would accept those as part of the letter. The letters we receive normally is part of the application process, but not at the hearing. Those go into the file. If we get three or more of those, then we will automatically set for a hearing. [LB339]

SENATOR COASH: But if a group wanted to come in front of the commission and had a whole bunch of neighbors that had very serious concerns about that licensee and they sent those letters to you to be distributed to the commission, you will accept those? [LB339]

HOBERT RUPE: Yes. [LB339]

SENATOR COASH: Will you charge? [LB339]

HOBERT RUPE: No. [LB339]

SENATOR COASH: Because it sounds to me like what folks want is just to be heard. [LB339]

HOBERT RUPE: Yeah. [LB339]

SENATOR COASH: And if they're being heard through the written word, they're not being charged. But if they want to say what they feel or what they think, rather than write it down, then that's when they get a bill. [LB339]

HOBERT RUPE: Well, that's not...it's when they become a party. Let's say you have three people who file it which causes the jurisdictional issue to have a hearing but then they bring in seven other people to testify. Those other seven people aren't going to be receiving any notice or apportionment because they're being called as witnesses by the party. It's the three people--or if we get more than three people, who send the letters in during that window who basically are interpleading and interjecting into this process and saying, we want a hearing. [LB339]

SENATOR COASH: Does the licensee...the licensee has right to counsel, correct? [LB339]

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

General Affairs Committee
February 02, 2015

HOBERT RUPE: Correct. [LB339]

SENATOR COASH: So if the licensee comes in front of the commission and there are citizen protesters who don't want to see that license granted and so let's say they pay their...or they file-- they don't pay till later--but they testify in front of the commission about why they don't feel that that licensee should be granted a license, does the licensee's counsel get the opportunity to cross examine the citizens? [LB339]

HOBERT RUPE: Correct, yep. [LB339]

SENATOR COASH: Does that happen? [LB339]

HOBERT RUPE: Occasionally. Most times they'll ask a couple of questions, how close do you live to the location? We'll make sure that it's an actual citizen. The problem which I can see right now is, if it's a smaller town you pretty much know everybody. But in a large city you might be protesting a letter...we've gotten some protests for, say, a license at 60th and Ames but they live at 125th and Dodge. How close are they being really impacted by it? So sometimes they'll be asked questions like, how close do you live? Most times, I've got to give the citizen protestants credit, they're usually in a nearby neighborhood. They're usually represented, at least affiliated through a neighborhood association. So they're usually...for nonlawyers, they're usually pretty well prepared. [LB339]

SENATOR COASH: But by being a party to the case, they open themselves up to cross-examination by the licensee? [LB339]

HOBERT RUPE: They do. [LB339]

SENATOR COASH: Are they sworn in? [LB339]

HOBERT RUPE: Yes, they are. [LB339]

SENATOR COASH: So presumably if they're sworn in and they're subject to perjury and lying on the stand and all that...I mean, if they give a false statement then they can be held accountable for that. [LB339]

HOBERT RUPE: They can be held accountable, yes. It is very much...I've described the commission hearings a lot of times as the county court of administrative law because we do a lot

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Transcriber's Office

General Affairs Committee
February 02, 2015

of cases quickly. But it's almost always sworn. You get a lot of people who are pro se, but you also get people who are represented by counsel, so it's...and you've got to remember, actual citizen protest cases are a very low number. Most of the cases which come before the commission are either a case being brought by the Attorney General against the existing licensee--those are called administrative citation cases where they are subject to suspension, cancellation, or revocation--or to show cause issued by the commission or by the Patrol during an application where there's some question about the person's character or there's some financial things. A lot of times when you get a citizen protestant, it's actually almost--we call it--triple whammy. You're usually getting...the Patrol has requested a show cause hearing from me; you're usually getting a recommendation of local denial; and you're also getting a citizen protester. And so a lot of times they'll sort of layer on each other so we have to be careful that we're not just--you know, for efficiency--not going in too deep. But usually those happen when there's a large question about the character or reputation of the individual. [LB339]

SENATOR COASH: Okay. I will stop my questions. Thanks though, Hobie. [LB339]

HOBERT RUPE: Okay. [LB339]

SENATOR LARSON: Thank you, Senator Coash. [LB339]

SENATOR RIEPE: Mr. Chairman, I will try to be brief. [LB339]

SENATOR LARSON: Senator Riepe. [LB339]

SENATOR RIEPE: Thank you. My question is, is are your fees fixed fees or are they cost...based on cost? [LB339]

HOBERT RUPE: They are a cost fee. Right now, we have got what I really like to call a pretty good deal with our existing court reporter. She charges us a certain fee for preparation of the minutes. But she also charges us \$25 for every active hearing cost. [LB339]

SENATOR RIEPE: So someone that's coming there may not know what their costs are going to be at the conclusion of the hearing. [LB339]

HOBERT RUPE: Exactly. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR RIEPE: Okay. The other one that I have, are your fees used to discourage everyone from coming forward? [LB339]

HOBERT RUPE: Not at all. [LB339]

SENATOR RIEPE: Okay. Thank you, Mr. Chairman. [LB339]

SENATOR LARSON: Thank you, Senator Riepe. Senator Kolterman. [LB339]

SENATOR KOLTERMAN: Yeah. Thanks for coming again today. [LB339]

HOBERT RUPE: Yes. [LB339]

SENATOR KOLTERMAN: My question...you alluded earlier when Senator Coash was asking questions. Like a city, if the city comes and testifies, do you send them the same bill that you would anybody else? [LB339]

HOBERT RUPE: Yep,... [LB339]

SENATOR KOLTERMAN: Okay. Thank you. [LB339]

HOBERT RUPE: ...if they lose. Remember, it's only against the party...the person who loses. Oftentimes the applicant gets the bill or the licensee--if it's an existing license--gets the bill. [LB339]

SENATOR LARSON: Thank you, Mr. Rupe. Any further questions from the committee? Thankfully, there's none. [LB339]

HOBERT RUPE: Thank you. [LB339]

SENATOR LARSON: (Exhibits 4, 5, 6) For the record, I forgot to read in...we do have two proponents to LB339, Dave Schinzel of the Dundee Memorial Park Association and Amy Miller of the ACLU of Nebraska. And we have an opponent, James Moylan, of the Nebraska Licensed Beverage Association. So I wanted to make sure that I got those on the record before the hearing ended. Do we have any more neutral testimony? With that, I will close the hearing on LB339. Oh, Senator Howard, would you like to close? [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR HOWARD: Thank you, Chairman Larson, for remembering me. [LB339]

SENATOR LARSON: Mr. Rupe was up here for so long. [LB339]

SENATOR HOWARD: I'm sorry. Just in closing, I would like to encourage the committee to consider LB339 as a great way to encourage public input from citizens who truly care about their neighborhoods. And in regards to Senator Coash's question as he speeds away, interestingly enough, this was an issue that I inherited from my mother from her tenure here in the Legislature. In 2008, there was a group of Infinite Gas stations that wanted liquor licenses in my district. And they complained to the city council...the neighbors complained to the city council. The city council approved the liquor licenses and the citizen protest was brought to the Liquor Control Commission and the licenses were denied. Interestingly enough, though, in 2014, the owners of those gas stations were indicted in Chicago for \$12 million dollars' worth of bank fraud. And so in this instance, the neighbors were probably right to have engaged in that appeal process. I thank the committee for their time and I would be happy to try to answer any final questions anyone may have. [LB339]

SENATOR RIEPE: May I ask one question, Senator? [LB339]

SENATOR LARSON: Senator Riepe. [LB339]

SENATOR RIEPE: First of all, you are the good daughter, so. [LB339]

SENATOR HOWARD: Oh, thank you. [LB339]

