

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

General Affairs Committee
February 13, 2017

[LB73 LB254 LB632]

The Committee on General Affairs met at 1:30 p.m. on Monday, February 13, 2017, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB254, LB632, and LB73. Senators present: Tyson Larson, Chairperson; Burke Harr, Vice Chairperson; Carol Blood; Lydia Brasch; Bob Krist; Dan Quick; Merv Riepe; and Justin Wayne. Senators absent: None.

SENATOR LARSON: Welcome to the General Affairs Committee. I am Tyson Larson, of O'Neill, Chair of the committee. Members of the committee are: to my far right, Senator Blood, of Bellevue; Senator Riepe, of Ralston, who will be joining us later; Vice Chair Senator Harr, of Omaha; to my immediate right is Josh Eickmeier, my legal counsel; to the far left, Aaron Bos, the committee clerk; followed by Senator Dan Quick, of Grand Island; Senator Lydia Brasch, of Bancroft; Senator Krist, of Omaha; and Senator Wayne, to my direct left, also of Omaha. There is one sign-in sheet located on the tables at the back of the room. Please be sure to indicate how you would like your participation in the hearing reflected in the committee's record. The first box is for those who want their presence and position noted as an exhibit in the committee records but are not testifying. The second box is for those who are here for today's committee hearing but will submit written testimony in lieu of testifying which will be noted in the committee statement. The third box is for anyone testifying today. When it is your turn to testify, please get your sign-in sheet to the committee clerk or one of the pages. This will help maintain a more accurate record for the public. 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 spell your first and last name; also please tell us whom you are representing, if anyone. While using the light...we are using the light system for these hearings. Testifiers will be given 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. Please turn all cell phones or any other electronic devices to silent. Please keep your conversations to a minimum or take them out into the hallway. The General Affairs Committee is attempting to go paperless, therefore, we are...therefore, we only accept handouts and written testimony electronically. If you do have paper copies, we will try to accommodate you in that endeavor. We also do not allow visual aids or other items. Because the committee is paperless, senators are allowed and even encouraged to use electronic devices during the hearings. Thank you for your cooperation and we will begin with LB254 with Senator Crawford. Welcome to the General Affairs Committee. And also, I know we have the three front...the three rows in front. I'm going to ask. I was...I usually ask one of the Red Coats to keep at least one side and we use that kind of as the on-deck circle. All right. It'll be fine. If you guys...when you guys do vacate to come testify, I'd ask that you...so we can move on to the rest. Welcome to the General Affairs Committee, Senator Crawford.

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

General Affairs Committee
February 13, 2017

SENATOR CRAWFORD: Good afternoon, Chairman Larson and members of the General Affairs Committee. My name is Sue Crawford, S-u-e C-r-a-w-f-o-r-d, and I represent the 45th Legislative District of Bellevue, Offutt, and eastern Sarpy County. And I'm here today to introduce LB254 for your consideration. I'm introducing LB254 on behalf of home brewers from across the state. Home brewing has a strong presence in our state and, until this year, they were present at some of our beer festivals, including the Great Nebraska Beer Fest that's held in Werner Park in Sarpy County. There are approximately 11,500 Nebraskans who brew in their home as a hobby. These home brewers are part of a tight-knit community that make up 25 brew clubs across our state. Current Nebraska law allows the making of wine, cider, or other alcoholic liquor by a person from fruits, vegetables, or grains, or the product thereof, by simple fermentation and without distillation, if made solely for the use of the maker and his or her family and guests. LB254 clarifies that beer, mead, perry, and products made with honey may also be made by individuals under the standards set out in this statute. Although the current statute provides permissive language for other alcoholic liquor, LB254 simply clarifies the legality of brewing these specific alcoholic drinks. Furthermore, LB254 would permit the serving of clearly marked alcoholic liquor made under 53-168.06 to be served at festivals, competitions, exhibitions, or tasting, where all the laws relating to the serving of alcoholic liquor are followed, so long as none of the alcohol is offered for sale. The language in LB254 requires home-brewed alcoholic liquor at these events to be clearly "identified as alcoholic liquor that was manufactured under an exception to the rules and regulations of the (liquor) commission by signage, and the location of the manufacturer shall be available upon request." Allowing home brewers to appear at festivals and competitions can also be...can be beneficial to our state in a few ways. First and foremost, it provides an entrepreneurial platform for those who are interested in turning their home-brewing hobby into a small business. Not only do these events provide an opportunity to receive feedback on recipes, as well as gain credibility and exposure, they also create an avenue for Nebraska home brewers to compete on the national stage. Since winning a local or statewide competition is a requirement to compete in some home-brew competitions at the national level, providing the opportunity to allow home-brew entities in Nebraska beer festivals creates a pathway for Nebraska to be represented at national home-brew events. It also provides the legal framework to allow communities in Nebraska to compete to host regional or national contests. Twenty-eight states explicitly allow for home brew to be served at competitions and events. Some of our surrounding states, including Missouri and Minnesota, have similar language to that proposed in LB254, allowing home brew to be removed from premises where brewed for personal or family use, including use at organized exhibitions or competitions such as home-brew contests, tastings, or judging. Considering many professional brewers began as home brewers, such as Samuel Adams, New Belgium, as well as successful local brewers such as Nebraska Brewing Company and the Farnam House Brewing Company, allowing home brewers to fine-tune their brews at competitions would give them skills and connections they need to start their own business here in our state. LB254 clarifies in statute the ability to form clubs or brewing clubs made up of friends and guests that may occur...may gather,

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

General Affairs Committee
February 13, 2017

excuse me, to exchange, consume, and score alcoholic liquor made by members of the club or brewing group, provided that all other laws and regulations regarding the consumption of alcoholic liquor are observed at the meeting or gathering. During a meeting or a gathering, as outlined in LB254, a person who is not the maker, family member, or guest of the group or club shall not consume any home-brew alcoholic liquor, and none of the alcoholic liquor can be offered for sale. Home brewers also stimulate the economy. Nationwide, the hobby of home brewing has created 11,000 jobs and has generated \$1 billion in spending. This includes spending in our state's economy; in fact, 95 percent of the home brewers surveyed report that they shop an average of two local home-brew stores eight or nine times a year. This spending helps Nebraska home-brew supply companies continue to be successful. One of the initial goals of LB254 is to allow for those home-brew businesses to provide samples to customers in a class or in some other restricted event. This current language in the bill itself is too broad and goes beyond that initial intent. I'm willing to work with the committee to clarify and narrow that language about sample, if they are interested in doing so. I've also had an initial conversation with the Liquor Commission about possible ways to accommodate these classes or to provide options for private events that may not require a change in statute. Those are all options that I'm willing to explore. Overall, the goal of LB254 is to provide clarification in existing home-brew statute on the making of beer, mead, perry, and products made with honey. It also seeks to allow the thousands of home brewers across our state to participate in festivals and other events in a regulated manner in order to fine-tune their skills and compete to represent our state on the national level. And lastly, LB254 provides statutory clarity on how home-brew clubs and groups can operate in our state. Following my testimony you'll hear from home brewers, local home-brew supply companies, event organizers, and individuals who can answer questions about the health and safety of home-brew liquors. I appreciate your attention to this issue and I'm happy to try to answer any questions that you may have. [LB254]

SENATOR LARSON: Thank you, Senator Crawford. Questions from the committee? Senator Blood. [LB254]

SENATOR BLOOD: Thank you, Senator Larson. Thank you, Senator Crawford, for that very informative introduction. You spoke briefly on the entrepreneurial platform. Out of the 11,500 home brewers, what percentage of those would you say open up storefronts? [LB254]

SENATOR CRAWFORD: I don't have a percent off the top of my head on that. Thanks. [LB254]

SENATOR BLOOD: Maybe one of our experts... [LB254]

SENATOR CRAWFORD: Perhaps. [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: ...will come and know that. And I know that you and I have benefited from that right in our own backyard, in Bellevue. Moonstruck? [LB254]

SENATOR CRAWFORD: Right. [LB254]

SENATOR BLOOD: So we're very fortunate in Sarpy County. That's one of many. You talked about regional contests. In your personal opinion, with economic development experience that you've gleaned as a state senator and being very active in the chambers in Sarpy County, would you say that it would be beneficial if we were able to increase our regional contests for, say, the Ralston Arena, the Bellevue Event Center? [LB254]

SENATOR CRAWFORD: Well, I appreciate that question. So one example of...that I mentioned was the Great Nebraska Beer Fest and that's held in Werner Park in Sarpy County. And what I have from a news article about that event is it attracted 2,500 beer aficionados to Werner Park. And so I think these are important events that attract tourists. And it's also the case, as I noted, that we need to get...have them in Nebraska for people to be able to compete nationally. It's also the case that we could compete to try to hold a regional or national event if we had a framework that allowed that to happen. [LB254]

SENATOR BLOOD: It sounds like good economic development sense to me, so thank you. [LB254]

SENATOR CRAWFORD: Thank you. [LB254]

SENATOR LARSON: Thank you, Senator Blood. Any further questions from the committee? Seeing none, will you stay for closing? [LB254]

SENATOR CRAWFORD: I'm planning to. [LB254]

SENATOR LARSON: If you'd like to pull out the chair by Senator Blood and... [LB254]

SENATOR CRAWFORD: Thank you. Thank you. [LB254]

SENATOR LARSON: ...push it to the back so you're not around. [LB254]

SENATOR CRAWFORD: Thank you. [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: All right. How many testifiers do I have on Senator Crawford's bill, just a show of hands? There are a few. All right. I'll take the first proponent. Welcome to the General Affairs Committee. [LB254]

TERRY SCHWIMMER: My name is Terry Schwimmer, T-e-r-r-y S-c-h-w-i-m-m-e-r. I'm representing the Lincoln Lagers Homebrew Club. Senator Larson, members of the committee, thank you for your time today. I'm here to support LB254 which allows home brewers to serve their product to the general public at festivals and a few other limited times. I found out about home brewing in 1994 when a remodeling client named Dave (phonetic) came home from work and offered me a beer that he made at home. Dave was one of the founding members of the Lincoln Lagers, the local home-brew club which formed in 1993. I was very impressed with his beer's flavor and was convinced that I could make great tasting beer at home like Dave did. I joined the Lincoln Lagers later that year, have been a member ever since, and am the current treasurer. Back in the early '90s, people who home brewed wanted to do so, so they could enjoy beers, mead, and ciders which were not readily available. These days we have many more choices, but just like cooking for your families and friends, home brewing is very rewarding. Home brewing is an incredible hobby which allows ladies and gentlemen to express their individual creative natures. It is a very social hobby where solid friendships are formed. We are all about fellowship and encouraging and educating each other. Home brewers are a very diverse group of people of all ages and from very different backgrounds. Our goals beyond enjoying great home brews are to share and educate so others may understand that they have options aside from the average bland choices which dominate the supermarkets. Home brewers can control what beverages go into their bodies. We don't encourage people to drink but, if they do, we encourage them to drink higher quality products and to do so in moderation. I understand that there are concerns that home breweries are not inspected. But the number-one rule that is stressed for new brewers is sanitation, sanitation, sanitation. I'm certain that home-brew kitchens are much cleaner than most of the church kitchens that I have been in. Jason McLaughlin will discuss safety and health in more detail. We're not bootleggers or moonshiners. In fact, we don't sell our home brew at all. When people ask to buy our product, we invite them to join us in our hobby, to make it themselves. That is part of what distinguishes home breweries from craft breweries. Craft breweries are commercial, for-profit entities which are allowed and capable of producing at a much higher level. Home brewers are in it for the love of our hobby. In the past few years, similar legislation to LB254 has been passed in the states of Kansas, Missouri, Wisconsin, Minnesota, and California. We would like to see this in Nebraska, would like to see changes made in the current regulations as outlined in LB254, and would appreciate your support. I'd be happy to answer any questions. [LB254]

SENATOR LARSON: Thank you, Mr. Schwimmer. Do I have questions from the committee? Seeing none, thank you for visiting us today. [LB254]

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

General Affairs Committee
February 13, 2017

TERRY SCHWIMMER: Thank you. [LB254]

SENATOR LARSON: I'll take the next proponent. Welcome to the General Affairs Committee. [LB254]

JASON McLAUGHLIN: My name is Jason McLaughlin, J-a-s-o-n M-c-L-a-u-g-h-l-i-n. Thank you, Chairman Larson and members of the committee, for allowing me to speak today before you as a proponent of LB254. As I said, my name is Jason McLaughlin. I'm a board member of the Lincoln Lagers Homebrew Club. I hold the rank of a national beer judge through the Beer Judge Certification Program and I'm also a certified cicerone, which is the beer equivalent of a wine sommelier. I would like to speak today about how inherently safe beer is as a beverage. The reason for this is because pathogens cannot survive in beer due to several antimicrobial hurdles and these hurdles include: the presence of ethanol, which inhibits cell membrane functionality; the alpha acids that come from hops that inhibit cell membrane functions and effects gram-positive bacteria; the low acidic PH of beer which affects the enzyme activity and enhances the inhibitory effects of hops; elevated carbon dioxide, which creates anaerobic conditions, also lowers PH, affects enzyme activity and affects cell membranes; the low oxygen in beer, which is below 0.1 parts per million, which creates an anaerobic condition; and the pasteurization from mashing the grain and boiling process in the kettle that causes thermal destruction of the cells. Beer is made by...beer made by a hobbyist goes through the same process as a professional brewer and, therefore, subjects any and all harmful pathogens to the exact same set of hurdles that make beer an inherently safe beverage. It should be historically noted that, due to the horribly poor water quality of medieval Europe, millions of men and women and children's lives were saved by beer due to it being the only clean source of hydration during those times. Gordon Strong, the president of the Beer Judge Certification Program for ten-plus years, confirmed that, to his knowledge, there has never once been a single case of a judge becoming ill from pathogens derived through beer served at a BJCP-sanctioned event. The BJCP has sanctioned over 8,000 competitions and judged over 1.25 million home-brewed beers since 1985. Gary Glass, the director of the American Homebrewers Association, also confirmed that in his 17-plus years with AHA, he has also never once heard of anyone becoming ill from a pathogen derived from beer. The most important point to make here is that beer cannot kill a person. It cannot harbor botulism, salmonella, E. coli, or the likes. In a community where bake sales, church potlucks, and farmers markets allow public to offer unregulated food products that pose serious dangers, harboring pathogens that can cause food-borne illness, beer is not among them and is an inherently safe beverage. Thank you all for the opportunity to testify today and I'd be happy to answer any questions. [LB254]

SENATOR LARSON: Thank you, Mr. McLaughlin. Do I have questions from the committee? Seeing none, I appreciate you coming today. [LB254]

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

General Affairs Committee
February 13, 2017

JASON McLAUGHLIN: Thanks. [LB254]

SENATOR LARSON: Take the next proponent. Welcome to the General Affairs Committee. [LB254]

MATTHEW MISFELDT: My name is Matthew Misfeldt; I spell M-a-t-t-h-e-w M-i-s-f-e-l-d-t. Good afternoon, Chairman and members of the committee. As I stated, my name is Matthew Misfeldt and I am here today asking for the committee to pass LB254. My wife Jennifer and I own and operate Patriot Homebrew Supply in Elkhorn, Nebraska. We are one of four home-brew shops in the Omaha and Lincoln area. Two of the stores in Omaha have operated for more than 20 years. We have recently celebrated our third-year anniversary this last October, having tapped into the growing demand for high-quality and diverse home-brew products. Home-brew stores sell the equipment and ingredients needed to make home brew, wine, mead, and hard cider. Home brewers promote and support Nebraska small businesses and demand locally produced home-brew ingredients. In addition to popular brand-name products, our store serves as a retail outlet for locally grown hops and works with local distributors to ensure that we meet the demands of our customers. The local home-brew community, through their purchases, provide revenue, tax dollars, and support to local jobs. We need to remember that all professional brewers started out as home brewers. With practice making home brew in their home and sharing their product with the community, they were able to successfully open a brewery with devoted followers. Our store serves as an incubator for future professional brewers and businesses. Our store has experienced sales growth every year. Home brewers spend money to produce a product that they share with friends and family with the only reward being the enjoyment of a quality beverage that they made. As sales increase, our collection of sales tax increases as well. If this bill is not passed, we expect to see a decline in sales which will result in a decline in sales tax revenue for the state. Home brewing is a social hobby. Patriot is a proud supporter and promoter of local home-brew clubs, competitions, and festivals which bring Nebraska's home-brew community together. We hold a variety of classes every quarter and free monthly seminars where home brewers can meet to discuss best practices and the latest techniques in producing quality home brew. In closing, the hobby of home brewing in the U.S. has seen exponential growth in recent years and this growth is projected to continue. Home brewers are dedicated to their hobby, community, and supporting local businesses. Passing LB254 will ensure that our hobby continues to thrive and will have a positive impact on Nebraska's economic environment. I ask you to vote yes for this bill. I'm subject to your questions. [LB254]

SENATOR LARSON: Thank you for your time today. Do have I have questions from the committee? Senator Krist. [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: Just a comment, because your humor is not lost on me. You were able to "tap" into that market. (Laughter) [LB254]

MATTHEW MISFELDT: Thank you. I would project more humor, but I think that my time is up. (Laughter) [LB254]

SENATOR KRIST: Well, come back again. Thank you. [LB254]

SENATOR LARSON: Thank you. [LB254]

MATTHEW MISFELDT: I'll be followed by Nolan Gaskill. [LB254]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB254]

GWYN EVANS: My name is Gwyn Evans, G-w-y-n E-v-a-n-s, and I am here representing the Lincoln Lagers who are a Lincoln-based home-brew club of about 90 members. Like all Nebraskans, home brewers are deeply invested in our community and we value the opportunity to donate our home brew to benefit important causes such as historical building restoration, disease research, education access, and feeding the hungry. When we donate a batch of home-brewed beer to an event, we not only invest time to help serve at the event; each batch also reflects many hours invested in our hobby. Over \$24,000 has been raised for the American Cancer Society by Kegs for the Cure, a home-brew festival and fund-raiser held since 2010. The Midwest Homebrewers Invitational is an event hosted by the Omaha-area home-brew clubs; 2014 was the first year of the event and they raised over \$6,000 for Food Bank of the Heartland. In 2015, the event raised \$7,000 for the Food Bank and the Midlands Humane Society. Unfortunately, the 2016 event was canceled due to confusion and questions that arose about serving home brew to the public at these festivals. The David City Brew Ha Ha, a festival featuring home-brewed beer and wine, has raised \$20,000 over nine years for the restoration of the Thorpe Opera House. This event was also canceled in 2016. Okto Beerfest, a benefit for the Nebraska State Stroke Association, has raised \$115,000 over 21 years. This event is the largest contributor to the Nebraska State Stroke Association, which promotes stroke awareness and education here in our state. The Lincoln Lagers have poured at the event since its inception. There are many repeat attendees who specifically look forward to sampling the creative home brews we donate. In 2016, when the Lagers were unable to participate, we were very much missed. Jim Krysl, with the Gateway Sertoma Club, an event organizer, said: The Lincoln Lagers have made 21 years of Okto Beerfest a success; because of your generosity, we have saved lives and prevented permanent disability to some Nebraskans. This summer, several home brewers donated to the first Hops for Hope event for the Boys Hope Girls Hope organization. This organization helps academically capable and motivated children in need meet their potential by

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

General Affairs Committee
February 13, 2017

providing support, opportunities, and education through college. Ten thousand dollars was raised at that event. Home brewers also donate home-brewed beer to events benefiting Pints for Prostates; The BAY, a community resource center for at-risk teens; Makeshift, a maker space that promotes innovation, art, technology, and science; the Lincoln Children's Zoo; the Kearney Chamber of Commerce; and the historic Liederkrantz building in Grand Island, Nebraska. Home brewers are happy to donate their time and home brew to help restore our towns, provide education and resources to those who need it, and fund health research and outreach. The organizations' help by these funds benefit Nebraskans across the state. Thank you for your time and consideration and I'm available for questions. [LB254]

SENATOR LARSON: Thank you for coming to the General Affairs Committee. Senator Blood. [LB254]

SENATOR BLOOD: This is more of a curiosity question. [LB254]

GWYN EVANS: Yes, ma'am. [LB254]

SENATOR BLOOD: I'm hearing some of the testimony. I know we're talking about beer and ale and mead. Is kombucha coming into any of these events at all? [LB254]

GWYN EVANS: We've had some kombucha brought to home brew meetings for our club. I haven't yet seen kombucha served at a festival but it certainly could be. [LB254]

SENATOR BLOOD: So if, indeed, a bill were amended to include kombucha, do you think there would be interest in it? [LB254]

GWYN EVANS: I think that it would certainly be good to explicitly legalize anything we'd like to see promoted here in Nebraska. [LB254]

SENATOR BLOOD: Thank you. [LB254]

SENATOR LARSON: Thank you, Senator Blood. Seeing no other questions, thank you for visiting us. [LB254]

GWYN EVANS: Thank you. [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: The next proponent. Welcome to the General Affairs Committee.
[LB254]

NOLAN GASKILL: Thank you. My name is Nolan Gaskill, which is N-o-l-a-n G-a-s-k-i-l-l. And so thank you, Mr. Chairman and members of the committee. I am here as the president of the Railroaders home brew club which is based out of Omaha. We have about 30 men and women in the club and we are a registered nonprofit. One of our major missions is public education and public outreach and that's why I wanted to come talk to you today. So, okay, Terry had already discussed with you what we do as hobbyists and how that kind of differs from what's happening at the professional commercial brewing scale. And it's important to remember that what we do is really a labor of love. We don't have any financial outcome, we don't have an incentive, or we don't get compensated for what we do. What we do get back from sharing our beers, however, is the valuable feedback that we need to help get better at our hobby. Ultimately home-brew beer, allowing this bill to pass would remove a lot of the ambiguity that exists in the current law with respect to what we as home brewers are permitted to do. Jason also talked about the safety of home brew. I think the key takeaway here is we do have a really deep understanding of the fermentation process and the many hurdles that harmful pathogens face in trying to survive in a home-brewed beverage. You know, really, home-brewed beer is safe and that's the bottom line, and much more so than some other context that we don't even tend to think of the safety, such as, you know, bake sales and potlucks. Matt at Patriot was kind enough to talk about the economic benefits and support of a vibrant home-brew community in the state does help keep spending tax dollars and ultimately the home-brew shop jobs within our borders. Gwyn was able to talk about the numerous charitable organizations that have been supported by our organization. And I wanted to just kind of close with the personal note about how important that I think that exposure to this hobby is at public events. I've long thought about home brewing myself, didn't really know where to start. I ended up buying some stuff on-line. Quite frankly, what I was doing early on wasn't that good. But luckily, I was able to connect with the Railroaders at a home-brew festival and, you know, it was quickly...I was quickly invited to their meetings, got feedback on my beer, was able to quickly improve my process. And it wasn't too long before that, that I was on the other side of the table serving home-brewed beer and getting people involved in the committee. So I really urge your support for this bill and thank you so much. I'd entertain any questions. [LB254]

SENATOR LARSON: Thank you for your time today. Do I have questions from the committee? Seeing none, thanks for visiting. Next proponent. Seeing no more proponents, I'll take the first opponent. Welcome to the General Affairs Committee, Mr. Rupe. [LB254]

HOBERT RUPE: Thank you. Thank you, Chairman Larson, members of the General Affairs Committee. My name is Hobert Rupe. I serve as the executive director of the Nebraska Liquor Control Commission and the commission has asked me to testify in opposition to this bill for a

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

General Affairs Committee
February 13, 2017

couple main reasons. The first...I already handed...this is my (inaudible). The big problem with this is unregulated product on a regulated location is our concern. For years, as you had heard, there were some home-brew festivals, competitions were going on and unfortunately--as you're aware, I was a regulator--it doesn't become a problem until it becomes a problem. Last summer it became a problem because what happened was we had many entities who were at that time applying to be liquor licenses. They had applications on file with the commission to become Class L brewpubs and, yet, we'd gotten complaints that they were already advertising out their product, you know, giving their product out to the public, hold themselves open as breweries before they had actually received licenses. That causes a couple of concerns. The first is, once a brewpub gets its brewer's notice from the feds, we'll allow them to start production work in the bonded warehouse so that when they do get their liquor license from the commission, they've got some product there, so they don't have to start from zero, they can actually build up towards opening. And the concern, of course, is that any of that product at that point in time is subject to taxation. And so when these brewpubs were holding themselves out still as home brewers, we had no idea where the product was coming from. Was it coming off that bonded warehouse? What was going on caused some concerns. So we started looking into just the sheer number of people serving the public; we, of course, then looked at the statute. The statute, people have said, is ambiguous. It's not. It's clear. You may serve for their own consumption, their family, and guests. The main issue of that is, as touched on earlier, this is totally unregulated. We don't have, you know, a regulated...this is a regulated product. The idea that somebody says this is no different than chili or a bake sale is different because chili and brownies aren't regulated by both the feds and the state, beer is, and so our concern was that these products were then being utilized and on to a licensed premise. Now we do allow under the SDLs where we can do exemptions, we do, do competitions. And so if somebody asks for an exemption to this rule to a bona fide competition where it's going to be judged by, you know, the judges who are generally, as you heard earlier, you know, they're usually certified by the national association, those events can happen. What we have concerns about is pouring for the general public because the general public, if they're on a licensed event, are going to sue that that product was made under licensed and sanitary conditions. And because they're home brew, there's no way we can guarantee that. You know, it's...you know, we've worked in/with on SDLs and brewers, we tried to. I did speak with Senator Crawford on dealing with some of the issues that could be handled. But the main issue that we really have is this large amount of unregulated product being sold on a regulated premise. And I see I'm out of time, so I'd be happy to answer any questions. [LB254]

SENATOR LARSON: Senator Blood. [LB254]

SENATOR BLOOD: Thank you, Senator Larson. I don't think I wrote the quote down correctly, so hopefully you can help me. Your concern is that people that consume this consume it without the knowledge that it perhaps could be...was made in not a licensed facility. [LB254]

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

General Affairs Committee
February 13, 2017

HOBERT RUPE: Yes. [LB254]

SENATOR BLOOD: So at farmers markets, when people come with baked goods and they make them in their own kitchens, they're allowed under the Department of Ag to put out a sign that says this was not made in a certified kitchen, eat at your own risk, basically. [LB254]

HOBERT RUPE: Okay. [LB254]

SENATOR BLOOD: It's said nicer than that. But why couldn't you do that with something like this? [LB254]

HOBERT RUPE: Well, the Legislature could do it. We would recommend against that because, as I said, those baked goods are not a regulated product. For instance, if I'm a brewer and I'm going to sell my beer, say, in the state or across state lines, I've got to be licensed by the federal government. TTB has got...I've got to get my brewer's notice. If it's going interstate, they've got a copy of my recipe. They know exactly what's going into it before it goes out. It's clearly marked with any allergens. It's clearly marked with any...with its alcohol by volume test, and so somebody who is drinking that knows that it was made under regulated conditions. These problems, it's not...you know, going back, you know, luckily there aren't a lot of deaths internationally from beer. But there are a lot of international deaths from unregulated consumption of distilled products or beer with its distillation added to it. That generally doesn't happen in the United States because of our three-tier distribution system. [LB254]

SENATOR BLOOD: Right. [LB254]

HOBERT RUPE: And so this is very...this is very much a "camel's nose underneath the tent" problem because we're saying, okay, we're going to take this relatively highly regulated product and we're going to reduce regulations. [LB254]

SENATOR BLOOD: But again I'm just trying to kind of clarify this in my head. [LB254]

HOBERT RUPE: Okay. [LB254]

SENATOR BLOOD: So the baked goods are regulated just by state, just not by federal. So to say that baked good is not regulated, at a farmers market Department of Ag insists that you have those signs or else you can't participate. [LB254]

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

General Affairs Committee
February 13, 2017

HOBERT RUPE: Well, they might on that for...because but then they're selling them too. [LB254]

SENATOR BLOOD: Right. [LB254]

HOBERT RUPE: They're actually...they're crossing over into selling it. There's nothing in the statute which keeps you from just getting out, having a big thing of baked goods on the podium back there, and anybody can eat them who they want. But of course then that's, once again, not a regulated...we're talking apples and oranges, regulated product, not-regulated product. [LB254]

SENATOR BLOOD: I say there's gray area. But the other question that I have is that the concerns that I hear you saying are all concerns that could be resolved through information. I mean I hear what you're saying about regulation but you say the concerns are content, ingredients, facility. Aren't those more educational/informational things, if those are your concerns, that could be easily addressed? [LB254]

HOBERT RUPE: I don't think so, I mean, because I think if you're going to have a beer festival where everybody is walking through, able to grab a small glass off it, they're not going to stop and read the warnings, they're not going to look at what's going on. [LB254]

SENATOR BLOOD: Well, and also because they trust it because it's beer and, you said it yourself, it's really...I mean if the beer is not made well, it doesn't turn out, you can't drink it anyway. [LB254]

HOBERT RUPE: Well, you know, it's...once again, it's, you know, it's those products...I mean this would almost be like going to a, you know, a, hey, I'm a chemistry student, here, I made my own aspirin, you want to try some? No, you can't do that because aspirin is a regulated product because of concerns. I mean I guess that's where... [LB254]

SENATOR BLOOD: I don't think there's an aspirin festival either. [LB254]

HOBERT RUPE: ...we're having the difference between beer. I mean I think this is more like a drug, less like a brownie so. [LB254]

SENATOR BLOOD: I hear what you're saying. Thank you. [LB254]

HOBERT RUPE: (Inaudible.) [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Senator Krist. [LB254]

SENATOR KRIST: You said...you made note that if the Legislature should decide to do that, that you would warn against that but...and I'm not saying that we're going to. [LB254]