SENATOR RIEPE: My question is just, what precedent is being set if this fee is waived? And I'm not talking within the Liquor Commission, I'm just saying big picture. You know, one will get you ten is kind of a common rule. You do it for one, you do it for all and I'm trying to figure out, do we open Pandora's box when we...? [LB339]

SENATOR HOWARD: Senator Riepe, that is a great question. And what I tried to do in my research about this was find other boards or commissions that the Legislature had created that required a fee. And I was unable to find any. My comparisons were the Board of Health and the Public Service Commission and the State Board of Education. And none of those require a fee. And so in this instance, getting rid of this fee really wouldn't be a Pandora's box. In fact, it would be potentially closing a Pandora's box. [LB339]

SENATOR RIEPE: Okay, thank you. [LB339]

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

General Affairs Committee
February 02, 2015

SENATOR HOWARD: Thank you. [LB339]

SENATOR LARSON: Thank you, Senator Riepe. Any others? With that, I will close the hearing on LB339. [LB339]

SENATOR HOWARD: Thank you. [LB339]

SENATOR LARSON: Thank you, Senator Howard. Moving to our last bill of the day, LB460 and Senator Nordquist. We will wait a few minutes for Senator Nordquist. We'll stand at ease for a minute. [LB339]

SENATOR NORDQUIST: Thank you, Mr. Chairman. I'm State Senator Jeremy Nordquist from District 7 in downtown and south Omaha, and I'm here to introduce LB460 to address two issues relating to liquor licensure. The first issue I want to address was made apparent to me and my office through communications with the Liquor Control Commission and the State Patrol which is, we feel, a public safety concern with what we commonly refer to as party buses. In 2011, the Legislature passed a bill that allowed limousines and party buses to have consumption of alcohol inside the vehicles. Since that time, we've seen incidents arise in which underage drinking has occurred on the buses and even unfortunate incidents which have put...one publicized incident that resulted in death and another where a 19-year-old woman had to be rushed to the hospital. It's becoming a major concern for law enforcement in our state because of the lack of regulation and oversight of the party buses. And, unfortunately, they're becoming a haven for underage drinking. In addition to adding charter buses and limousines, the bill would also establish licensure of pedalpubs. Pedalpubs are passenger-powered bikes with an employee who is actually in control of steering the bike and they've become popular tourist attractions in Lincoln and in my district, in downtown Omaha. They're prohibited from allowing alcohol on the bikes without violating the state's open container laws. Those who are in violation right now are guilty of a Class III misdemeanor. Pedalpub owners, who will testify more in depth about their local operations approached our office about being included in the Liquor Control Act in order to allow patrons to have alcohol on the bikes and to ensure they are properly regulated. I'd like to note that the bill does not allow for the sale of alcohol on pedalpubs, it just allows for passengers of drinking age to bring their own. Essentially, this bill allows for these attractions to have alcohol on them while ensuring some level of accountability by putting safety measures in place. This bill also puts all businesses that allow patrons to consume alcohol on the level playing field operating under the same law. As far as just the overall bill, we are opening up a section on the charter buses and limousines and pedalpubs that is currently already established for other means of transportation, such as airlines and I believe trains as well. We think that without any licensure or any kind of regulation that we're setting up a situation where the state doesn't have the ability to regulate and doesn't have the ability to make sure that we don't have unscrupulous operators

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

General Affairs Committee
February 02, 2015

out there putting the safety of minors at risk. I'd appreciate your favorable consideration of LB460. [LB460]

SENATOR LARSON: Thank you, Senator Nordquist. Senator Coash. [LB460]

SENATOR COASH: Thank you, Senator Larson. Senator Nordquist, you made it clear in your opening that it doesn't allow the pedal guys to sell? [LB460]

SENATOR NORDQUIST: That's right. [LB460]

SENATOR COASH: What about the buses? [LB460]

SENATOR NORDQUIST: That would be the same as right now. Yeah. [LB460]

SENATOR COASH: So it allows it? [LB460]

SENATOR NORDQUIST: There's no sale. [LB460]

SENATOR COASH: So it allows them to...it allows the buses, in this example, to have alcohol but they can't sell it to them. [LB460]

SENATOR NORDQUIST: That's right. [LB460]

SENATOR COASH: Can they serve it to them? I mean, I'm trying to figure out what type of license this is similar to. Is it similar...it's not an off-sale. It's not similar to an off-sale license, so we're not...because they're not saying, I'll sell you a six-pack or a bottle of wine. And it's not like a retailer where they're saying, I'll sell you a glass and serve it to you. Correct? [LB460]

SENATOR NORDQUIST: Right, right. That's right. [LB460]

SENATOR COASH: Okay. So this just allows the regulation of the possession of alcohol within the confines of... [LB460]

SENATOR NORDQUIST: I guess possession and consumption, I suppose. Yeah. [LB460]

SENATOR COASH: Okay. And it puts it on whoever has the license to do that? Okay. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR NORDQUIST: Whoever is operating it. Right. You know, we hear too many stories of 21-year-olds renting a party bus. And right now, and I think that Hobie can speak to the issue that the State Patrol doesn't even have the ability to go on board--my understanding is, at least--without a warrant, I believe is what he said. So we really have no ability to ensure that we don't have underage drinking going on. We know that this is happening and we've heard plenty of stories about it. [LB460]

SENATOR COASH: Right. So your bill, I can tell it just because it came to our committee, gives the power to the Liquor Commission versus giving any power to the Public Service Commission, who I know is here, who regulates the transportation. So in your research of this issue there's--and this would probably be a question for maybe the PSC if they come up--the Public Service Commission has no arm of the law that says to a transportation provider, if you're going to operate a party bus--which they license them--and you do it irresponsibly, i.e., let somebody who is underage drink, there's nothing the PSC can do? I mean, the power of the commission is the power of licensure. And I'm talking about the Liquor Commission. But the power of the Public Service Commission is also the power of licensure and that's what keeps everybody in line. You don't do what I want as the regulator, I yank your privilege of your license to do what you're asking to do, whether it's serve alcohol, make alcohol, distribute alcohol, on the side of the Liquor Commission. And then on the side of the Public Service Commission it's take people, citizens, and moves them from point A to point B. So nothing the Public Service Commission can do? Is that what you understand? [LB460]

SENATOR NORDQUIST: I wouldn't say definitively, but my understanding is that we need to enhance licensure on one side of it. But the Public Service Commission, at least my thought of that, is more just the transportation component of it, not anything dealing with the consumption of alcohol. So we really are splitting two...on a line here between two agencies, which way it goes I don't have necessarily a strong feeling as long as we can ensure that the issue gets addressed. [LB460]

SENATOR COASH: Right. Yeah, I mean, because for me it's both of those commissions are charged with public safety, which is your concern. And they both have that heavy arm of the license to do so. I don't know. I'm trying to figure out where it best fits. I'd appreciate you giving a stab though and we'll see how it goes. Thank you. [LB460]

SENATOR LARSON: Thank you, Senator Coash. Senator Riepe. [LB460]

SENATOR RIEPE: Thank you, Senator Larson. Senator, thank you for being in here and working overtime. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR NORDQUIST: That's all right. [LB460]

SENATOR RIEPE: My question is, is passage of this, would that be the death knell to the party bus business because of liability? [LB460]

SENATOR NORDQUIST: You know, I don't think it would be. I mean, I guess I don't know what type of additional coverage they would need to get in that situation and I'm sure the operators can speak to that. They would have to be responsible operators or have their license removed. But I don't know that they would have any additional liability, I guess. I don't know why this would open up additional liability for them. It certainly could be the death knell for individual operators who the Liquor Control Commission doesn't feel is operating responsibly. [LB460]