HOBERT RUPE: Okay. [LB254]

SENATOR KRIST: I'm just saying if we decide to go down that track in terms of exempting in this process, we need a little bit more record to fall back on it. So we've heard about all of the festivals that have gone on. [LB254]

HOBERT RUPE: Yep. [LB254]

SENATOR KRIST: To your knowledge, has there been any problem with those festivals in the state of Nebraska? [LB254]

HOBERT RUPE: From drinking "containted" alcohol or from overservice? [LB254]

SENATOR KRIST: Well, we're all guilty of overindulgence every once in awhile. [LB254]

HOBERT RUPE: I've gotten many complaints about those from overservice and because they're... [LB254]

SENATOR KRIST: From overservice? [LB254]

HOBERT RUPE: Yeah, because, you know, because what they're doing is they're trying beer after beer after beer after beer. And so you're getting an overconsumption. And if the over...if you're a licensee and you overserve, we have grounds....we have grounds to bring you back into compliance. [LB254]

SENATOR KRIST: So that would be one area that you would be concerned with would be overservice (inaudible). [LB254]

HOBERT RUPE: I'm very concerned with...yeah. [LB254]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: And what would be the other area then, just the quality of the product?
[LB254]

HOBERT RUPE: The quality, there's no guarantee that this has been made under sanitary and legally, you know, licensed positions. [LB254]

SENATOR KRIST: And on that end, have you heard anecdotal information that says that there (inaudible). [LB254]

HOBERT RUPE: Well, you don't get a lot of people sick off beer but it's the next step that you get a lot of deaths. What was it? I just saw recently Mumbai, India, had 13,000 people who died or became violently sick from people adding alcohol into a beer product because they made some home brew. And the problem you get with that is the methanol problem. Home distillation can, if you do it wrong, can create it in something that's deadly. That's why it's not allowed at all. If you screw up a fermentation product, your methanol level is usually low enough that it's not really going to pose a major health or safety issue to you. It's possible but you...it's much more likely with distillation, you know, but at the same time, you know...you know, most times one of the things I look at when I'm going to drink a beer right away, because I want to know how many I should be able to drink--I don't drink a lot but I'm a big guy so I have to balance those two considerations--is the alcohol by volume. And so a commercially manufactured beer tells you what is its alcohol by volume. In a home brew, you have no way of knowing. [LB254]

SENATOR KRIST: Okay, three important considerations. Thank you, Mr. Rupe. [LB254]

SENATOR LARSON: Thank you, Senator Krist and Mr. Rupe. Any further questions from the committee? Seeing none, thank you. [LB254]

HOBERT RUPE: Thank you. [LB254]

SENATOR LARSON: Any further opposition? [LB254]

CHRIS WAGNER: Good afternoon, Chairman Larson and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, and I'm the policy and research coordinator for Project Extra Mile, a network of community partnerships across the state working to prevent excessive alcohol consumption, including underage drinking and its tragic consequences. Unfortunately, our interim executive director, Diane Riibe, was unable to attend in person today, but I'm here to deliver testimony on her behalf, and we're here today in opposition to LB254. As this committee well knows, the Liquor Control Commission is tasked with promoting the health, safety, and

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

General Affairs Committee
February 13, 2017

welfare of the people of this state through careful regulation of the manufacturer, distribution, and sale of alcoholic liquor. The three-tier system is the foundation of the alcohol regulatory process throughout the country. States are wise to protect the distribution and use of alcohol through this regulatory process in order to control availability of alcohol for the protection of public health and safety. Controlling the availability of alcohol is a primary purpose of the three-tier system and this proposal would make alcohol easily available and dangerously available to the consumer outside of that system. Alcohol is no ordinary commodity and should not be treated as casually as other products. Section 53-132 of the statute outlines key factors the Liquor Control Commission must consider when issuing a license. One of those key factors is the sanitation or sanitary conditions on or about the proposed licensed premises. Without a license, public health and safety officers are unable to inspect the premises where the alcohol is manufactured and stored, a significant public health concern. Furthermore, Section 53-168.06 allows for the exception of persons that are not restricted from manufacturing alcohol by fermentation if made solely for the use of the maker and his or her family and guests. Home brewers are currently allowed to participate in special designated license events only if it was part of a brewing competition involving judges, the idea being that judges understand the health risks of consuming alcohol in unknown conditions. Finally, in a nationwide survey conducted by the Center for Alcohol Policy, an effort of the nation's wholesalers, 89 percent of Americans agree that "all alcohol sold in my state should come through a licensed system which effectively tracks and (sic: the) steps it takes from the producer to the consumer." Senators, this bill would do just the opposite and we'd urge you to oppose LB254 and thank you for consideration of our comments. [LB254]

SENATOR LARSON: Thank you for coming to the General Affairs Committee today. Any questions from the committee? Seeing none, have a nice day. [LB254]

CHRIS WAGNER: Thanks. [LB254]

SENATOR LARSON: Any further opponents? Any neutral testimony? Seeing none, Senator Crawford. [LB254]

SENATOR CRAWFORD: Thank you, committee members, for your time and attention and good questions. I am glad that you had a chance to really hear from some of the home brewers about what...how they see the hobby and the ways that they'd like to participate in the community events and some of the events they've been able to have and are concerned they're no longer able to have. I understand Mr...Director Rupe is responsible for being attentive to our regulations and so I appreciate his concerns about making sure that we're being attentive to how we're moving forward. I would say there are some possible considerations as we move forward and he'd listed some of those. One is possible consideration of excluding people who are in the process of

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

General Affairs Committee
February 13, 2017

becoming a regulated brewer, you know, so that it doesn't become a pathway to provide people an exception or an early out on that process. Another is the consideration following Senator Krist's question about overservice. Those are something that could be done. And another area would be considering the special licenses and if there is a pathway through special licensure that is an effective pathway to address some of the concerns. Some of those might be the regulation pieces. The other...a couple examples from other states, the language in the statute is pretty simple and I assume a lot of those areas where they tighten the language and put the exceptions and restrictions in probably happen in the regulations. But if you are interested in seeing what some of those regulations look like, or if you're interested in talking about this issue further, I'm happy to try to provide what information that we can and I'm sure other folks that were testifying are interested in providing any help, if they can, as well. So I appreciate your time and attention. [LB254]

SENATOR LARSON: Thank you, Senator Crawford. Any questions from the committee? Seeing none, thank you for LB254. [LB254]

SENATOR CRAWFORD: Thank you. [LB254]

SENATOR LARSON: I'm going to change the schedule real quick. [LB254]

SENATOR RIEPE: Oops. My speech is still coming in. [LB73]

SENATOR LARSON: Well, we'll wait for a minute. I'm going to change the schedule real quick because of the length of what I expect LB632 will be. And Senator Riepe is just arriving from a funeral. He was originally slated to go first today, but we moved him back not expecting him to be here this early, so we will wait for a minute and move Senator Riepe's LB73 up into the middle just on...based on how long this is expected to take. [LB73]

SENATOR RIEPE: My staff is bringing my comments over because... [LB73]

SENATOR LARSON: That's fine. We'll wait a few minutes. [LB73]

SENATOR RIEPE: Okay, appreciate your kindness. Excuse me. Chairman? [LB73]

SENATOR LARSON: Senator Riepe, thank you, and welcome to the General Affairs Committee. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR RIEPE: Chairman Larson and members of the General Affairs Committee, my name is Merv Riepe; it's M-e-r-v R-i-e-p-e. I represent Legislative District 12 which is Millard, Omaha, and Ralston. Tobacco use costs the U.S. about \$170 billion in annual healthcare expenditures and more than \$150 billion annually in lost productivity. It continues to be the leading cause of preventable deaths in the U.S., killing more than 480,000 people each year. According to the CDC, if smoking continues at the current rate among youth in this country, 5.6 million of today's Americans younger than 18 will have a premature death from a smoking-related illness. LB73 is not a technically difficult bill but has the potential for substantial positive health outcomes. LB73 is a bill introduced to disrupt the chain of youth tobacco addiction. I also would like to add that LB73 is not a tax. This is strictly a public health initiative. According to the Campaign for Tobacco Free Kids, 95 percent of adult smokers began smoking before 21 years of age and many experimental smokers began smoking daily between the ages of 18 and 21. According to the 2015 Institute of Medicine study, increasing the legal age to buy tobacco from 18 to 21 will result in 200,000 fewer premature deaths for those born between the years 2000 and 2019. Even with these potential health outcomes, critics of raising the legal age, nevertheless, argue that there are many other serious activities 18-year-olds are allowed to engage in, like joining the military. However, raising the drinking age to 21 is a prime example of the deterring effect raising the minimum age can have on society. In 2015, Hawaii was the first state to increase the legal age to buy tobacco to 21. In June, California became the second state. And as of August 2016, at least 185 cities or towns and 14 states have also raised the legal age to 21. Eight other states have introduced similar legislation including Texas and Oklahoma. Utah, Alabama, Alaska, and Alaska (sic) have raised the minimum wage...or age to 19. And I have passed around some maps there for the members of the committee. Why is raising the legal age to 21 so important? First, delaying the age when young people first experiment or begin using tobacco can reduce the risk they transition to regular tobacco use; in fact, according to the Institute of Medicine, increasing the minimum age of legal access to tobacco will likely prevent or delay initiation of tobacco use by teens and young adults. Adolescents are particularly vulnerable to the addictive effects of nicotine. The parts of the brain most responsive for decision making, impulse control, sensation seeking, and susceptibility to peer pressure continues to develop and change throughout young adulthood. Adolescent brains are uniquely vulnerable to the effects of nicotine and nicotine addiction. There are also concerns regarding older teens and young adults as a source of tobacco for younger teens. Research shows that young smokers find friends and classmates to provide tobacco as these young teens have daily contact with students who can legally purchase tobacco for them. Raising the sale age of tobacco to 21 is likely to make both direct retail purchase and social acquisition more difficult for underage youth, especially those that are 15, 16, and 17 years of age. By increasing the minimum age to 21, it would decrease the likelihood these legally purchasing individuals would be in the same social circles as high school students. Finally, enforcement of the minimum age would be significantly easier on retailers. Nebraska driver's licenses switch from vertical to horizontal when an individual turns 21. I think some of you have seen that where the card flips. Additionally, the

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

General Affairs Committee
February 13, 2017

youth driver's license states the individual is 21. As stated before, LB73 is not a technically difficult bill. It simply adjusts the minimum age requirements from 18 to 21. As I conclude, I would like to do a quick recap as to why I think increasing the legal minimum age for tobacco sales is the right step for Nebraska. First, delaying the age of initial use of tobacco greatly reduces the risk that Nebraska youth will transition to regular or daily tobacco use. Second, raising the minimum legal age to 21 will increase the age gap between young teens starting tobacco use and those who can legally provide tobacco to them by helping to keep these products out of high schools. Finally, younger teens will have a harder time passing themselves off as a 21-year-old, as opposed to an 18-year-old. This will reduce underage sales. Increasing the legal age to 21 will simplify identification checks for retailers, since Nebraska driver's licenses indicate whether a driver is under the age of 21. Thank you for your time and your consideration. I know it is...I would have the opportunity to personally introduce...thank you for the opportunity to personally introduce this bill. And I would like to thank you, Chairman Larson and my fellow members of this committee. With that, I ask/urge the committee to vote LB73 to General File and I am prepared to attempt to answer questions. [LB73]

SENATOR LARSON: Thank you, Senator Riepe. Senator Krist. [LB73]

SENATOR RIEPE: Yes, sir. [LB73]

SENATOR KRIST: Senator Riepe, I think, just to bring to your attention, I think that there is a drafting error. I think when we go through all the definitions and then in Section 3, starting on page 3, line 18, it lists the actual Section 28-1419 which then identifies any person who sells, and it's tobacco or whatever, cigarettes, cigarette paper, vapor products, that vapor product is missing from 28-1424, starting on line 8 on page 4. So to be consistent with all the other sections, you've included, and I think appropriately included, vapor products... [LB73]

SENATOR RIEPE: Yes. [LB73]

SENATOR KRIST: ...in this bill and it's missing. And that basically addresses in that section the license, so I think that needs to be fixed. [LB73]

SENATOR RIEPE: Thank you. Thank you. [LB73]

SENATOR KRIST: You're welcome. [LB73]

SENATOR RIEPE: We need those eyes on it and I appreciate that very much. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Senator Blood. [LB73]

SENATOR BLOOD: Thank you, Senator Larson. I personally think smoking is disgusting. I've never understood it. I think vaping looks ridiculous. But with that said, how do you...how can you help me justify the fact that we make 18-year-olds register for the draft, go to war if indeed we have to go to war, but don't let them make the adult decision whether they can smoke or not? [LB73]

SENATOR RIEPE: I'd love to address that because, to me, if you can justify that they can smoke at the age of 18, if they can enlist in the military, then logic would say that you should allow them to drink as well. [LB73]

SENATOR BLOOD: Well, it used to be 18 and 19 in Nebraska and Iowa. [LB73]

SENATOR RIEPE: But it's not and it's proven that by raising the age to 21 it's had a positive impact, effect on society, so I see in the same line of logic. [LB73]

SENATOR BLOOD: Okay, I'm still not hearing, how do you justify it? The health is how you justify is what you're saying to me that... [LB73]

SENATOR RIEPE: Well, the health is... [LB73]

SENATOR BLOOD: ...because I'm not talking about people registering for the military; I'm talking about people legally having to be forced to register for the draft and, should we go to war, legally they're going to be forced to go to war. That's what I'm talking about, not people who are like, hey, I'm done with high school, I'm going to go sign up for the Air Force. That's...I'm trying to, in my head, I'm trying to say, how do we justify saying, you know, this is bad for your health so we're going to bump up the age? And I don't disagree that that's a good thing. But I'm having a hard time justifying we want you to go to war and get blown to bits possibly but we don't think that you're old enough to make the decision whether this is going to be healthy for you or not. [LB73]

SENATOR RIEPE: But we've made that decision for them for consumption of alcohol. So given, I think, your argument, then you'd lower the drinking age for alcohol down to 18 as well. If you can justify it for smoking, you can justify it for alcohol. That's...that would be my... [LB73]

SENATOR BLOOD: For me, alcohol is...smoking isn't going to change their senses as far as whether they can drive, whether they can speak to people, whether they can hold down jobs.

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

General Affairs Committee
February 13, 2017

Alcohol is a drug and although nicotine is, indeed, a drug, it will not affect the person in the same way alcohol will. So I guess for me, there's a gray area between the two. But I do hear and respect what you say. [LB73]

SENATOR RIEPE: And I hear you. Thank you. [LB73]

SENATOR LARSON: Senator Harr. [LB73]

SENATOR HARR: Thank you, Mr. Chairman. Do you think we should raise the voting age to 21, as well, then? [LB73]

SENATOR RIEPE: No, because this is a public health bill. [LB73]

SENATOR HARR: It's what? [LB73]

SENATOR RIEPE: I agree voting can be dangerous, but this is intended to be a public health bill. (Laughter) [LB73]

SENATOR HARR: Hmm. All right. Well, but if the brains aren't fully developed, they might vote for your younger opponent. [LB73]

SENATOR RIEPE: Well, I am going to let you submit that bill next session that... [LB73]

SENATOR HARR: Okay. [LB73]

SENATOR RIEPE: ...you would want to raise that to 21 and I may cosign on it with you, I may not. [LB73]

SENATOR HARR: All right. Thank you. [LB73]

SENATOR RIEPE: Thank you. [LB73]

SENATOR LARSON: I'd like to note that 18 is in the federal constitution. [LB73]

SENATOR HARR: Yeah, federal (inaudible). [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Okay. Any other questions from the committee? Seeing none, I'm assuming you'll stay to close? [LB73]

SENATOR RIEPE: I will. I will be sitting outside. [LB73]

SENATOR LARSON: You can take your seat--it's awful full--if you'd like. [LB73]

SENATOR RIEPE: Well, it is kind of full. Okay, thank you. [LB73]

SENATOR LARSON: How many testifiers do I have on LB73? Quite a few. I'll take the first proponent, first proponent. Okay. Welcome to the General Affairs Committee. Well? [LB73]

SENATOR BLOOD: Somebody go. [LB73]

SENATOR LARSON: Mr. Hale, welcome to the General Affairs Committee. [LB73]

ANDY HALE: Thank you, Senator. Thank you, Senator Larson. Members of the General Affairs Committee, my name is Andy Hale, A-n-d-y H-a-l-e, and I'm the vice president of advocacy for the Nebraska Hospital Association. I want to thank Senator Riepe--there he is--thank him for bringing the bill. And I want to also, on a side note, just say my thoughts and prayers are with his family today. So thank you for being here, Senator. Nebraska Hospital Association is the influential and unified voice for Nebraska's hospitals and health systems. Our hospitals employ over 42,000 people and provide care to more than 11,000 patients each day in our state. I'd like to again thank the senator for bringing this bill, and his staff. On behalf of the members of the NHA, I ask that you support LB73. Each day about 2,500 kids in the United States try their first cigarette. Four hundred of those kids become new regular daily smokers. That's more than 150,000 new underage daily smokers in this country each year. Ninety percent of adult smokers begin while in their teens and two-thirds become regular daily smokers before they reach the age of 19. Ten-point-five percent of all high school students are current smokers by the time they leave high school. The tobacco companies spend \$9.1 billion each year to promote their products. That's nearly \$25 million every day and much of that marketing directly reaches and influences our children. Of the \$10 spent on healthcare in the United States, 90 cents is due to smoking. That's \$170 billion a year spent on illnesses caused by tobacco smoke, with \$39 billion of that coming from public programs like Medicare and Medicaid. Tobacco use is the leading cause of preventable death in the United States. Health effects from cigarette smoking account for nearly one in every five deaths each year in the United States; that's more deaths caused by tobacco than by HIV, illegal drug use, alcohol use, motor vehicle injuries, suicides, and murders combined. If the smoking rates persist, 5.6 million children alive today will die prematurely from

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

General Affairs Committee
February 13, 2017

smoking. And for every person who dies from smoking, at least 30 or more are suffering from a serious smoking-caused disease or disability. I want to thank you again for your time and your support in this matter. And on behalf of Nebraska's hospitals, I urge you to support LB73. [LB73]

SENATOR LARSON: Thank you, Mr. Hale. Senator Blood. [LB73]

SENATOR BLOOD: Thank you, Senator Larson. For clarification, I thought I read that smoking has gone down progressively this decade, year after year. [LB73]

ANDY HALE: Correct, but the numbers are still probably higher than they are. [LB73]

SENATOR BLOOD: Okay, just making sure I understood. [LB73]

ANDY HALE: You are correct. [LB73]

SENATOR BLOOD: Thank you. [LB73]

SENATOR LARSON: Thank you. Seeing...any further questions? Thank you for coming today. [LB73]

ANDY HALE: All right. Thank you. Enjoy your day. [LB73]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB73]

JULIA McCARVILLE: Thank you. My name is Julia McCarville. I serve as the executive director for the American Lung Association in Nebraska. [LB73]

SENATOR LARSON: Can you please spell your name? [LB73]

JULIA McCARVILLE: I sure can. Julia, J-u-l-i-a; last name is McCarville, M-c-C-a-r-v-i-l-l-e. I'm so thankful for the filing of LB73 and I want to urge you to support it. I am a...I'm a young mom. I have a one-year-old daughter and I think about what her life is going to be like, what her access is going to be like. I'm also disproportionately affected by lung disease because of tobacco. I lost both of my grandparents because of their excessive tobacco use. I lost my dad to lung cancer because of his exposure. The tobacco industry, we know, is targeting youth to become the next generation addicted to this very, very powerful drug. Research shows that 95

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

General Affairs Committee
February 13, 2017

percent of adult smokers begin smoking before they turn 21 and the transition to regular use is between the ages of 18 to 21. Removing tobacco products from the school campuses reduces the rate of youth initiation. Twenty-two percent of Nebraska high school students have reported using e-cigarettes, compared to the 13 percent of students who have reported using smoking cigarettes. Experimentation with e-cigarettes is increasing. The tobacco industry is targeting our youth with flavors like grape, atomic fireball, Captain Crunch, bubblegum. These are flavors that are attracting our youth. It's important for us to have retail licensing on e-cigarettes because, without that, it won't be known who or where they're being sold, making enforcement very difficult. And at the Lung Association, we believe that tobacco at any age is a killer and if we can stop the access of our youth, we're setting ourselves up for success. Thank you. [LB73]

SENATOR LARSON: Thank you. Any questions from the committee? Seeing none, thank you for joining us today. [LB73]

JULIA McCARVILLE: Thank you for your time. [LB73]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB73]

LINDA STONES: Thanks, Senator Larson. And members of the General Affairs Committee, my name is Linda Stones, L-i-n-d-a S-t-o-n-e-s, and I am here on behalf of the Nebraska Nurses Association. The Nebraska Nurses Association is the voice of registered nurses in Nebraska and we support LB73 which prohibits the use and consumption of obtaining tobacco, vapor products, and alternative nicotine products by persons under the age of 21. And we want to thank Senator Riepe for introducing this bill. As nurses, we care for individuals with comorbidities resulting from tobacco use on a daily basis. It is clear that tobacco is one of the leading causes of lung cancer and the leading cause of heart disease. In the United States there has been scientifically proven link between chronic cigarette use and lung cancer. Lung cancer accounts for about 30 percent of all cancer deaths and some 85 percent of lung cancer deaths are attributable to tobacco use. The largest cause of death in the United States at the turn of the 21st century was cardiovascular disease, also largely attributed to smoking. Many of the patients we care for would like to go back in time and change their decision to start smoking. By the time they make that decision, they have already had enough damage that it is irreversible. Nurses care for these patients with chronic obstructive pulmonary disease due to the damage they've caused from their lungs from smoking. It is a disease that can be fixed. All we have to do is provide support to and relief from some of the...it is a disease that cannot be fixed once they've had it. All we can do is support and aid the relief of some of the symptoms of the respiratory distress. And if you've ever cared for somebody with chronic obstructive pulmonary disease, it is probably one of the most painful, emotionally, to deal with, because they literally cannot breathe and it's just a struggle every day for them to take in a breath. The overwhelming majority of smokers start before they

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

General Affairs Committee
February 13, 2017

are age 25, sometimes in childhood but most in adolescence. Americans' dependency on tobacco comes with a high price tag which is estimated around \$96 billion in direct medical expenses and \$97 billion in lost productivity. More than ten times as many U.S. citizens have died prematurely from cigarette smoking than have died in other wars fought in the United States. There are some statistics that were shared earlier that I'm not going to go back over, but I think the most important thing is an 18-year-old is likely to hang around with 15- and 16-year-olds which makes it a lot more accessible for them to gain cigarettes. Someone at the age of 21 is less likely to hang around with that cohort and by moving the age from 18 to 21 we really think we can have a dramatic impact on the health of Nebraskans. So we ask this committee to advance LB73 and support moving it to the General File. I'm available to answer any questions. [LB73]

SENATOR LARSON: Thank you for your testimony. Do I have questions from the committee? Seeing none, thanks for coming today. [LB73]

LINDA STONES: All right. Thank you. [LB73]

SENATOR LARSON: I'd take the next proponent to LB73. [LB73]

SIERRA GARTH: Hello. My name is Sierra Garth. My name is spelled S-i-e-r-r-a G-a-r-t-h, and I'm with the American Lung Association. I'm from Bellevue, Nebraska. And, Senator Blood, you are the senator of my district and I'd like to ask you to support this bill. I attended Bellevue East High School from 2009 to 2013 and during my time there I've witnessed my peers smoking cigarettes at the park that is blocks away from the school. Oftentimes the seniors would smoke and share cigarettes with the underclassmen. Tobacco use is present in today's youth. Passing LB73 would be beneficial in preventing many instances of youth experimenting with tobacco. Thank you for your time. [LB73]

SENATOR LARSON: Thank you for coming today. Do I have any questions from the committee? Seeing none, thanks for sharing your story. [LB73]

SIERRA GARTH: Thank you. [LB73]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB73]

LISA FUCHS: Thank you. My name is Lisa Fuchs, F-u-c-h-s. And dear Chairman Larson, members of the General Affairs Committee, I am the...I am a program director of a respiratory school at Nebraska Methodist College. I also serve on the local leadership board for American Lung Association and I am asking for your support on...for LB73 to raise the minimum age of

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

General Affairs Committee
February 13, 2017

tobacco from 18 to 21. As you've heard many statistics, I will not repeat them. But I will share personally. Across the state...you just had a nurse from the Nebraska Nursing Association. We cannot produce enough healthcare providers to take care of these patients with COPD. I mean there's a shortage of nursing. There's a shortage of respiratory therapists. They're being offered big bonuses in rural areas. So by cutting, you know, making it later, age 21 for tobacco use, to be able to buy it, we would be saving, you know, Nebraskans a lot of money; plus, you know, with professionals, we're growing them, we would have time to grow them. But I just want to thank you for your time and I hope you'll support LB73. Thank you. [LB73]

SENATOR LARSON: Thank you. Just a second, let me see if there's questions from the committee, not...do I have questions from the committee? Seeing none, thank you. [LB73]

LISA FUCHS: Thank you. [LB73]

SENATOR LARSON: Next proponent. Welcome to the General Affairs Committee. [LB73]

AMANDA KIS: Thank you. My name is Amanda Kis and I'm from Omaha and my name is spelled A-m-a-n-d-a K-i-s. And I thank you for this time. I work for the American Lung Association and my job is to drive around the state and provide educational and support to our rural hospitals and our hospitals in Lincoln and Omaha. And what I'm hearing is, from the patients who have COPD and lung cancer, that they started smoking when they were 10, 12, 13, 14 years old, and it's one of the biggest regrets of their lives. Now they have lung cancer or COPD and it's...the regret and the pain that people feel, they feel responsible from this happening. But as you've heard, the prefrontal cortex in the brain is not fully developed until the mid-20s. So by delaying access to tobacco products, we would be reducing some of that health burden on our constituents. And you know that our critical access hospitals are already struggling to keep up with the demand in rural areas. And when you think about marketing to youth, remember the flavors: vanilla cupcake, maple pancakes, cinnamon crunch, berry bash, peach, banana, apple pie, chocolate, watermelon. Are those lollipops? Desserts? Ice cream? It's...those are e-cigarette flavors. So tobacco in general, delaying the buying age and...will reduce access in high schools and help us out with healthcare. So I'm asking you to support LB73. [LB73]

SENATOR LARSON: Thank you, Ms. Kis. Do I have...Senator Brasch. [LB73]

SENATOR BRASCH: Thank you, Chairman Larson, and thank you, Ms. Kis, for your testimony. I just wonder. And I'm not, I guess, a proponent of smoking specifically. You know, there's a lot of education there. But when you're telling me that you've run into people that started smoking at the age of 10, 12, etcetera, before there was cotton candy cigarettes or

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

General Affairs Committee
February 13, 2017

whatever flavors, what makes you think raising it to 21 will change that? I mean if they're smoking now despite the 18-year-old age, what will make a person not smoke just because it's a law to be age 21? [LB73]

AMANDA KIS: So thank you for that question. I think that reducing access by when we have an 18-year-old who is a senior in high school, you heard in the last testimony that seniors in high school are purchasing the products, meeting up with their friends before and after school, and sharing. There's an 18-year-old who is providing access and... [LB73]

SENATOR BRASCH: But ten-year-olds must be getting them from parents, perhaps, or older siblings or...? It just alarms me to see that we're throwing ten-year-olds into the mix and I don't understand how just raising the age to 21 will change wherever ten-year-olds are getting cigarettes from. [LB73]

AMANDA KIS: I'm happy to introduce you to some of the patients who have lung cancer and COPD who have told me these stories. [LB73]

SENATOR BRASCH: And they were ten when they started. What age were they...what age are they now that they're having... [LB73]

AMANDA KIS: There is specifically one patient that I was working with in...around Fremont, Nebraska, and he is in his 60s now and he has COPD. In order for him to go anywhere, he requires oxygen. He is one of the patients that I just recently met who has told me his tale. [LB73]

SENATOR BRASCH: I'm not challenging that smoking is bad. I'm just saying, where are ten-year-olds getting cigarettes and why will this law prevent a ten-year-old from getting a cigarette? [LB73]

AMANDA KIS: When there are young people who have access, it's all about access. There are young people who that long-term decision-making part, that development of the brain happens around 25. So from adolescence to 21, they're still growing. Even at 21, the brain is still developing. It's not fully mature. So delaying access and access in the sense that the individual person and the providing to the younger people, their younger peers. [LB73]

SENATOR BRASCH: All right. I...thank you for your testimony and thank you for your work with those suffering from the ill effects of tobacco. [LB73]

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

General Affairs Committee
February 13, 2017

AMANDA KIS: Thank you. [LB73]

SENATOR LARSON: Thank you. Thank you, Senator Brasch. Any further questions? Seeing none, thank you for visiting the General Affairs Committee. [LB73]

AMANDA KIS: Thank you. [LB73]

SENATOR LARSON: Take the next proponent. Come on up. Welcome to the General Affairs Committee. [LB73]

KAT BALL: Thank you. Hello. My name is Kat Ball. I'm an eighth grader at Scott Middle School this year but when I... [LB73]

SENATOR LARSON: Will you please spell it? [LB73]

KAT BALL: Oh. K-a-t B-a-l-l. [LB73]

SENATOR LARSON: Thank you. [LB73]