SENATOR RIEPE: A party bus without a party. [LB460]

SENATOR NORDQUIST: Responsible party, Senator. [LB460]

SENATOR RIEPE: Yes. Thank you. [LB460]

SENATOR LARSON: Thank you, Senator Riepe. Senator Hansen. [LB460]

SENATOR HANSEN: Thank you, Chair. Senator Nordquist, so going back to the early question of Liquor Control Commission versus Public Service Commission, under the way your bill is written, they would...say a party bus is irresponsible and does have their liquor license--in this case--pulled. They would still be able to operate as a limo service or party bus, but they just wouldn't be able to provide alcohol? [LB460]

SENATOR NORDQUIST: Absolutely. Right. That's right. [LB460]

SENATOR HANSEN: Okay. That was my clarification. Thank you. [LB460]

SENATOR NORDQUIST: I believe that's right. [LB460]

SENATOR LARSON: Thank you, Senator Hansen. I have a question or two, Senator Nordquist. [LB460]

SENATOR NORDQUIST: Yes. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Do you know if the Liquor Control Commission regulates anyone else that doesn't actually sell alcohol, meaning, what you're trying to do is add regulations on a class of businesses that don't actually sell the alcohol. Do you know, is there any other thing that they regulate that actually holds nothing in terms of... [LB460]

SENATOR NORDQUIST: No, I can't think of any off the top of my head. [LB460]

SENATOR LARSON: And I get the concern. You know, we all saw the stories. And I view this, in essence, a little bit of a slippery slope because I'm not sure we do this...and underage drinking is obviously a concern. We hear a lot of these bills. I don't think we regulate churches on communion. They provide liquor or an alcoholic beverage. And I do know that some of them provide that to under 21s. Is this a concern? Should we force the churches to get liquor licenses? [LB460]

SENATOR NORDQUIST: If we started seeing incidents of binge drinking coming out of churches of underage individuals, maybe. Maybe we would look at it. [LB460]

SENATOR LARSON: We're both Jesuit educated. We've been down that road, Senator Nordquist. And lastly, would you consider--and this would be my own preference working with you--actually a friendly amendment on the pedapub side that would allow them to get licensed in order to sell alcohol on the pedapub during the ride? Is that...or did you...during your research did you find something that would prohibit that? [LB460]

SENATOR NORDQUIST: No. [LB460]

SENATOR LARSON: I just know that as long as the dude steering is not drinking, but just the pedalers... [LB460]

SENATOR NORDQUIST: Right, right. You know, it certainly...I was approached because it was a constituent issue in the Old Market of the pedapub. And that's kind of how we started working on this. We started talking to the commission and then we obviously saw stories come forward kind of in the meantime in talking to the commission about the party bus issue. So certainly, both sides can stand on their own. So...but I certainly think, as a Legislature with the issues that we are seeing, you know, we created this issue just a few years ago. So it's a new issue and when you open up the ability on the party buses and limousines and had to let it go for a few years. There might be a need to step back and take a look at do we need to regulate this a little more. But to answer your question, yeah, both can stand on their own, both could move forward separately and I'm always amenable to that. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: But would you support...I guess, would you support allowing like the actual pulling of the draft beer on the pedalpub to where they could...and obviously, at that point they would need a liquor license because they would be serving as well. Is that something that you would be open to? You know, you got the driver in the middle and then you've got a bartender. You get what I'm saying, I'm trying to... [LB460]

SENATOR NORDQUIST: Right, right. So that...what kind of license would they fall on? Would we create a...? [LB460]

SENATOR LARSON: I mean, we'd have to work with the Liquor Control Commission. It would probably be...they probably would have to be attached to...I mean, it would just be a regular operator's alcoholic permit. But I just was wondering if that would be something that would interest you? [LB460]

SENATOR NORDQUIST: Yeah. I'd be happy to talk about it. [LB460]

SENATOR LARSON: Because then, obviously, then they would be serving alcohol, they would be...that would follow the regulations, so. But you'd be open to that? [LB460]

SENATOR NORDQUIST: Yeah. I'd be happy to talk about it. Yeah. [LB460]

SENATOR LARSON: All right, excellent. That's...those are my questions, because that's something that I'd actually be interested in changing a little bit. [LB460]

SENATOR NORDQUIST: Yeah. Great. [LB460]

SENATOR LARSON: Thank you. [LB460]

SENATOR NORDQUIST: Any other questions? [LB460]

SENATOR LARSON: Any further questions? [LB460]

SENATOR NORDQUIST: Thank you. [LB460]

SENATOR LARSON: Thanks. Will you be staying for closing? [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR NORDQUIST: Yes, I will. [LB460]

SENATOR LARSON: All right. Thank you, Senator Nordquist. And we'll start with the proponents. Welcome back, Mr. Rupe. [LB460]

HOBERT RUPE: Thank you, Chairman Larson. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of the Nebraska Liquor Control Commission, testifying in support of LB460. It was in our legislative letter that brought this up. I'll try to hit the highlights and answer any questions. This has been an issue for the commission, not just in with the recent tragedy that happened last year. It was in our legislative letter the previous year in 2013. It first was brought to our attention by the Nebraska State Patrol. There was a party bus in Nebraska City. The people stopped at a convenience store, they decided to go in and shoplift some items--some of the members did--and then sped away or the bus left. Well, they were able to ID the bus, they pulled it over because then they had probable cause a crime had occurred and was able to...had a reasonable suspicion to stop the bus. Of the 27 people that were on there, 19 were minors in possession of alcohol. Nineteen MIPs were written on that day. The concern that was brought to the commission from the patrol was that people of age were renting these and then they were driving round. And the Patrol's position was, unless you can do an articulable position that there's a crime occurring, you can't really stop somebody. You need to have a reason why. The difference by having a liquor license is then you're able to be stopped and checked for whether you're in compliance with the act. And that was why they brought the issue to us. Unfortunately, then you saw the incidents that happened last year with the young man from Nebraska Wesleyan who was tragically killed on I-80. And a couple...about a month after that you had the 19-year-old who was taken to detox off of a party bus. So we believe it's a health and safety concern. To answer a couple of questions that I heard, it is against the law to open a...to have a bar, club, or any other place open to the public for the consumption and/or sale--it can be just consumption--without a liquor license. That was one reason why when we looked at this we looked primarily just at the consumption because that's what we were hearing. If you want to make it...allow them to sell, that's of course up to you. We based this on existing statutory schemes. There already is sort of an overlay where the PSC and the commission already have dual licensing. Train cars, dining cars on trains have been dual licensed by both entities for 40-plus years. Planes are licensed by both us and the federal government. Boats, the old riverboats where they have the restaurants on them, were both licensed so there was an overlay. The issue here was, very simply, that these places, especially the party buses--and we haven't heard nearly the complaints about the limousines and so I'll put that out there right away--the party buses are acting like bars. They're large, they're neon lights, they're going around, they are havens for underage drinking and havens for overconsumption, the same thing we see in problem retail establishments. With that, I'll answer any questions; I see my light went red. [LB460]

SENATOR LARSON: Thank you, Mr. Rupe. Senator Coash. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR COASH: Thank you, Chairman Larson. Hobie, should we make the churches get the liquor license to give communion? [LB460]

HOBERT RUPE: Well, believe it or not, the act does specifically address that. It specifically addresses that they are excluded from the act for bona fide religious services so the act does recognize that. For instance, when I was 14 and a good Lutheran boy, I first got my taste of strange wine, so. But actually the act does contemplate that. The other issue from churches, who we license a lot, we license them through the SDL processes, especially in fish fries. Right now I think we're actually getting...the applications for Lenten fish fries are starting to come into the commission as we speak for future SDLs. [LB460]

SENATOR COASH: Hobie, do you get any party buses applying for SDLs? [LB460]

HOBERT RUPE: Nope. [LB460]

SENATOR COASH: Buying alcohol for a minor or providing it for a minor is against the law. [LB460]

HOBERT RUPE: Class I misdemeanor. [LB460]

SENATOR COASH: But if the person who's doing it doesn't have a liquor license it becomes a function of regular law enforcement, not of the commission to enforce. Is that correct? [LB460]

HOBERT RUPE: That's correct. Then it's a criminal act. [LB460]

SENATOR COASH: Because presumably, what's happening on these party buses, as in the example you gave, you've got minors drinking. Hopefully they didn't buy it themselves, somebody got it for them so it's against the law. Where does the enforcement fall? I mean, is it because they don't have a license, thereby probable cause that law enforcement can't knock on the party bus and say, hey, we just want to make sure everybody in here is safe, just like they do checks in bars and everything like that. Is that what you're getting at here? [LB460]

HOBERT RUPE: That's exactly right. If you have a liquor license the Patrol, as our primary arm, and local law enforcement have the right to enter onto a licensed premise to make sure that all aspects of the act are being complied with. That's why you'll see in Lincoln, especially on a busy Saturday night, LPD officers will do a walk-through. Now what happens there is, let's say you get a minor in a bar in downtown Lincoln and their friend is buying them the alcohol back in the corner. Not only is that friend possibly criminally liable, but that licensee has now got some skin

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

General Affairs Committee
February 02, 2015

in the game because they're allowing a minor on their premises to consume. And so their license could be suspended, cancelled, or revoked. The issue here on these party buses is, right now the buses seem to be saying, hey, we sold to a 21 guy, we don't ID everybody, we're not responsible for what's going on in the rest of the bar...on the rest of the bus. We think that is posing a public health, safety, and welfare risk. So we're trying to put them on the same...you know, have them have some skin in the game. And as part of that, we believe they should get licensed. Now the license type you'll notice is not that onerously expensive because they're not buying it...they're not selling it, as drafted. They also are not subject to the occupation tax because they're going to be going around multiple locations and there's only one license. Not every single bus has to be licensed. They have to have one master license and then they have their copy of the license on the buses, which is exactly how we've done planes, how we've done trains, where the company who has it has the master license but then each of those cars has got to have the license. So we weren't trying to reinvent the wheel, we were looking at something which has been in the act pretty much since its inception. [LB460]

SENATOR COASH: Thanks, Hobie. [LB460]

SENATOR LARSON: Thank you, Mr. Rupe. Any more questions? I have one. Oh, did you have one, Senator? [LB460]

SENATOR HANSEN: I did. [LB460]

SENATOR LARSON: I'm sorry, you first. [LB460]

SENATOR HANSEN: Yes, thank you, Chair. My question is, is there any organization that currently has their liquor license but doesn't sell, so in other words, a liquor license just for consumption? [LB460]

HOBERT RUPE: We've had those done before. Usually those are done through SDLs. You'll have, say, where people would have a BYOB or a beer tasting, where they'll allow the beer to come in and be tasted. You'll see some of the Shakespeare on the Green events will often be that way. The only way to be is if you're open to the public for consumption, you need a liquor license even if you're not selling it. Every year about this time of year we always have to notify a jewelry store or two who wants to do a guys' night to buy the perfect jewelry for the upcoming Valentine's Day where they'll do pizza and beer and they'll serve it. Well, they're open to the public, you can get on. That would be the problem with the pedalpubs. Anybody can go up to those a lot of times, pay the fee and get on. Therefore, they'd be open to the public, you know, I mean, so it's not a closed club. There's a difference if you and five guys are in your own place drinking, consumption, that's...a license would not be required. If you've got a sign out that says,

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

General Affairs Committee
February 02, 2015

"come on in, free beer," a license would be required because now you're open to the public for consumption, even if they're not charging for it. [LB460]

SENATOR HANSEN: And so to clarify, if I say had--based on your example--a theater and I advertised it as BYOB and I got an SDL, I would be liable if, say, a minor was consuming in my theater? [LB460]

HOBERT RUPE: Exactly. You would have the SDL through that process. So you would either--to get an SDL--you would have to be a licensee or one of the approved nonprofits or religious organizations which can get SDLs. [LB460]

SENATOR HANSEN: Great, thank you. [LB460]

SENATOR LARSON: Senator Coash. [LB460]

SENATOR COASH: Thank you, Senator. Senator Hansen made me think of another question. Under the bill as proposed, if this bill became law who can get in trouble? Presumably, the licensee. [LB460]

HOBERT RUPE: The licensee could get in trouble with us, the commission. [LB460]

SENATOR COASH: What about the...let's say that the thing that went against the license was minors drinking. So, if law enforcement got involved the licensee might be in trouble not only from the law but with the commission. What about like...how would this bill work with regard to the, like, the adult who signed the contract to rent the party bus? [LB460]

HOBERT RUPE: He could also...he could be found criminally liable...now, which happens a lot. Now, I mean, a compliance check. Let's say a bar fails a compliance check. The bar is facing suspension, cancellation, or revocation of its liquor license. The individual clerk who made the sale could be charged by the city attorney or the county attorney for a Class V misdemeanor, and oftentimes they are. [LB460]

SENATOR COASH: And the minors could get an MIP. [LB460]

HOBERT RUPE: Well, yes. A compliance check, no, because they're a cooperating minor. But a normal, a "real" minor case, yes, the minor would get MIP. The issue before us is, of course, is

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Transcriber's Office

General Affairs Committee
February 02, 2015

there a lower standard in front of the commission because it's an administrative action instead of a criminal action? And we're trying to get the people to have more skin in the game. [LB460]

SENATOR COASH: I get it. Thanks. [LB460]

SENATOR LARSON: Mr. Rupe, every example that you listed, the plane, the boat, all those, they were actually selling alcohol on every one of those, though. Correct? [LB460]

HOBERT RUPE: Correct. [LB460]

SENATOR LARSON: All right. Thank you. I think you're good. [LB460]

HOBERT RUPE: Thank you, sir. [LB460]

SENATOR LARSON: I'll take the next proponent. Welcome to the General Affairs Committee. [LB460]

KEVIN LETNES: Senator Larson and the General Affairs Committee, thank you for having me today. My name is Kevin Letnes, K-e-v-i-n L-e-t-n-e-s, and I'm one of the co-owners of the Omaha Patio Ride which is classified in this bill under the pedalpub portion that Senator Nordquist spoke to earlier, so...here to support the LB460 bill for a few reasons. I'll touch on the economic impact that we feel like this will have for the Old Market Omaha area as well as the state of Nebraska. My co-owner sitting behind me will come later to touch on some safety concerns that may be out there as well as a plan of action if this bill were to get passed through the Senate. So just an overview of pedalpubs, for those of you who may not know what they are. So it's a 16-passenger--at least in Omaha--it's 16-passenger; I think Lincoln has a 15-passenger, so those are the only two pedalpubs operating right now that do two-hour tours, two- to three-hour tours around the downtown areas, usually primarily used for pub-crawls. We have birthday parties, team-building events, we collaborate with some local businesses as well. In Lincoln they look at doing brewery tours and things of that nature. We've been in operation for four years and this...the consumption of alcohol on the bike itself is the number one inhibiting growth factor that we're currently experiencing. And to be honest, it's the first thing people ask when they're asking to rent the bike itself. We hear it a lot. Can you drink on the bike? No, it's a state law not to and we definitely have been making sure that we're holding to that and not allowing it. But we know that this could definitely be a big growth factor for us. Additionally, many other states and cities have already passed this and the safety issue does not seem to be a concern; states including: Minnesota, Wisconsin, Texas, Tennessee, as well as Georgia and Oregon, and a number of others are in talks of it. Going back to the economic impact, we bring a ton of tourism