KAT BALL: But when I started this project, I was in sixth grade. The topic I chose to research was lung cancer. And when it came time to pick the organization to research, I was really interested by American Lung Association. I chose this specific organization because I saw how much of an impact they made on everybody around them, all sorts of people really. A very good friend of mine passed away because of lung cancer and starting smoking at a very young age I think was a contributing factor. The bill before you today seeks to increase the age to legally buy tobacco products from 18 to 21. I support this new bill because from ages from 18 to 21 many smokers transition from experimenting to regular use. The majority of adult smokers begin smoking before they turn 21. Adolescents and young adults are uniquely vulnerable to "uniques" of the nicotine and nicotine addiction, causing lasting adverse consequences on brain development. The National Academy of Medicine report emphasizes that the brain continues to develop until about age 25. Thank you. [LB73]

SENATOR LARSON: Thank you for your testimony. Do I have any questions from the committee? Seeing none, thank you for coming today. [LB73]

KAT BALL: Thank you. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: The next proponent. Seeing none, I'll take the first opponent. Welcome to the General Affairs Committee. [LB73]

GREGORY CONLEY: Thank you. Senator Larson, members of the committee, my name is Gregory Conley, G-r-e-g-o-r-y C-o-n-l-e-y. I run a small nonprofit called the American Vaping Association and I'm here to strongly encourage you to vote no on LB73. And while I often dislike the...what can be called an intellectual fallacy of the slippery slope, I think here that term truly does have meaning because, if you pass this, what is next in terms of you're an adult for some purposes but not for others? I defend vapor products because six and a half years ago, thanks to a watermelon-flavored vapor product, as an adult I quit smoking and I have not had a cigarette since. The Royal College of Physicians and Public Health England, both very distinguished organizations, have released reports in the past 18 months, both estimating vaping to be about 95 percent less hazardous than smoking and an effective means to get smokers to quit. Also, the University of Victoria Centre for Addictions Research recently released a landmark report disputing the claim that vaping can be a gateway to smoking. There are several reasons beyond just the freedom issue to oppose this bill. The first is that existing 18-, 19-, and 20-year-old smokers will become criminals under this bill. There is no grandfathering in of existing 18-, 19-, and 20-year-old smokers. When New Jersey raised its age to 19, they did not grandfather in. I was 19 at the time and had friends coming to me and asking, please buy me a pack of cigarettes. Thankfully, I was never arrested, but I did become a criminal for some of my friends. I would strongly urge you not to bring that to Nebraska. Additionally, as some of you know, Nebraska's expungement statute is not friendly to those convicted. If you are a juvenile and you are caught under the current law, you can get your conviction expunged. If you are an 18-, 19-, 20-year-old, too bad, you are stuck with that for life. You are stuck with a criminal misdemeanor conviction on your record for life. Also, with regard to this idea that raising the age to 21 prevents access, the 2011 YRBS, 20 to 25 percent of high school seniors and juniors drank five or more drinks at a time in the past 30 days; 33 percent of juniors and seniors had used in the past 30 days. Lastly, statistics cited about, quote unquote, tobacco use, about all this harm that comes from tobacco is from smoking. Ninety-nine-plus percent of tobacco-related disease and death is from inhaling burning smoke into the lungs, not tobacco use, not nicotine use. So in conclusion, I would urge you to reject this bill because I don't think it respects the rights of 18-, 19-, and 20-year-olds, especially those existing smokers that are currently smokers, vapers, smokeless tobacco users; they deserve rights too. I'd be happy to answer any questions. [LB73]

SENATOR LARSON: Thank you for coming to the General Affairs Committee. Senator Blood. [LB73]

SENATOR BLOOD: Thank you, Senator Larson. Thank you for your testimony. What percentage of your clientele would you say are between the ages of 18 and 21? [LB73]

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

General Affairs Committee
February 13, 2017

GREGORY CONLEY: We don't...we're not a trade organization; we don't sell vapor products. But I can estimate that for 18 to 21, you have some vape shop owners that will be testifying, but it's probably in the range of 10 percent, 15 percent. [LB73]

SAM SALAYMEH: Six percent. [LB73]

SENATOR LARSON: Just a second. You'll be able to...you'll be able to get your turn. [LB73]

SAM SALAYMEH: I'm sorry. I was actually giving him the data (inaudible)... [LB73]

GREGORY CONLEY: Well, my colleague jumped in and said, for his business, 6 percent. [LB73]

SENATOR BLOOD: Six percent? I thought maybe as a nonprofit that you kept stats on things like that, so I'm sorry to ask you a question that was not in your (inaudible). [LB73]

GREGORY CONLEY: No, always happy. [LB73]

SENATOR BLOOD: Thank you. [LB73]

GREGORY CONLEY: Thank you. [LB73]

SENATOR LARSON: Any further questions? Seeing none, thank you for coming today. [LB73]

GREGORY CONLEY: Thank you very much. [LB73]

SENATOR LARSON: I'll take the next opponent. Come on up. Welcome to the General Affairs Committee. [LB73]

SAM SALAYMEH: Thank you. Good afternoon everyone. My name is Sam Salaymeh; that's S-a-m; last name, S-a-l-a-y-m-e-h. I am the president and founder of alohma, the state's first retail vape company, started in your district, sir, and currently headquartered in Senator Riepe's district, off 96th and L. My company operates 14 retail locations. We employ 85 employees, 6-8 of which are in the state of Nebraska. I believe we should say no to this bill, and the reasoning for that goes...I have justification of course from a numerical perspective, from a social perspective, from a public health perspective, and even a compliance perspective. So I might be lengthy with this. Please bear with me and stop me if needed. First of all, the issue of freedom:

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

General Affairs Committee
February 13, 2017

Freedom is a very important thing. I was a very, very heavy smoker. When I got out of Iraq, I was smoking two packs a day and actually Lisa Fuchs, who spoke earlier, was my smoking cessation coach and I failed miserably with that until I got into vaping. And with vaping, I stopped smoking, and that was approximately seven years ago. Two years after that, because of my joy of success in this, I started a business to help others. And I started with fruity flavors. I can't vape tobacco flavors. No one goes out to dinner and orders a tobacco pie at the end of dinner and that's a very important thing. I love fruity flavors and I always use them. They're not to tempt kids. The challenge (inaudible) is that we're confronted with a possibility of a law that would prevent us from helping other people like me who are, let's say, 19, 20 years old, coming back from Iraq or Afghanistan and they are heavy smokers. We tend to be very, very heavy smokers and I would rather not have to tell them I can't, because of the current laws, offer you a viable harm-reduction strategy. And one of my busiest retail locations is actually in your district, off 36 and 370. It creates quite a bit of a dilemma. The other challenge that we have...we've seen that in Kansas City, in Overland Park. I have a retail location recently that went to the age of 21. We have the parents and the grandparents coming and making purchases for their kids who are 19 or 20. Now when we know that they're purchasing for someone at that age, we refuse the sale. But how often do we know? In Sioux City last weekend, I was there. There are many--sad, but it's the truth of it--people who are of legal age, 19 and 20 years old, who would come into our retail store. And I saw a case where four kids were in a car, leaned back the seats in the front so that they're not appearing. They're teenagers. I'm not going to sell. We refuse the sale to the person because we suspected they're selling to minors. And we have a statement that they have to sign. Yes, sir. [LB73]

SENATOR LARSON: Finish that thought and then I'm going to have to cut you off just in...for time's sake. [LB73]

SAM SALAYMEH: Yes. We have to make them sign a statement that says, I am purchasing this for myself, not for anyone else and definitely not someone under the age. But the sad reality is, there are people who do that now. [LB73]

SENATOR LARSON: Thank you. And I'm sorry to cut you off. [LB73]

SAM SALAYMEH: Absolutely. [LB73]

SENATOR LARSON: We just have a lot here today for a number of bills. So, questions from the committee? Seeing none, thank you for coming today. [LB73]

SAM SALAYMEH: Thank you. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: The next opponent. Welcome back to the General Affairs Committee, Ms. Siefken. [LB73]

KATHY SIEFKEN: Chairman Larson and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association here in opposition to LB73. I apologize. The handout, I wasn't really going to use that handout so my name isn't on it, so if you would just mark it that it came from me, I would appreciate that, but these are my talking points. The current legal age to purchase tobacco products in 44 states is 18 years of age. The states of Alabama, Alaska, New Jersey, and Utah are 19 years; California and Hawaii are age 21. Proposals to raise the legal age to purchase tobacco are unnecessary due to the fact that retailers are already complying with federal and state laws to prevent the sale of tobacco products to underage youth. According to tobacco retailer compliance inspection statistics from the FDA, retailers have achieved significantly high passing rates when an underage youth decoy, or during a compliance check, has attempted to purchase tobacco products. The FDA Web site reports that retailers successfully pass compliance checks and do not sell to minors more than 95 percent of the time. That's a national figure. Nebraska's figure is pretty close to that: not quite 95 percent. Raising the legal age to 21 to purchase tobacco products will not solve the problem of reducing underage youth access to tobacco products. Recently released initial findings of the long-term Population Assessment of Tobacco and Health, which is referred to as the PATH Study, sponsored by the FDA, confirmed that a significant majority of underage youth rely on social sources for cigarettes and other tobacco products that are set out in this bill. Generally, they include adult-aged older siblings, friends, parents, and even strangers. We've found them paying off, youth paying people in the parking lots and we don't make those sales either. According to that PATH Study, 80 percent of the 15- to 17-year-olds obtain cigarettes by giving money to older adults; offering cigarettes from...being offered cigarettes from someone else; buying cigarettes from another person; and the list goes on. For electronic cigarettes, the statistics show that 15- to 17-year-olds reported that 89 percent of the time they relied on social sources to obtain those e-cigarettes. So the people that are selling vape products are also not selling to youth. Raising the legal age to purchase tobacco will deprive legal-age adults from deciding for themselves what legal products they choose to purchase and use. Liberty, personal liberty, freedom are being restricted when the very 18-, 19-, and 20-year-old adults that will be impacted by the higher minimum purchase are allowed to exercise so many other rights: the liberty to vote, the liberty to serve in the military, to take out loans to pay for college tuition, get married, divorce, buy lottery tickets, and they're required to buy health insurance. They have the right to make these decisions for themselves. And one of the other rights is including the right to refuse life-saving medical decisions. My last point is that the FDA already has jurisdiction over tobacco issues and we think that this should be a federal issue, not a state issue. With that, I would be happy to answer any questions you might have. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Thank you, Ms. Siefken. Any questions from the committee? Seeing none, thank you for coming today. [LB73]

KATHY SIEFKEN: Thank you. [LB73]

SENATOR LARSON: The next opponent. Welcome back, Mr. Keigher. [LB73]

TIM KEIGHER: Thank you for having me. Chairman Larson, members of the committee, my name is Tim Keigher; it is T-i-m K-e-i-g-h-e-r. I appear before you today in opposition to LB73 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association. And I don't have anything else to add and it looks like you're going to have a long afternoon, so I'd be happy to answer any questions if you have any. [LB73]

SENATOR LARSON: Thank you, Mr. Keigher. Any questions from the committee? Seeing none, thank you for coming. Welcome to the General Affairs Committee. [LB73]

SARAH LINDEN: Hello. Thank you, Senator. I am also paperless. I hope you don't mind me. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n. And I'm here representing Generation V E-Cigarettes and Vape Bar. I own four stores in the Lincoln and Omaha area. Today I'm here to speak to you, though, as an individual and as a mother but I have to say a couple of things. I share the distaste for smoking that's been expressed here. My grandmother died from lung cancer and my father almost died from blood clots related to smoking. But vaping is not smoking. Vaping is over 97 percent healthier than cigarettes because it doesn't have any of the tar or cancer-causing carcinogens that cigarettes have. It's helped over 9 million Americans stop smoking. And according to the Youth Risk Behavior Survey, only 30 percent of the youth who try vaping use e-liquid with nicotine in it. As a vape shop owner, my ultimate goal is to help smokers quit deadly cigarettes. I share many of the sentiments expressed today by Senator Blood. I don't understand why an 18-year-old is wise enough and old enough and adult enough to make a decision about going into the military and perhaps losing his or her life but yet unable to make a decision about whether or not they can smoke or use e-cigarettes. That does not make sense to me. I think that if there is an age where someone is an adult, it should be that's the age for everything. It shouldn't be different. The main concern that I have, though, with LB73 is the provision which criminalizes the use of tobacco and vapor products. Adults between the ages of 18 to 20 who receive this conviction will have it on their permanent record and it can never be expunged. As a young lady who got into trouble when I was 18 and 19 years old, I have found it extremely difficult to secure meaningful employment and even get accepted into prestigious universities, even with my criminal record pardoned, which happened about five years ago. I have an MBA from a top-ten business school. I've worked for Nestle. I've worked for ConAgra. Whenever I have to check the box that says have you ever been convicted of a crime other than a

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

General Affairs Committee
February 13, 2017

minor traffic violation, I am always rejected from being gainfully employed. They don't ask questions about what the conviction was. It's, if I check that box, I do not get the interview, I do not move forward. As a mother of two young children, it saddens me to think that they may one day experiment with tobacco or vapor products and, in turn, be arrested and the course of their lives dramatically altered because of it. Of course I do not wish anyone to start an unnecessary habit; however, I understand that we can't control everything our children do. I started smoking at 12 years old from no part of my parents. They do experiment. I would not want it to affect their later education and employment opportunities; instead, I would appreciate the opportunity to teach and discipline them myself. In closing, I ask you to consider whether you would want your own children to have a conviction on their permanent record which would hold them back from achieving their dreams. Do you believe the use of tobacco or vapor products when ages 18 to 20 should keep them from becoming gainfully employed for their entire adulthood? I ask you to please vote no to LB73. And I am willing to take any questions. [LB73]

SENATOR LARSON: Thank you. Any questions from the committee? Senator Brasch. [LB73]

SENATOR BRASCH: Thank you, Chairman Larson. And I have to ask, where does a 12-year-old get cigarettes? [LB73]

SARAH LINDEN: Just as the previous speaker said, I would stand outside of grocery stores and ask adults to go in and buy me cigarettes and I would give them money or...unfortunately, I'm in a courthouse...or not a courthouse. But I would steal them. [LB73]

SENATOR BRASCH: Okay. [LB73]

SARAH LINDEN: I would find any way to get them. I mean, when you're addicted to nicotine, I would find any way to get them that I had to. [LB73]

SENATOR BRASCH: At age 12? [LB73]

SARAH LINDEN: At age 12. [LB73]

SENATOR BRASCH: That's...see, this is where I would think that would be extremely hard to do, even if...but even if you raise the age to 21, you would still find a way to steal them or get an...someone older. [LB73]

SARAH LINDEN: Exactly. My brother was three years older than me, not yet 18, and he also smoked and would find ways to get cigarettes also. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR BRASCH: I have no other questions. Thank you. [LB73]

SARAH LINDEN: Thank you. [LB73]

SENATOR LARSON: Thank you, Senator Brasch. Any further questions? Seeing none, thank you for coming today. Any further opposition? Seeing none, neutral? Welcome to the General Affairs Committee. [LB73]