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

General Affairs Committee
February 02, 2015

on these bikes. They're very unique and fun in their own way. And so we know more than 30 percent of our passengers come from outside of a 30-mile radius of Omaha, specifically, so it brings in a lot of tourism. We know average spend for tourists, both day and overnight, is pretty substantial and we've estimated that this could be over \$200,000 of economic impact if the bill were to pass. So we understand that there may be concerns of allowing alcohol on the bikes themselves, but we want you guys to know we're obviously primarily concerned about safety first. And we know that this is definitely something that could benefit the Old Market in Omaha area. I'll take any questions that you might have. And like I said, my co-owner will touch on safety and future plans of action as well, so just keep that in mind. [LB460]

SENATOR LARSON: Thank you, Mr. Letnes. Senator Coash. [LB460]

SENATOR COASH: Thank you, Senator Larson. Mr. Letnes, are you asking to be able to allow your customers to consume or do you want to be able to sell to them as well? [LB460]

KEVIN LETNES: So, yes. To Senator Larson's point earlier, we actually would prefer not to sell alcohol on the bike. We would prefer to be more of what the party buses are right now where they're able to bring beers or malt beverages aboard the bike. We'd be open to limiting the amount of beers and things like that that they could bring. But, yeah, we'd probably be more open to letting them bring it on board as opposed to selling it, pouring beer for them and that nature. [LB460]

SENATOR COASH: All right. Thank you. [LB460]

KEVIN LETNES: Yep. [LB460]

SENATOR LARSON: Would you be opposed if we allowed both...? [LB460]

KEVIN LETNES: I mean, I don't think...yeah, I don't... [LB460]

SENATOR LARSON: ...to where you, as a business owner, would have the opportunity to either let them bring their own or they could...someone else could...you'd be able to serve, should that be your own business decision or is there... [LB460]

KEVIN LETNES: Right. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: ...are there issues with...do you get what I'm asking? Just so you, as a business owner, can decide what you want? [LB460]

KEVIN LETNES: Yep. Yeah, I think we'd be open to it. Obviously, I think I'd want to more understand what the liability difference would be, if there is a liability difference for us to sell it versus the passengers to bring it on board. So that would be the one thing I would want to... [LB460]

SENATOR LARSON: Yeah, and I guess that would be your call in terms of just from us legalizing both is kind of what I was getting at. The ability to you so you could...yeah... [LB460]

KEVIN LETNES: Yeah, if it were both and it was an option to us, I don't think we'd be concerned with that. [LB460]

SENATOR LARSON: Excellent. And also, for the record, you're testifying more specifically just to the pedalpub portion of LB460 and not the party bus. [LB460]

KEVIN LETNES: Correct. And I think we're in support of everything being regulated on the same playing field as it was spoke to earlier. So I think that this bill does that and we're definitely willing to be compliant with those regulations. [LB460]

SENATOR LARSON: All right. Thank you, Mr. Letnes. Any further questions? I think you're good. [LB460]

KEVIN LETNES: Okay. [LB460]

SENATOR LARSON: Have a nice day. Welcome to the General Affairs Committee. [LB460]

DAVID SAUER: Thank you. Good afternoon. My name is David Sauer, that's D-a-v-i-d S-a-u-e-r, I'm a co-owner of the Patio Ride in Omaha and I'm in support of LB460 as well. So you may be wondering if pedalpubs are safe and we have a lot of data to support that they are. The last four years of our operations in Omaha we've had zero accidents in 600 tours. We also have friends that own other operations in Milwaukee, Nashville and they have zero to very limited accidents as well. Our liability insurance costs have gone down each year, which is a sign that there's been low claims and also low accidents in our pedalpub industry. So safety really hasn't been a concern, but if this law does pass it will remain our number one priority, as it is today. And we're going to enact a few things or we would propose a few things to make sure that it continues to be a very safe experience for our riders. As you touched earlier, we would

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

General Affairs Committee
February 02, 2015

allow...we would want to limit the number of alcoholic beverages that passengers could bring on board. In other cities they limit it to two or three per passenger. We'd only allow aluminum cans or plastic cups; no glass bottles. We'd recycle all containers. And then also we'd also partner with local taxi services to encourage safe rides home from the Omaha district. [LB460]

SENATOR LARSON: Thank you, Mr. Sauer. Is there any questions from the committee? Seeing none, have a nice day. [LB460]

DAVID SAUER: Thank you. [LB460]

SENATOR LARSON: Hello. Welcome to the General Affairs Committee. [LB460]

DREW PHILIPPI: Senator Larson, the rest of the committee, thanks for having me here today. My name is Drew Philippi, last name, P-h-i-l-i-p-p-i, here in support of LB460, specifically speaking on behalf of the pedalpub section of it. My wife and I, Katy, we own Group Therapy Bike Tours here in Lincoln, so we do...we're the second company in Nebraska that would benefit from the passing of this bill. And rather than just throwing a bunch of stats, I just kind of want to tell you a story to kind of help your submersion into the experience of what other cities are doing to successfully utilize these businesses to create fantastic tourism opportunities. In 2012, my wife, Katy, and I traveled to Bend, Oregon, to meet the owner of Cycle Pub, a company that we had been researching for the better part of a year and we were fascinated by their concept; this 15-passenger pedal-powered trolley with lights and music and knowledgeable tour guides. They have this synergistic relationship working side by side with a lot of local businesses, but breweries was the number one thing that we...the bike was literally parked in a brewery. They would take off from one brewery and they would visit...if you haven't been to Bend, it's like a beer metropolis. The craft beer is like the native tongue there. And so they have utilized the concept of these pedalpubs as a way to actually create a tourism event to actually educate not only locals, but tourists alike. So...and the way that we were even...we stumbled across this Cycle Pub is by speaking with locals and they suggested: If you want to...you don't want to just try one, you want to try them all. Bend is fantastic. So we got on this pedalpub. It took us around, I think we visited five different breweries that day. And what's unique about Bend is that you can go into these establishments and you can take a flight where you sample all the beers. And if you like one, you can request or you can purchase a growler--which is, obviously, we were talking about that earlier in another bill--but it was really neat. So here we are, we're with all these people. We like a beer, we'd get a growler, we go back onto the bike, we pour ourselves a beer, on to the next one. The whole time the tour guide is giving us all these tidbits of information about all the local beers and the process. And it was a really neat thing. It was a beer tourism event. And we feel like if this bill would pass that would allow us to continue on with our vision, which following the success of this bill, Group Therapy Bike Tours would introduce the Lincoln

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

General Affairs Committee
February 02, 2015

Ale Trail which would be a custom bike tour of downtown Lincoln and the Haymarket, centered around the support, education, and, of course, the sampling of Lincoln's best beers. In 2013, we sold 110 Group Therapy Bike Tours. In 2014, we sold 200, so we're seeing between almost 3,000 people on an annual basis that are soliciting our services to learn more about Lincoln, both from Lincoln and out of state. And they have a common interest in craft beer as well. So with that, I'll open it up to any questions that you may have. [LB460]

SENATOR LARSON: Thank you, Mr. Philippi. Are there any questions from the committee? I really appreciate you coming down today. [LB460]

DREW PHILIPPI: Thanks a lot. [LB460]

SENATOR LARSON: Ms. Carritt, our next proponent. [LB460]

NICOLE CARRITT: Good evening, Senators. My name is Nicole Carritt and I'm the executive director of Project Extra Mile, a network of community partnerships across the state working to prevent underage drinking and its tragic consequences. And we're here today... [LB460]

SENATOR LARSON: Can you spell the name again? [LB460]