NICK FAUSTMAN: Thank you. Good afternoon. I'm Nick Faustman, representing the American Cancer Society Cancer Action Network. That's Nick, N-i-c-k, Faustman, F-a-u-s-t-m-a-n. ACS CAN is the nonprofit, nonpartisan advocacy affiliate of the American Cancer Society. We support evidence-based policy and legislative solutions designed to eliminate cancer as a major health problem. I'm here today to testify in a neutral capacity on LB73 which aims to increase the age of sale for tobacco products to 21 years of age. ACS CAN contends that raising the age of sale can and should be part of a comprehensive effort to reduce tobacco use. There are many ways, however, that LB73 can be improved in order to ensure that the proposal is effective and enforceable. My comments will focus on just two, one dealing specifically with e-cigarettes and the other dealing with restrictions on the possession, use, and purchase of tobacco products by those under 21. The first thing we suggest is...to improve LB73 would be to require e-cigarette retailers to be licensed just as other tobacco retailers are. E-cigarettes are products that contain nicotine derived from tobacco and they should be treated as such. If, through LB73, we aim to treat tobacco, alcohol, and e-cigarettes the same way, then we really should level this playing field. When retailers are licensed, the potential for license suspension or revocation may be a more effective deterrent to selling to people under 21 than a fine or other penalty. If e-cigarettes are not licensed, there is no reliable way to know who is selling these products or where they are being sold, which makes enforcement of this proposed law as it applies to e-cigarettes extremely difficult. Our second suggestion is based upon the provisions of the bill regarding the possession, use, and purchase of tobacco products by those under 21. In LB73, a minor who possesses, uses, or attempts to purchase shall be guilty of a Class V misdemeanor. Laws that punish young people for the purpose...or, I'm sorry, the purchase, the use, or possession of these tobacco products have not been proven effective at preventing/reducing youth tobacco use. For those young people already addicted, what they need most is access to evidence-based cessation services and not fines. Ideally, a proposal to raise the age of the sale would include many more improvements, many of which deal with updating current definitions and bringing Nebraska's antiquated tobacco statutes up to date. Whatever the committee ultimately decides to do with LB73, it seems as though the time is right for such a comprehensive review, and perhaps the General Affairs Committee would partner with the Health and Human Services Committee on an interim study to further examine these...address...or, I'm sorry, further examine these issues brought by LB73. The American

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

General Affairs Committee
February 13, 2017

Cancer Society Cancer Action Network would be happy to offer assistance. Thank you for the opportunity to comment on this matter. [LB73]

SENATOR LARSON: Thank you, Mr. Faustman. Do I have any questions from the committee? Seeing none, thank you. Any further neutral testimony? Welcome to the General Affairs Committee. [LB73]

BRIAN KRANNAWITTER: Good afternoon. My name is Brian Krannawitter; it's spelled B-r-i-a-n; last name is spelled K-r-a-n-n-a-w-i-t-t-e-r. I'll be very brief. My predecessor, Nick, from the Cancer Society, hit upon some of the points in the bill. As with the Cancer Society, we do support raising the age of sale for tobacco products to 21 years of age. We do recommend, however, that the bill modify to include licensing e-cigarette retailers just as the other tobacco retailers are. This will aid in enforcement to make the bill more effective and enforceable. Thank you for the opportunity to testify. [LB73]

SENATOR LARSON: Thank you for your testimony. Any questions from the committee? Seeing none, thank you. Any further in the neutral capacity? Seeing none, Senator Riepe. [LB73]

SENATOR RIEPE: Thank you, Chairman Larson and members of this committee. I'd also like to thank all of those that have testified, regardless of their positions. I think that's a good, healthy process and I think that that's the way that we get to good legislation in this state. I also wanted to point out, because the military card had been played, I am a Navy veteran and I'm also a trained respiratory therapist, so I do have some concerns about smoking and the causes of cancer and the addiction, quite frankly. That said, the biggest culprit for cancer is cigarette smoke, not vapor; however, the challenge with "vaping" is that it is nicotine and nicotine is very addictive, and so you still have the process of addiction even if it comes in the Baskin-Robbins flavors that you...that may be very appealing. I also wanted to go to Senator Brasch's question because how do 10-year-olds or 12-year-olds get cigarettes? And I can tell you--I'll be brief here--I have a cousin who is a minister and we used to go in and he would take one of Uncle Les's (phonetic) cigarettes, not more than one, only one, and of course he never missed it, so my point is oftentimes if parents like drugs, if they're laying around, that's where younger kids under the high school age will go to. I also wanted to, and I not often quote President Lyndon Johnson but I will today and he said doing the right thing is easy, knowing what the right thing to do is very difficult. And increasing the age to 21 to purchase cigarettes and vapors is the right thing. [LB73]

SENATOR LARSON: Thank you, Senator Riepe. Senator Brasch. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR BRASCH: Thank you, Chairman Larson, and thank you, Senator Riepe. From the earlier testimony, what I thought I heard was that not all of the e-vapor, or whatever they are, don't have nicotine, that some are just fruity flavors, and they're nodding their head yes. So some are just to blow smoke, I guess. I don't know. But so are...would you put a separate, like anything containing nicotine, into this bill rather than the fruity flavors? [LB73]

SENATOR RIEPE: If it doesn't involve nicotine or if it doesn't involve tar, like in cigarettes, we could take a look at that. It was not my understanding that any of the "vaping" was simply tutti-fruity and some of the other flavors. [LB73]

SENATOR BRASCH: And I thought I heard the opposite, and they're nodding yes, there can be just the fruit flavors and vapor (inaudible). [LB73]

SENATOR RIEPE: We'll explore that. We will explore that... [LB73]

SENATOR BRASCH: All right. [LB73]

SENATOR RIEPE: ...because we're interested in getting the right legislation. [LB73]

SENATOR BRASCH: Because I understand it was used as a tool to go away from nicotine to just to your fruit flavor is...but I would like to explore that further. [LB73]

SENATOR RIEPE: I don't want to get into a full discussion, but it's the nicotine that's the addictive side of it... [LB73]

SENATOR BRASCH: That you're after here, um-hum. [LB73]

SENATOR RIEPE: ...that can be a gateway to cigarettes at some point, not for everyone but it can be. [LB73]

SENATOR BRASCH: Very good. [LB73]

SENATOR LARSON: Thank you, Senator Brasch. Any further questions? Seeing none, thank you, Senator Riepe. [LB73]

SENATOR RIEPE: Thank you, sir. [LB73]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: That will close the hearing on LB73 and we will move to LB632. Introducing the bill will be my legal counsel, Josh Eickmeier. I'll wait for a second while (inaudible). All right, quiet down. Mr. Eickmeier. [LB73]

JOSHUA EICKMEIER: Good afternoon. My name is Joshua Eickmeier, J-o-s-h-u-a E-i-c-k-m-e-i-e-r. I'm the legal counsel to the General Affairs Committee and I am here today representing Chairman Tyson Larson and introducing LB632. LB632 contains a number of provisions intended to clarify and strengthen the Nebraska Liquor Control Commission's ability to regulate the alcohol industry. The bill also includes consumer protections for liquor licensees and others when interacting and entering into agreements with music licensing agencies. LB632 creates a definition for bottle club in a proactive effort by the commission to address a potential loophole. The commission is concerned that there could be attempts made to operate a business that allows for the consumption of alcohol but, arguably, doesn't require a liquor license. This provision is intended to close that loophole. LB632 assists the commission in regulating alcohol that is being shipped directly to consumers in Nebraska. This provision would require third-party shippers to file an annual report to the commission. This report would include shipment details in a form and manner prescribed by the commission. LB632 would limit special designated licenses, SDLs, to 12 per calendar year for certain licensees. There has been a recent proliferation of SDLs and this provision is intended to curb the total number of SDLs to 12 per year. This proposed SDL limit, due to some concerns that were raised, I understand there will be a proposed committee amendment to strike this provision from the bill. When issuing SDLs, the commission may waive certain statutory requirements, except for those regarding consumption by minors. LB632 would prohibit waiving the requirement that the SDL licensee go through a distributor. Additionally, in order for the commission to waive in the allowable statute, LB632 would require a showing of substantial need and undue hardship. Again, I understand that there will be a proposed committee amendment to strike the requirement to show substantial need and undue hardship before the commission may weigh the statutory provision; however, the language that would require going through the three-tier system would still be included as of now. Currently, Class C retail licensees with a bottling endorsement are limited to bottling 32-ounce growlers. LB632 would increase the growler size limit from 32 ounces to 64 ounces. Currently, the commission can only suspend a license for second and subsequent offenses when it's a compliance check violation. LB632 would provide the commission with the authority to suspend licenses for second or subsequent offenses of any other provisions. Before I discuss the next few aspects of the bill, it is important to mention how the three-tier system works and why it is essential to properly regulate the liquor industry. As Prohibition ended, states created three-tier systems consisting of manufacturers, retailers, and distributors. The three-tier system provides the commission with the means to regulate the industry which includes collecting the proper excise tax and ensuring the public's health and safety. The three-tier system provides the structure for accomplishing these objectives and that the commission can compare the manufacturer's books with the wholesaler's and retailer's. Because these books are independent

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

General Affairs Committee
February 13, 2017

of each other, the three tiers provide checks on each other. Keep in mind the commission is responsible for approximately \$33 million in revenue with an operating budget of around \$1.3 million. LB632 clarifies and codifies the at-rest provision in the commission's rules and regulations that requires beer to be taken to the wholesaler's warehouse where it is then placed at rest before being transported to retail locations. This requirement is important because it allows the commission the opportunity to investigate and audit shipments for regulatory purposes, including excise tax collection and health and welfare concerns. The commission currently allows in-state craft brewery beer to not come at rest in the wholesaler's warehouse but out-of-state beer does. This raises a constitutional issue involving the dormant Commerce Clause. The U.S. Supreme Court held in Granholm v. Heald in 2005 that while the Twenty-first Amendment of the U.S. Constitution grants the authority to regulate alcohol, they cannot do so in a way that violates the dormant Commerce Clause which prevents states from discriminating against out-of-state producers or their products. Since in-state brewers may disregard the at-rest requirement but out-of-state brewers must comply, there appears to be a dormant Commerce Clause violation that could be challenged in court. In order to remedy this concern, LB632 would require all beer going through a distributor to be at rest at the distributor's warehouse. I understand there will also be a proposed amendment to clarify that this is not intended to include farm wineries. Related to the at-rest requirement and the issue of excise tax collection and who collects it, currently the wholesaler pays the excise tax on all out-of-state beer which attaches once the beer reaches the warehouse. The craft brewer pays the excise tax whether it sells it at retail or through a wholesaler. LB632 clarifies that the wholesaler pays the excise tax on all beer, whether from a craft brewer or an out-of-state brewer. From a regulatory standpoint, this provision would assist the commission in ensuring that the appropriate excise tax is being paid on all beer that comes into the possession of the wholesaler. LB632 would require that a craft brewer's five separate locations have on-site production. This provision is intended to address another dormant Commerce Clause concern that would exist if in-state brewers were allowed to have retail locations without production on premises but an out-of-state brewery would not. This concern will grow considerably once a craft brewer reaches the 20,000-barrel threshold and is allowed under current law to retain ownership of five retail locations while an out-of-state brewer cannot; therefore, after careful consideration, Senator Larson has decided to remove this proposed change from the bill which will be reflected in a future committee amendment. The intent of last year's liquor omnibus bill was for the craft breweries' retail locations to be wholly owned. There are now concerns that small interests are being acquired and, as a result, allowing the craft brewer to transport his beer to those retail locations without going through a wholesaler. LB632 would codify the commission's policy that requires 100 percent ownership and, therefore, the craft brewery would only be allowed to transport its beer to wholly owned locations and not partially owned. Arguably, such transportation is currently a violation of the commission's policy. LB632 would grandfather in existing partial ownership interests. The last component of LB632 is the inclusion of the Music Licensing Act. This act is intended to address issues that liquor licensees and others are having with live music performances and claims of copyright

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

General Affairs Committee
February 13, 2017

license royalties. We have heard concerns regarding liquor licensees receiving aggressive calls from firms claiming to hold the copyrights to songs that may or may not be performed at the licensee's venue. Liquor licensees have said to have been harassed to the point that they just paid these music licenses so they would be left alone. The Music Licensing Act would provide consumers with protections including requiring music licensing agencies to register and file annual reports with the Secretary of State, provide a list of members of affiliates it represents and a catalog of its music licenses, and would prevent music licensing agencies from harassing the venue operators. That's all I have for LB632. [LB632]

SENATOR LARSON: Thank you, Mr. Eickmeier. Questions from the committee? Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. And I'm sorry I missed some of your testimony. [LB632]

JOSHUA EICKMEIER: Sure. [LB632]

SENATOR BLOOD: So if you've already said this, I apologize. [LB632]

JOSHUA EICKMEIER: You want me to reread it all? (Laughter) [LB632]

SENATOR BLOOD: No, but thank you for offering. So I went back and read a little history and talked to, frankly, both sides, mostly the lobbyists. And the thing that I heard that maybe was different this time around with this bill--and I just need to know, I need you to verify whether this is true or not and hopefully you know the answer--it seemed like everybody was at the table last time when you formed the bill but this time it seemed that maybe only half of the people that were involved were at the table. Did you involve the microbrewers, these...the people that this bill is really going to affect, at the table when you guys designed this bill this time around? [LB632]

JOSHUA EICKMEIER: Yeah. What we do as our office policy is around the time the Liquor Control Commission puts out a letter, a legislative letter, I send that letter out to our lobby list. And then what I do is I let people know, if you have concerns with this or thoughts on this or any other issues, please come and let me know. And so then they'll...oftentimes, interested parties will come and visit with me. And our policy in our office is I take in information from individuals and then at the time decision is made to move forward with the bill, that's what's introduced. And then again, additional feedback usually comes in after, you know, after bill

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

General Affairs Committee
February 13, 2017

introduction. People see the bill and they have other suggestions and then we proceed that way. But that's been our policy within our office for at least the last few years. [LB632]

SENATOR BLOOD: So you did hear from the brewers when you were crafting the bill? [LB632]

JOSHUA EICKMEIER: All these concerns that are in this bill are/were brought at some point I believe to the Liquor Control Commission's attention. These didn't all make it into the letter, but as far as I know that is the path that the information traveled. I don't typically go out and seek input. Typically the lobby, because of interested parties, they typically are the ones that communicate that to one another and then bring that to us. [LB632]

SENATOR BLOOD: So was it your impression...I'm sorry. I know I feel...it sounds like I'm beating a dead horse. I'm just trying to hear an answer here. [LB632]

JOSHUA EICKMEIER: I'm fine. [LB632]

SENATOR BLOOD: Would you say it was pretty fair and balanced as far as gathering information on both the pros and the cons, because it seems to me what was odd as a freshman senator... [LB632]

JOSHUA EICKMEIER: Sure. [LB632]

SENATOR BLOOD: ...is that you had this great bill that really gave them a boost up and then...and I understand the circumstances as to why we're trying to reel it back in. So with it affecting so many new businesses in Nebraska, I guess, for me, I need to hear that it was a fair and balanced process. [LB632]