NICOLE CARRITT: Sure. N-i-c-o-l-e C-a-r-r-i-t-t. [LB460]

SENATOR LARSON: Thank you. [LB460]

NICOLE CARRITT: Yep. And we are here today in support of LB460. Underage drinking and excessive drinking, including binge drinking by both youth and adults, with foreseeable consequences of the 2011 statutory change that negatively altered a key protective component in our statutes that ease restrictions on open containers in some vehicles with passengers. To address these problems it might be best to go back and change the law back. But that seems unlikely, so we agree that there needs to be additional regulation and we feel that LB460 is a first step toward addressing those, what were absolutely foreseeable, consequences. We would respectfully request, if the bill were to be considered further, that the bill be amended to prohibit those under the age of 21 from boarding the buses, limousines, or pedalpubs if alcohol is being consumed. Doing so would drastically reduce minors' ability to access alcohol, an environment that until recently has been relatively risk free. Thank you for your consideration of our comments and we appreciate Senator Nordquist's attention to the issues. And I'd be happy to answer any questions that you may have. [LB460]

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

General Affairs Committee
February 02, 2015

SENATOR LARSON: Thank you, Ms. Carritt. Do we have any questions from the committee? It looks like we don't. Thank you for hanging around all day. [LB460]

NICOLE CARRITT: Thank you. You bet. My pleasure. [LB460]

SENATOR LARSON: Do we have any more proponents? Seeing none, opponents to LB460. Opponent. Welcome to the General Affairs Committee. [LB460]

JIM CAMPIN: Good afternoon, gentlemen. My name is Jim Campin, J-i-m C-a-m-p-i-n, I'm the owner of Emerald Limousine based out of Omaha, Nebraska. I've actually been in business five years and actually was in the business working for someone else for quite a few years before that, so speaking from a person in front of you that's been in the trenches, both owning and driving, with a ton of experience versus what you've heard so far with little to no experience. I will tell you this, some things I want to point out...I don't know if I can get it all in three minutes but if I don't, somebody please ask me about weddings and family events, etcetera. But to point out, when you're looking at these party buses, if anybody wants to travel on these buses and figure it out, a lot of what we do--because I've been there in the trenches--it's more to keep the kids from drinking and driving. Adults, whoever is on these things have rented them. So what you'll see is you'll pick them up. And it might be a 10 or 15 minute drive to a bar. They're in there for a whole hour while you sit there. I would go...it's common for me to go through and pick up the empties and keep it cleaned up. Hardly anything is empty because they were only on there 10 or 15 minutes because the mass consumption is in the bar. Then they use you to transport them to the next bar, and so on till it's done. So all told, it may be a three-hour event, they may have been on that bus one hour and very little beer consumed versus what they consumed in the bar. So just throwing that out there. And the same with the limousines, etcetera. And I haven't heard hardly anything about limousines and that's the basis of most of what I do. I feel like we're being punished for some accidents or something that happened that, really, the adults need to take responsibility and be adults when they're out there drinking and whatever. You know, a driver in a car has got enough to worry about anyway. It's up to the person inside the vehicle to behave themselves and be an adult and be responsible for their own actions. And I've heard a lot of testimony about havens for minors but there's been no proof laid out here for that, those are assumptions or hearsay. So I don't agree with that, because I have sat in that seat of limousines. I've sat in sedans. I've sat in vans. I've sat in party buses and viewed all that, so I know. That's just one example I can give. I can give you more. I don't know if this means my time is up or... [LB460]

SENATOR LARSON: Till the red light. [LB460]

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

General Affairs Committee
February 02, 2015

JIM CAMPIN: Till the red light? So that's just one example. But I mean, the other side of the coin is, if you didn't have...I do think this will severely hurt the industry. And if you do push something through like that, then you're going to hurt the industry big time. And a lot of these people will just say, heck with it. And they'll just drive themselves around and drink anyway. So if you're going to stop it, you're going to have to stop it somewhere amongst the person because if that person wants to drink, they're going to do it anyway, regardless. The incidents that you guys have spoke about, I'm knowledgeable about. Nobody in the transportation industry has been found accountable for those incidents and there's a reason for that, because they weren't accountable. It's up to that person that was being irresponsible that caused the thing. So, you know, we could sit here and argue about it all day. But the bottom line, again, is it's going to tell us that we can't have minors on the vehicle. Okay, three minutes is up. [LB460]

SENATOR LARSON: Senator Coash. [LB460]

SENATOR COASH: Thank you, Chairman Larson. Do you monitor the consumption of alcohol while you're driving a wedding party around or something like that? [LB460]

JIM CAMPIN: Yes. I've got chauffeurs that have been ten-plus years on most of them. And they know what to look for and see and we do monitor that. We do have it in our rules that if somebody gets out of hand you can stop and end the run anytime, based on their behavior, regardless of whether it's from consumption of alcohol or not. So you can do that. And working with an attorney, legally, that's why we have it in our rules, because if they're being irresponsible you can terminate the run. So we have it in place. Our drivers do a good job monitoring that and there's been a couple of occasions where they've had to, hey, tone it down or else this is over, without incident. So we have not had an incident in five years of running. Most people know how to behave. [LB460]

SENATOR COASH: Do you monitor for underage drinking on the...in the limos? [LB460]

JIM CAMPIN: We don't sit there and ID. Obviously, there's people that look like it. So, yeah, if there's a person that looks like it, then obviously you ask. It's part of the agreement, too, when they take on...they lay down their money and they agreed to the agreement, then that's their responsibility to make sure they don't bring anybody on board that's a minor as far as a party goes. But then I think you're opening up Pandora's box because...Christmas season, you have a heck of a lot of holiday light tours. And in most of those light tours that we do, they're families. They're all getting together so they have somebody to drive them and be safe to see the holiday lights. The families bring alcohol in and they bring sodas for kids of all ages or juices or whatever. So that's going to hurt us because, you know what? Families aren't going to go out and do it anymore because they can't bring their kids to enjoy it with them. A wedding party, when

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

General Affairs Committee
February 02, 2015

the wedding is over they want to go do pictures for a couple of hours and just have fun before the reception. Well, yeah, they consume alcohol on there but it's not like it's in mass quantities and they're just trashed when you drop them off at a reception. But it's common for them to bring the ring bearer, some other family members on, etcetera, and now they wouldn't be able to do that by this law, so. [LB460]

SENATOR COASH: Well, I...to be clear, I don't think there's anything in this law that prohibits any of that. I want you to be clear on what we're talking about there. [LB460]

JIM CAMPIN: Okay. [LB460]

SENATOR COASH: Nothing in this bill says we can prohibit minors on these. Now it was suggested by a testifier that maybe we do that, but the bill itself does not contemplate prohibiting a minor on a limo or a party bus. So I just want to make that clear. [LB460]

JIM CAMPIN: Okay. Just a real quick example, when you go back to the bar-hopping party stuff. When you talk about minors, every one I've ever been with, they all get off the bus and they go in. Not once has ever one person been kicked out saying, you're a minor and have to come back to the bus. This tells me that they're all legal. Obviously, they're not going to get into the bar if they're not. You know, we had an example earlier of the minor in the corner with his buddy buying beer with him. Well, how did the minor get in the bar? You know, not a good example. So, you know, that's what I'm saying, you know. And I have one party bus but then I have a true limousine bus that's a different clientele. The limousines themselves are different clientele. But in the end, all different types are allowed to bring alcohol with them. It's very controlled. Our drivers do a good job with that, without complaint, we don't have any customer complaints. Now what I want somebody to do is contact every transportation company out there that provides all these transportations, figure out how many runs they do in a year's time, add them all up versus the incidents and I think you're going to see a small percentage of incidents. And it's unrealistic to think that there's ever going to be a zero percent incident rate. So I prefer to work on facts like that than just inflate two or three incidents into a major deal. I think you're opening up Pandora's box; just my personal opinion. [LB460]