JOSHUA EICKMEIER: I can't speak to that. [LB632]

SENATOR BLOOD: Okay. [LB632]

JOSHUA EICKMEIER: I mean, that's kind of the eye of the beholder. Again, I did not go out and specifically ask people for input based...I mean, I asked them for input based on the general sense of issues that they have, but I don't take every idea that comes to us back out into the lobby or other interested parties. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: Sure. [LB632]

JOSHUA EICKMEIER: Just every bill is so different. [LB632]

SENATOR BLOOD: Yes. [LB632]

JOSHUA EICKMEIER: It's everything like case-by-case basis. You have different...the process is different for every bill, for every session, and for every office, so. [LB632]

SENATOR BLOOD: Again, I just...I found it really confusing... [LB632]

JOSHUA EICKMEIER: Sure. [LB632]

SENATOR BLOOD: ...seeing the vast difference between the two bills and I'm still a little puzzled about what the true intent is. [LB632]

JOSHUA EICKMEIER: Sure. [LB632]

SENATOR BLOOD: So hopefully I can learn more as I hear. [LB632]

JOSHUA EICKMEIER: Yeah. And I'd be happy to meet with you after the hearing if you have additional questions... [LB632]

SENATOR BLOOD: I appreciate that. [LB632]

JOSHUA EICKMEIER: ...about the structure of the bill. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Harr. [LB632]

SENATOR HARR: Thank you, Mr. Chairman. You made several references to an amendment, and I know we do things a little differently. Do we have a copy of that amendment? [LB632]

JOSHUA EICKMEIER: I don't. I had it. I was preparing it and I found an issue with it at the last minute and so I wanted to get that issue addressed before making it public so there wasn't confusion about having multiple amendments floating around. So I made mention to the

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

General Affairs Committee
February 13, 2017

particular changes that we're considering in that amendment, but I don't have a hard copy for you. [LB632]

SENATOR HARR: So to avoid confusion about an amendment, you mention an amendment without bringing the amendment? [LB632]

JOSHUA EICKMEIER: Yes. [LB632]

SENATOR HARR: Okay. (Laughter) [LB632]

JOSHUA EICKMEIER: Does it help? [LB632]

SENATOR HARR: And I guess my next question is, what is the policy reason to move on the...to go from 34 to 62 ounce...or 32 to 64 ounces? [LB632]

JOSHUA EICKMEIER: I believe there will be...I assume there might be some testimony following me about any number of these provisions. My understanding is that currently 64 ounces is a traditional...I get in trouble when I use with like "traditional," but my understanding is that 64-ounce growlers are very common. I believe that there are brewpubs or craft breweries that will fill growlers and that 64-ounce size is very common. When this was first passed to...in the...before to allow for a limited bottling endorsement, it was set at 32 as the limit. And so this would just bring it in line with what's already out there for what's already common practice. [LB632]

SENATOR HARR: Okay, thank you. [LB632]

SENATOR EICKMEIER: Yeah. [LB632]

SENATOR LARSON: Senator Brasch. [LB632]

SENATOR BRASCH: Thank you, Chairman Larson. And thank you, Mr. Eickmeier. Because you were reading and pretty much in a monotone, I just want to make sure we talked about, and just now, about amendments to be made. And seeing the number of individuals who are here, are those amendments going to be addressing some of the concerns that may be raised? [LB632]

JOSHUA EICKMEIER: Yes. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BRASCH: And if so, can you be more specific... [LB632]

JOSHUA EICKMEIER: Sure. [LB632]

SENATOR BRASCH: ...what is being taken out so they are very clear when they come forward? [LB632]

JOSHUA EICKMEIER: Sure. And just to clarify, there may be additional, you know, inclusions to that amendment, you know, as we move forward with this process. But specifically, for example, the SDL provision in the bill limits the SDLs to 12 per calendar year and the intent is to... [LB632]

SENATOR BRASCH: So the limit will be changed? [LB632]

JOSHUA EICKMEIER: It will remove that limit to 12. [LB632]

SENATOR BRASCH: So there will be no limits then. [LB632]

JOSHUA EICKMEIER: So current...well, current law would apply. [LB632]

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: So whatever the current law would apply, it would be there. [LB632]

SENATOR BRASCH: Is...it stands. [LB632]

JOSHUA EICKMEIER: Yes. [LB632]

SENATOR BRASCH: So that change will not be made. [LB632]

JOSHUA EICKMEIER: Correct. [LB632]

SENATOR BRASCH: And then next? [LB632]

JOSHUA EICKMEIER: And then...yes, in the bill it states that the commission has the authority to waive statutes when it's issuing an SDL. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: And it's common when it's like, depending on the location, sometimes just the geography doesn't allow all of the statutes and so to apply. And farmer's markets, for example, present their own issues with logistics. But they're allowed to waive the statutes. And one of the concerns deals with the statute that they would, in order to waive these statutes, they would have to...there would have to be a showing of substantial need and undue hardship to request that waiver. And we...it was decided that we would take that out of... [LB632]

SENATOR BRASCH: So that's another concern being removed about the...okay. [LB632]

JOSHUA EICKMEIER: Yeah, so basically the...and Hobie Rupe, the executive director,... [LB632]

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: ...is also here to... [LB632]

SENATOR BRASCH: All right. [LB632]

JOSHUA EICKMEIER: ...talk about that and explain because that, it basically removes that as well. The...under the at-rest requirement when it comes to the beer reaching the distributor's warehouse, it went...we're looking at a clarifying amendment to make sure that because the farm wineries have self-distribution rights, even though it's in another section, we just want to make it abundantly clear that we're not talking about farm wineries. This is strictly beer. [LB632]

SENATOR BRASCH: So it's an exclusion for farm wineries. [LB632]

JOSHUA EICKMEIER: Well, they already have the ability to self-distribute. [LB632]

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: And we just want to...we want to make it abundantly clear that the intent is not to change how they're operating. And so when...let's see, the last one had to do with the issue with the five locations and that there being production at those five locations. And as I mentioned, there's still some constitutional concerns. But at this point, given the size of the craft breweries in Nebraska, at this point it was decided to remove that provision. So where it was

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

General Affairs Committee
February 13, 2017

saying you'd have to have production at those locations, at those retail, at those locations couldn't just be retail, that goes away. [LB632]

SENATOR BRASCH: That's also... [LB632]

JOSHUA EICKMEIER: So the current law would still be... [LB632]

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: ...applicable to that situation. [LB632]

SENATOR BRASCH: So the law will not change that. [LB632]

JOSHUA EICKMEIER: Correct. [LB632]

SENATOR BRASCH: Okay. [LB632]

JOSHUA EICKMEIER: And I believe those are the ones I mentioned, so. [LB632]

SENATOR BRASCH: All right. I just wanted... [LB632]

JOSHUA EICKMEIER: Yeah. [LB632]

SENATOR BRASCH: ...because of the individuals that have come forward... [LB632]

JOSHUA EICKMEIER: Yeah, absolutely, appreciate you giving me the opportunity to clarify. [LB632]

SENATOR BRASCH: ...so they (inaudible). All right. Very good. I have no other questions. Thank you. [LB632]

SENATOR LARSON: Senator Krist. [LB632]

SENATOR KRIST: So for everyone, the fact that a craft brewer brewery can have five independent sites called taprooms is still, the way that you're telling me this amendment is going to read, they can still do that. [LB632]

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

General Affairs Committee
February 13, 2017

JOSHUA EICKMEIER: It would not change that. [LB632]

SENATOR KRIST: Okay. [LB632]

JOSHUA EICKMEIER: The only issue that comes up in here has to do with being wholly owned because there are some issues where maybe someone would acquire a partial...maybe you own a craft brewery and you get a partial interest in a retail location. You know, the idea wasn't to get these small percentages everywhere and be able to essentially self-distribute to your own locations, so. [LB632]

SENATOR KRIST: Why are we changing the law? [LB632]

JOSHUA EICKMEIER: As opposed to...? [LB632]

SENATOR KRIST: Can't the legal...the alcohol commission, they're holding a hearing in March on this very issue. [LB632]

JOSHUA EICKMEIER: On the...yes, well, I mean, the state law always supersedes the rules and regulations. I mean from a state law perspective, it's always cleaner. I think Hobie will tell you he'd prefer to see a state law change just because it gives them much more clear discretion. They've had issues in the past where, you know, they made passive rules and regulations on an item that gets challenged. And so state law just makes it very clear on the record of what the Legislature's intent is and gives the guidance to the commission on how to proceed on those issues, so, yes. [LB632]

SENATOR KRIST: I guess I'll have to...I don't want to put words in Mr. Rupe's mouth and I'll ask him the same question when he comes up here. But to me, when the law was passed last year, there wasn't...it was pretty black and white. I mean it's not that they had to have the equipment to brew on site. It was a taproom and it had a provision for wholly owned and that is enforceable by the Liquor Commission. So once again my question for the record is, why are we messing with something that's working? [LB632]

JOSHUA EICKMEIER: And I would defer to Hobie on the... [LB632]

SENATOR KRIST: Okay. [LB632]

JOSHUA EICKMEIER: ...enforcement side. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: All right. [LB632]

JOSHUA EICKMEIER: But I do see there are areas where being proactive in heavily regulated industry is not a bad thing but obviously there needs to be a balance there. [LB632]

SENATOR KRIST: We'll ask Mr. Rupe when he comes up. [LB632]

JOSHUA EICKMEIER: Put him on the hot seat. [LB632]

SENATOR LARSON: Thank you, Senator Krist. [LB632]

JOSHUA EICKMEIER: Thank you. [LB632]

SENATOR LARSON: Any further questions from the committee? Seeing none, thank you, Mr. Eickmeier. [LB632]

JOSHUA EICKMEIER: Thank you. [LB632]

SENATOR LARSON: I'll take the first proponent to LB632. Welcome back to the General Affairs Committee, Mr. Madigan. [LB632]

MIKE MADIGAN: Thank you, Chairman Larson. Chairman Larson, Senators, my name is Michael Madigan, M-i-c-h-a-e-l M-a-d-i-g-a-n. I'm an attorney with Madigan, Dahl and Harlan, and I'm appearing today on behalf of the Associated Beverage Distributors of Nebraska speaking in support of LB632 as it amends 53-123.01, 53-123.14, 53.124-11, and 53-164.01. Nebraska Rule 010.01, known as the at-rest rule, provides that all "beverages purchased for resale in this State prior to being resold at retail shall physically come into the possession of a licensed wholesaler and be unloaded into and distributed from the licensed wholesaler's warehouse located in this State." The rule safeguards the three-tier system by ensuring that manufacturers sell their products to wholesalers and that the product must come to rest in the warehouse where it's subject to inspection and audit by the Nebraska Liquor Control Commission to verify that all liquor laws are being complied with and to verify that all taxes are being collected. However, the last sentence of that rule exempts Nebraska brewers from the at-rest requirement. That exemption does not pass constitutional muster for two reasons. One, the commission's enabling statutes make it clear that only wholesalers have the right to sell and deliver to retailers and nothing in that language even suggests that Nebraska brewers are not subject to that rule. Secondly, and perhaps more importantly, as counsel alluded to, the rule clearly runs afoul of the dormant Commerce Clause. The seminal case regarding the constitutionality of state liquor laws

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

General Affairs Committee
February 13, 2017

under the dormant Commerce Clause of the United States Constitution is the Granholm case, a 2005 Supreme Court decision. That case involved the constitutionality of Michigan and New York laws which allowed in-state wineries to ship direct to consumers but prohibited out-of-state wineries from doing so. And in pertinent court, the court held, and I quote, "state laws violate the Commerce Clause if they mandate 'differential treatment of in-state and out-of-state economic interests that benefits the former and burdens the latter.'" And there is no doubt in my mind that the exemption for Nebraska craft brewers clearly runs afoul of that dictate in the Granholm case and in the dormant Commerce Clause. So we urge the committee to pass this bill to rectify that constitutional infirmity. Nebraska Revised Statutes Section 53-123.01(2) was amended last year, as you all were discussing. Pursuant to that amended statute, a craft brewer was entitled to own up to five brewpubs. Brewpub is defined as a facility that has a manufacturing capability on premise. So it was ABDN's understanding and interpretation of that, that of the five satellites that a craft brewer could own, it had to have a manufacturing component. However, in an interest of accommodating other industry members while still somewhat limiting the vulnerability to a constitutional challenge, my clients are supportive of the amendment that was discussed a minute ago that would allow the craft brewers to have five satellite retail locations. The final section that I'd like to address is Section 53-124.11 that creates special designated licenses and delineates the circumstances under which they can be granted. And that statute does grant authority to the commission to exempt an SDL from certain provisions of the liquor law. That authority, however, was only intended to be exercised in extraordinary circumstances upon a showing of need and that conclusion is supported by the rule itself which states, "It is the declared policy of the Commission that Special Designated Licenses should not be used to avoid the oversight and accountability imposed upon a regular (retail) license." In other words, an SDL should not be granted if it is not consistent with the purposes of the act and no waiver from the provisions of the act should be granted if it's not consistent with those principles. And many SDLs have been issued by the commission that exempt many provisions of the Liquor Control Act, and in order to guide the commission's discretion and to make it clear that the underlying policy of the act is to be adhered to, ABDN urges the committee to pass the amendment to 53-124.11 that specifies that the commission cannot grant SDL exemptions to three-tier and tied-house laws. [LB632]

SENATOR LARSON: All right. [LB632]

MIKE MADIGAN: So with that, I'll stand for questions. Thank you very much for your time. [LB632]

SENATOR LARSON: Thank you, Mr. Madigan. Any questions from the committee? Senator Krist. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: Mr. Madigan, if I get five lawyers in a room, I'm going to get five different opinions. Would you agree? [LB632]

MIKE MADIGAN: Okay, fair. [LB632]

SENATOR KRIST: Okay. So I'm looking at the conversation, the product that was put together by let's call it the other side of the equation. And their assessment is that Granholm was a case dealt with discriminatory Michigan and New York laws governing direct shipments of wine to consumers. The Supreme Court struck down the laws because they explicitly discriminated against wine producers in other states by preventing out-of-state wineries. In addition, they go on to say Nebraska LB1105 was adopted last session to accomplish a much-needed affirmation and clarification of rights afforded to craft brewers, which is a separate license, you admit. It's an L license. And the L license provisions enacted by LB1105 unequivocally provide two key rights to craft brewers, both of which have been exercised by L license holders in Nebraska for years: the right to deliver and sell beer they produce at five satellite locations. And I don't see a definition of the satellite locations--that would be your interpretation--of having all the hardware necessary to produce; it was just their way of having a retail outlet--again, their interpretation and mine. So the last thing that I'd like to bring for the record is I get the feeling that we had maybe one or two bad actors out there that were doing something that they weren't supposed to be doing and that--we're having a hearing in March--the Liquor Commission is going to take care of this...alcohol commission, I'm sorry. I'm just not, I'm not sure that this just isn't an overreach by distributors, wholesalers trying to make sure that it's produced in Crawford and it's got to go all the way to Omaha and then it gets distributed from there. I don't find there's a gentle blend. And so I guess if you'd like to respond to any or all of that, you're welcome to do so. [LB632]