SENATOR COASH: Okay. Thank you for your...thank you. [LB460]

SENATOR LARSON: Thank you, Senator Coash. And to piggyback off Senator Coash real quick, he's right in the sense that the bill doesn't...and we're double-checking for sure that it will still allow minors on the bus. But the added layer of protection I think that you're saying would be cumbersome would be that any...you'd have to make sure while you're driving that no minor is consuming as well. So as you're watching the road, driving with that family, you would have to

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

General Affairs Committee
February 02, 2015

ensure that since they're not in their own home where they can legally consume with their parents, you'd have to be playing babysitter. [LB460]

JIM CAMPIN: Right. It's basically taking what the bars does and having to drive on top of that. And that's a ton of responsibility. [LB460]

SENATOR LARSON: So at some point you might have to have someone monitoring in the back. [LB460]

JIM CAMPIN: Well, yeah, you know. It could add cost to your business and it's already a business that doesn't have a ton of room for costs to be added to it. I think several people could probably back me on that, so. [LB460]

SENATOR LARSON: Well, thank you, Mr. Campin. [LB460]

JIM CAMPIN: All right. [LB460]

SENATOR LARSON: We'll take the next opponent. Welcome to the General Affairs Committee. [LB460]

BILL ALFORD: Thank you, Senators. Thank you for allowing the opportunity for input. My name is Bill Alford, B-i-l-l A-l-f-o-r-d, I'm the owner and president of VIP Sedan and Limousine, we have statewide authority, we're based in Omaha at 2318 S. 24th Street, speaking in opposition to LB460. VIP operates safe public transportation by chauffeur by luxury vehicle, and that's different than party buses. We're a different class of vehicle. And our concern is, particularly, the addition of limousine service into this bill. We've been in operation for 14 years, performed over 150,000 runs, safely transported over a million people. And we cater to corporate client transportation and safe luxury transportation for special events such as weddings, anniversaries, birthdays, and special life events. We've had no incidents that would be addressed by this bill. And I think if you go back and check there are no other incidents on record for limousine companies, period. It's a different type of operation. And we'd hate to have people stop using transportation services, particularly luxury vehicles, for their special events like weddings and so forth for fear of being...coming under some of these rules. And if there are some legal liability to the owners and so forth that they wouldn't allow children, particularly at a wedding party, so if you have a couple of junior brides' maids that come along, if they're not allowed to come in while the adults enjoy champagne...we...in a smaller vehicle, we can't really effectively have a eight-passenger wedding party with a off-duty police officer in the back monitoring who's drinking. We don't have the ability to necessarily see through the dividers. Having said that, we

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

General Affairs Committee
February 02, 2015

do encourage safe transportation. That's what the previous bill, LB281, was to encourage to keep people from being behind the wheel. And so we would like to be in support of that but we think this particular bill, at least as it goes to adding limousine service to it, is counterproductive. Our drivers, again, are focused on safety and on driving and we do not want them thinking about who's taking a drink perhaps in the back. We do monitor it, obviously we don't allow people that are underage on our vehicles unless we're talking to the responsible parties to make sure that they don't serve or get served. But once they're in, we're focused on driving. As far as if there was...we have to deal with illegal motor homes and other places that are taking people that are not licensed by the Public Service Commission. It's my understanding that this bill would do nothing for those. Like at the duck races there were a number of vehicles down there that were unlicensed and unregulated. That's all. Thank you. [LB460]

SENATOR LARSON: Thank you. Seeing no questions, thank you for your time. [LB460]

BILL ALFORD: Thank you. [LB460]

JOEL BISGARD: (Exhibit 1) Good evening. I'm Joel Bisgard, last name B-i-s-g-a-r-d, I'm the owner of Party Express Bus, based out of Omaha, Nebraska. We are a transportation company; that's what we do. We do allow drinking, allow alcohol on the bus. We don't support minors being on the bus, we do everything we can to prevent it. However, I was in Avoca, Nebraska, at this Quack-Off last Saturday. There was drinking in the streets. There's drinking everywhere. If this bill passes what's going to happen is, if they don't drink on our bus going down at 10:00 in the morning...they're drinking hot chocolate, they're eating breakfast foods, things like that. They stand on the streets and drink. They're not supposed to be drinking in the streets in Avoca during the Quack-Off. They get on our bus, they may not drink anything on the way back. But if they get in a vehicle and drive, where's the responsibility on them? They came off of our bus. Does that make us responsible? We didn't buy alcohol for them. We want nothing to do with the alcohol purchase of them. They have to be of legal age to rent a bus; the state of Nebraska says it's 19. We do proms, we do weddings, anybody that calls my company--and you can do it, you can do a spot check any time you want with my company, and I believe most bus companies--they're going to say, we want to pick you up at a house or a hotel. Every one of these buses, mine included, I seat about 30 to 40, 45 people. I operate five buses. That's a lot of people that are driving around...being driven around, excuse me, that are not driving their vehicles from bar to bar to bar. Anything that you do here with this bill, I believe is going to force people...if it raises our costs, they're not going to use our service. They don't use our service, they're still going to drink. They're still going to want to go to the bar, have a good time and do what they do. This is a transportation thing, this isn't about alcohol. I don't want to serve alcohol on our bus. I don't want to buy them alcohol. We won't buy ice for them because of the gray area. We're regulated by the DOT, by the Public Service Commission. If an officer wants to board my bus, I will not hesitate at all to allow them any access they see fit because I think it's the right thing to do. The

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

General Affairs Committee
February 02, 2015

person that rents the bus is the responsible person. They are told when they book the bus that their minors have to be of age to drink. Anybody that we catch on the bus that's not of age, we will take and drop them off. We are responsible to take them to a safe, lit, location and remove them from the bus. However, we prefer to take them back to where we pick them up, whether it's one person or the whole bus, and it just happens to be one person that rented the bus. We can't tell what they bring in their pockets. We can't frisk them. They will bring anything they want on the bus. If we catch it, we stop the bus. We try to resolve the issue. If it doesn't get resolved, they go back. I personally had a bus run in Lincoln that the whole bus...it was kind of a deal, the gentleman that rented the bus, he was 21. Turns out most of the bus was minors. Well, I didn't understand why they didn't go to a bar at first, turned around and I dropped them off. Guess what? They were told in the beginning what the rules are. He signed the contract. And I showed him that when I dropped him off. There's personal responsibility here. I did mine, as a transportation business. At the end of every run I tell my drivers, if you see somebody intoxicated, take them home. We don't charge any extra for that. Anybody, even if we see somebody that wasn't on our bus, take them home. I pay my drivers for it. [LB460]

JOEL BISGARD: Thank you, Joel. Do we have any questions? Senator Coash. [LB460]

SENATOR COASH: Thank you for your testimony. At the beginning of your testimony you said, we take steps to prevent minors from drinking, something to that effect. Can you describe what those steps are, what your drivers do? [LB460]

JOEL BISGARD: Well, it's not so much the drivers. It's where it starts with the phone call to us to rent one of my buses. I really let them know that we're not joking around. You have to be of legal age to rent the bus. If somebody is 19, a prom, whatever, we let them know there's no alcohol on the bus. And I try to get their parents involved even though they're 19. They're of legal age to sign that contract. I just want them to make sure that they're taking personal responsibility for what they do. The person that rents the bus is 21, I let them know they are responsible for every guest that they have on that bus. Two incidents that happened in recent months: The young person that was sick on the bus turned out to be 19 years old. They stopped the party like they were supposed to, for the safety of that person. They called 911, they ended the party. That's not the bus driver's fault, it's not the company's fault. The minor got on there. The person that was responsible for that bus was cited. That's the right thing to do. The gentleman--and I'm sorry to even have to bring it up--the gentleman that got hit, the party bus...the Lancaster County Sheriff did a follow-up report and interview that I saw on the news media saying that the bus was still at the truck stop at the time he got hit. Where's the bus fault in that? The driver feels horrible about it. The business owner feels horrible about it. It didn't involve any of my buses, my drivers, anything and we feel horrible about it. But there is personal responsibility for what everybody does. If we catch minors, they're done. They're off. That's it. [LB460]

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Transcriber's Office

General Affairs Committee
February 02, 2015

SENATOR COASH: The reason I ask, I mean, I understand what Senator Nordquist is trying to do and I just...it's always been a policy of mine, when we can, to find ways for industries to regulate themselves. And the liquor retail industry has been a leader on this. They've found ways to regulate themselves. And I'm just...you've got a couple of bus owners out there that kind of put you in a bad spot here today. And you're not responsible for anybody but your own company. I get that, but now we're at a point where we've gone down the path of some public safety and concerns that this Legislature, this committee has to deal with. So I don't expect you to answer that, I'm just putting that out there that, to the extent an industry can regulate themselves and come to their regulators and say this is how we're going to do it, I'm interested to hear how they might do that. [LB460]

JOEL BISGARD: With all due respect to you, Senator, just a quick response to that. You said there's a couple of bus companies that kind of put us all in the limelight. You're absolutely right. But they didn't do anything wrong. I've talked to the owners. I've tried to meet with everybody. A lot of the owners in Omaha, we get together, we talk. You know, how are things going, how is this, how is that. They didn't do anything wrong. Okay, the minor got on the bus. It happens. You contact any bar. You talk to the Liquor Commission. They've had instances where bars are cited. Gas stations get cited all the time for alcohol being purchased. Do things slip through the crack? Absolutely. Nobody up here is going to sit here and say that things don't happen and we do the best that we can. We have to answer to the Nebraska Public Service Commission, the DOT. All the local laws that everybody else out there, we are bound by that as well. And as far as the insurance goes, every one of my buses carries \$5 million. For every month last year, for a whole year, I paid over \$4,000 a month and I didn't bat an eye writing that check because I'm taking the responsibility as a business owner for it. This, if it passes, the insurance companies will latch onto it, putting more financial responsibility on us. It will put the smaller guys out of business. [LB460]

SENATOR COASH: Thanks for testifying. [LB460]

SENATOR LARSON: Thank you, Senator Coash. Any further questions? Seeing none, thank you, Mr. Bisgard, for coming. [LB460]

JOEL BISGARD: Thank you very much. [LB460]

SENATOR LARSON: Any further opponents? Any neutral testimony? Welcome to the General Affairs Committee. [LB460]

MARK BREINER: Good afternoon, Senators. Chairman Larson, members of the committee, my name is Mark Breiner, it's M-a-r-k B-r-e-i-n-e-r, I'm the director of the Motor Transportation

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Transcriber's Office

General Affairs Committee
February 02, 2015

Department for the Nebraska Public Service Commission. And I do want to preface this: I hadn't intended to testify and I'm not really here to testify for the commission. It's my understanding the commission's position on this bill is neutral. I did, however, want to make myself available if there are any questions. It sounds like some issues came up. I did want to say, specifically, that the primary interest of the Public Service Commission is in insurance and in the safety of the vehicle. There are some other things regarding rates and the geographic area, but primarily it's to make sure that there is insurance and work with the Nebraska State Patrol and with the federal Department of Transportation to help ensure that the vehicles are as safe as they can be. [LB460]

SENATOR LARSON: Thank you. Are there any...Senator Coash. [LB460]

SENATOR COASH: Thank you. I was hoping you'd come up here, Mr. Breiner, because I'm trying to figure this out. Do you believe that the PSC has any jurisdiction with regard to the safety of the passengers while they're in the care of the buses, the limos, the pedalpubs, whatever they are? If they've got a license under the PSC, do you see any arm of the law within that license to regulate this? [LB460]

MARK BREINER: We don't really have any jurisdiction when it comes to liquor laws. We certainly don't have any jurisdiction over the pedalpubs. As they're not propelled by motor vehicles we don't have any jurisdiction there. I believe that in order to get a certificate from the Public Service Commission, one thing that the companies have to prove is they're fit, willing, and able to provide the service. And a company that found themselves in violation, even of minor in possession, procuring for minors, those kind of things, I think we would be able to make an argument that those violations of state law is showing that there is a fitness standard that they're not meeting. And I believe that they would be subject to having that certificate revoked. That's one possible way that we could look at that. As far as specific regulation of liquor laws, no. [LB460]

SENATOR COASH: That makes sense, but let me give you an example. Let's say I was in a wedding, the guy that got married. I got a bus and I was part of the wedding party and I got to ride around on the bus. And there's beer on the bus and I notice that the 16-year-old usher is having as much beer as I am, as the groomsman. And I write a letter to the Public Service Commission and I say, hey, look, I was just on this bus last week. And there was booze going all over, including to minors. What would the commission do with that? [LB460]

MARK BREINER: Well, we would take an investigatory role on it, see if there are any violations of our statutes. We would probably also forward that on to the relevant local jurisdiction that might have some more specific authority on that. If it was on the highways of

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

General Affairs Committee
February 02, 2015

the state, we'd refer that onto the Nebraska State Patrol and cooperate with them in any way that we could. [LB460]

SENATOR COASH: The first answer to your question is, we'd look to see if it violated any regulatory...could you repeat that? Would it? That's what I'm trying to get at. Would allowing...would a minor drinking on a party bus violate some regulatory framework within the PSC? [LB460]

MARK BREINER: I don't believe in the particular, specific instance there would be a violation of what the Public Service Commission regulates. If that were referred on to the local jurisdiction and the local jurisdiction issued a citation that the bus operator had provided alcohol or did not take adequate steps and the operator was cited for procuring or contributing to the delinquency of a minor, then I think there's an argument that could be made that the commission could take an action against the bus company for operating in an unfit manner. [LB460]

SENATOR COASH: Has that ever happened that you're aware of? [LB460]

MARK BREINER: Not that I'm aware of, no. [LB460]

SENATOR COASH: Okay. Thank you. [LB460]

MARK BREIMER: You're welcome. [LB460]

SENATOR LARSON: Thank you, Senator Coash. Any further questions? Thank you. [LB460]

MARK BRIEMER: Thank you for the opportunity. [LB460]

SENATOR LARSON: Is there any other neutral testimony? Senator Nordquist, would you like to close? [LB460]

SENATOR NORDQUIST: Yes, because I know you guys would like to stay here even longer. But I'd like to thank the committee for their consideration of this bill. Just to reiterate, this is a new problem that's arising because of a law that's only been three years on the books. And I think it's definitely probably time for us to assess the impacts of it and that's what we need to do. And I look forward to moving the discussion forward. For those responsible operators behind me, I would just say to them, this bill--outside of paying a \$75 fee, which we could put at \$25 or whatever we want to do on the licensure fee--should have no impact on them. If they're taking

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Transcriber's Office

General Affairs Committee
February 02, 2015

steps to make sure that minors aren't consuming on the premises and they're being responsible operators, there would be a simple licensure fee and we can move forward. But for those incidents where challenges do arise and operators aren't acting responsibly, there would be a hammer to be able to address that. And that's what we're trying to do in LB460. Thank you. [LB460]

SENATOR LARSON: Thank you, Senator Nordquist. Any questions in closing? As there is none, that ends the hearings for LB460 and the General Affairs Committee for the year. [LB460]