MIKE MADIGAN: Sure. Chairman Larson, Senator Krist, thank you for that question. I was provided with a copy this morning of a letter from Ms. Silke dated February 12 of 2017 and let me hit the highlights of that, in my viewpoint, and then specifically the question you asked. First of all, I strongly disagree with the analysis embodied in that letter. I do not believe that the cases that are cited in here for the conclusions for which they're cited have any application. And I was...I litigated three of the four cases that were cited on an appellate level so I have a personal experience with those cases. First of all, there is a suggestion at the beginning of the letter that only the courts have the authority to examine the constitutionality of governmental action. As I think probably every member of the committee understands, that's simply not true. Not only do the legislative and executive branches have the authority to assess the constitutionality of government action, they actually have the responsibility to do so, and I believe that every member of the body takes an oath to do that before they assume office. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: So you're assuming that we as an independent branch can call something unconstitutional and rule on the unconstitutionality of something? [LB632]

MIKE MADIGAN: No, no. What I'm saying, sir, is that it's the responsibility of every legislative body and the executive branch to have an understanding of what the constitution requires... [LB632]

SENATOR KRIST: Okay. [LB632]

MIKE MADIGAN: ...and when it takes an official action to ensure that it's in compliance. [LB632]

SENATOR KRIST: Okay. I just want to let the Chief Justice know his job wasn't what he thought it was if that's where you were going with it. [LB632]

MIKE MADIGAN: (Laugh) All right. [LB632]

SENATOR KRIST: Okay. [LB632]

MIKE MADIGAN: Then secondly, the Granhholm case stood for the proposition that, number one, it wasn't clear prior to Granhholm whether or not state liquor laws were subject to dormant Commerce Clause challenge by virtue of the Twenty-first Amendment. The Granhholm case conclusively decided that issue and held that liquor laws which regulated producers, in other words, suppliers, and their products are clearly subject to the dormant commerce laws and legislatures and Congress cannot pass laws which discriminate between in-state and out-of-state producers and their products, favoring one over the other. [LB632]

SENATOR KRIST: No question. [LB632]

MIKE MADIGAN: Right. The Southern Wine case which is cited in the February 12 letter was a dormant Commerce Clause challenge to a Missouri residency statute that regulated distributors. In other words, it was not a law that regulated producers and their products; it was a law that regulated distributors. And under the Twenty-first Amendment, the Eighth Circuit Court of Appeals held that Granhholm did not have application to that statute because it didn't regulate producers and products, it regulated distributors, and further held that that regulation was exempt from dormant Commerce Clause analysis. That's completely separate from the statute that we're dealing with here which exempts in-state brewers from the at rest but doesn't exempt out-of-state brewers. The second case that was cited by Ms. Silke is the Arnold's Wines case. That was a

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

General Affairs Committee
February 13, 2017

Second Circuit decision that was challenging under the dormant Commerce Clause a New York regulation of retailers. And what that law said was, in order to get a New York License, you had to have a physical premises in New York. In other words, an out of state, a New, I believe it was, a New Jersey retailer challenged that law. And the Second Circuit Court of Appeals--one level below the Supreme Court--held that that also was not subject to dormant Commerce Clause and that the Granholm case didn't have any application because it was regulating retailers, not producers and their products. And then the final case that was cited, and this was a case that I was not involved with, was a Maine case and it was decided by the First Circuit Court of Appeals. What was involved in that case was a Maine statute that allowed farm wineries to sell, when somebody came to the winery, it allowed them to sell direct to a consumer but an out-of-state winery couldn't ship. And there the First Circuit Court of Appeals held that it didn't violate the dormant Commerce Clause and the reason being, in order to exercise the privilege to sell direct to consumers in Maine, you had to be physically present in Maine, you had to have a farm winery in Maine. [LB632]

SENATOR KRIST: There had to be a nexus. [LB632]

MIKE MADIGAN: Right. So I would submit respectfully that none of these cases stand for the proposition that the at-rest exemption in Nebraska is exempt from dormant Commerce Clause. I don't believe there's a clearer case of a violation. [LB632]

SENATOR KRIST: The only thing I would add to yours is you very eloquently have told me all about other states which none of them are the same as Nebraska, none of them have laws that are...some of them are similar but the three tier is executed or is administered in vastly different ways. So you've given me all the reasons why they should do things in other states. There's never been a challenge that I know of in the state of Nebraska. Constitutionally our Supreme Court has never ruled on whether or not this is an issue. So I would...I'd respectfully say that both of you can cite anything you want to cite, but what I believe is in the best interest of the craft brewers is to continue to do what they're doing, clean up the bad actors, let the alcohol commission weigh in and do what they're paid to do, and when they meet in March, punish the bad actors and let's go on. So thanks for your time though. I appreciate it. [LB632]

SENATOR LARSON: Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. And thank you, Senator Krist, for doing the heavy lifting, because now I only have two or three questions. As a freshman senator, I need a lot of clarification, so bear with me. [LB632]

MIKE MADIGAN: Okay. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: So I did speak to lobbyists and people involved on both sides--and I had asked this question earlier, so hopefully you have the answer--and both sides told me that last time all parties were involved in the designing of the bill but this time that one important community was left out of it. Why do you think that was? [LB632]

MIKE MADIGAN: Chairman Larson, Senator Blood, I'm engaged as counsel to the association... [LB632]

SENATOR BLOOD: Okay. [LB632]

MIKE MADIGAN: ...and not as a lobbyist so that's a question that I think would be better put to the lobbying team. [LB632]

SENATOR BLOOD: Then I'll go with a counsel question. [LB632]

MIKE MADIGAN: Okay. [LB632]

SENATOR BLOOD: All right? I'm looking at the part where it changes the distribution and to me it seems nonsensical. Right now it says that, the way the bill is read, that you could take the beer all the way to...you have to take it all the way to the distributor's warehouse regardless of how far away it is. But with the bill existing like it is, that is not necessarily the case. Is that correct? So for instance, if it's a 100-yard trip to the other side of town but the warehouse is 200 miles away, right now you could do that 100-yard trip but with the new bill you'd have to take it as far as it needed to go. That seems not green, which so many of the breweries seem to be gearing towards. It sounds like a liability, an insurance issue. I don't understand why. And as counsel, maybe you can tell me the legal reasoning for this. [LB632]

MIKE MADIGAN: Sure. [LB632]

SENATOR BLOOD: It just...it doesn't make any sense to me as someone who's not involved with it in any fashion. [LB632]

MIKE MADIGAN: Chairman Larson, Senator, number one, the transactions that you're talking about would be a minuscule part of the distribution and sales in the state of Nebraska. Ninety-nine-point-nine percent of all sales occur in a manner different from that than you just described. Now there may be some isolated instance where a brewer has decided to engage a distributor a long way away from that particular brewer's facility, but that's a decision that the brewer makes. The reason why we have the law is, and I think this was alluded to by Director Rupe earlier in

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

General Affairs Committee
February 13, 2017

his testimony on the other bill, before anyone can sell alcohol in the state of Nebraska (1) the manufacturer has to be licensed here or the importer of the manufacturer has to be licensed here; (2) their labels have to be registered. And so that product is then tested to make sure that it's suitable for consumption. The product is tested, it's verified that that particular supplier is, in fact, the supplier of that product is not a counterfeiter gray market. And all product has to come to rest in a warehouse in Nebraska. Why do we do that? So that the Liquor Control Commission can go in at any one time, audit the product in that warehouse, verify (1) that everybody has been licensed; verify (2) that the labels have been duly registered; verify (3) that the appropriate tax has been paid on that product. And alcohol is one of the most heavily regulated products in our economy and we have some of the highest tax collection rates in the country on alcohol because of these laws. So that's the reason why we have an at-rest law and I would submit respectfully that the policy objectives that are achieved by that system that has worked very, very well for decades far outweighs some isolated instance. And that craft brewer is free to choose another distributor in a different area if they wish to do so. So I hope that addresses the question. That's my perspective on that. [LB632]

SENATOR BLOOD: I guess I'm a little confused because I'm reading it in the bill and I understand why that you expect there to be distribution. That's not the brewer's choice. I think you kind of made it sound like they get to choose whether they want it distributed or not. They have to have it, use a distributor under state law. [LB632]

MIKE MADIGAN: Right. [LB632]

SENATOR BLOOD: Gosh, I guess I don't understand the need for the change in that language. That's where I'm confused. It seems like if it's not--well, it's kind of like Senator Krist says but I say it more simply--if it's not broken, why are we trying to fix it? [LB632]

MIKE MADIGAN: Well, Chairman Larson, Senator, I think it is broken. I think the law is unconstitutional as it currently exists. And I don't think there's any great disagreement either, respectfully, Senator, over that fact. Now how you deal with that is obviously a policy decision for all of you. But I don't think anybody familiar with this area of the law would suggest that this at-rest exemption for Nebraska brewers is constitutional. I don't believe it is. [LB632]

SENATOR BLOOD: You know, the one thing I've learned being in the Capitol, one of the first lessons I learned is that if I throw a rock in this room I'm going to hit a lawyer. And I don't mean that to be flippant or... [LB632]

MIKE MADIGAN: I understand. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: But I can tell you, depending on who the lawyer works for is what view I hear. You know, we have other bills right now that have been in front of us that I scratch my head on is that we try and solve problems sometimes that I don't think truly exist and I think this may, indeed, be one of them. But I appreciate your testimony and I respect the fact that you testified. [LB632]

MIKE MADIGAN: Okay, thank you. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Krist. [LB632]

SENATOR KRIST: Vast disagreement on whether we're talking constitutionality or not. And I'm not a lawyer but I've been on this committee, off and on, for eight years, dealt with the three-tier system, and I know that there is a...let me ask you a question. What is a constitutional violation of the three-tier system? [LB632]

MIKE MADIGAN: What is? [LB632]

SENATOR KRIST: Yeah, what is? Just give me a hypothetical. What's a...what would be a constitutional violation of the three-tier system? [LB632]

MIKE MADIGAN: Chairman, Senator, it would be a...under the dormant Commerce Clause it would be a law that discriminates between in-state and out-of-state producers,... [LB632]

SENATOR KRIST: Okay. [LB632]

MIKE MADIGAN: ...provides a benefit to an in-state producer... [LB632]

SENATOR KRIST: Okay. [LB632]

MIKE MADIGAN: ...that is not provided to an out-of-state producer. [LB632]

SENATOR KRIST: Okay, and...? [LB632]

MIKE MADIGAN: And then it's a violation of the dormant Commerce Clause. If the state is sued, as many, many states have been in the last 20 years, the law will then be stricken. The state will have to pay not only its own attorneys in defending the law. The state will also under

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

General Affairs Committee
February 13, 2017

Section 1983 of the United States Code have to pay the attorney's fees of the lawyer that is challenging the law. [LB632]

SENATOR KRIST: And I assume that you're just the guy to do that but... [LB632]

MIKE MADIGAN: No, actually, I'm usually working with the state, Senator, defending those laws. [LB632]

SENATOR KRIST: Okay. [LB632]

MIKE MADIGAN: I'm working with the solicitors general in four different states. [LB632]

SENATOR KRIST: Okay, so I apologize for that comment. Let me retract that off the record. But I...the biggest violation that I see is trying to make sure that someone is not producing it, distributing it, and selling it at retail, I mean, and the intent or the purpose of the law is fully in compliance by saying that a craft brewer cannot own all three parts of the system. The at-rest part of it could be inspected at the craft brewer if we want to institute that. And the liquor...the alcohol commission can go on site at any one of these craft brewers, as I'm sure they do, and inspect their facility for it happening. What you want to have happen, or what we're arguing about here, is the at rest has to happen in this square building that's owned by somebody else and adds another layer of bureaucracy. I'm for limited bureaucracy, small government, and keeping it the way it is. So when you made the statement, the only reason I piped back in is you made a statement that there is a problem you think with the constitutionality. You're talking about interstate commerce laws. I'm talking about the laws in the state of Nebraska and the compliance with the three-tier system. Thank you. [LB632]

SENATOR LARSON: Thank you, Senator Krist. Any...no? I'll chime in now. [LB632]

MIKE MADIGAN: Okay. All right. [LB632]

SENATOR LARSON: I always let everybody go first. [LB632]

MIKE MADIGAN: Sure. [LB632]

SENATOR LARSON: Do you feel as we move forward with the amendment, specifically to Section 53-123.01, is a reasonable balance and accommodation to the craft brewers? [LB632]

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

General Affairs Committee
February 13, 2017

MIKE MADIGAN: Chairman Larson, I do, for this reason: particularly if retail, satellite retail locations are permitted, I'm not aware of many other states--there may be a few--that accord that kind of a privilege to craft brewers in their state. Others have what I'll describe as a more pure three-tier system. So I think a significant accommodation is being made to the interests of craft brewers. I think it's, in my opinion, it's prudent for the Legislature to address the constitutional infirmity and I think if those two things were done in tandem it would be a reasonable balance of industry member interests. [LB632]

SENATOR LARSON: All right. You mentioned so if we were...and you walked through Granholm and you walked through specifically the at-rest provision. If we were, and we've heard, you know, the...I get the concerns of if a distributor were to pick, in western Nebraska, pick a distributor from Omaha, that to comply with the at-rest provision is...that they're choosing that distributor to distribute their beer. But it...on the surface it doesn't necessarily make sense. Can you walk me through who collects the excise taxes in the state of Nebraska? [LB632]

MIKE MADIGAN: Right. [LB632]

SENATOR LARSON: Who collects it? It is the distributors, correct? [LB632]

MIKE MADIGAN: That's correct. [LB632]

SENATOR LARSON: And the history of the three-tier system, moving further back, why did we have that middle tier? What is the purpose and why do we...because that's the next, I think, logical argument of why don't we just get rid of that distribution tier, what... [LB632]

MIKE MADIGAN: Right. [LB632]

SENATOR LARSON: And obviously back in the late '30s that was created for a reason. What was the purpose of that distribution tier? [LB632]

MIKE MADIGAN: Right. The...there are several purposes of the three-tier system and tied-house laws. The first purpose is to prevent vertical integration of the industry. Brewers used to own retailers lock, stock, and barrel. That was the origin of that phrase. The consequence of that was, number one, there was a proliferation of retail outlets throughout the country and there is then a correlation between the number and density of retail outlets and consumption patterns and abuse. Secondly, if a brewer owns a retail outlet, they will tend to promote the sale of their products and only their products. So it actually had an impact on the diversity of consumer choice and variety. In addition to that, if a consumer...or, excuse me, if a brewer owns a retailer

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

General Affairs Committee
February 13, 2017

lock, stock, and barrel, there is a tendency to overmarket, overpromote the sale of alcohol which, again, leads to consumption patterns. So, and the ancillary benefit, incidentally, to craft brewers is, as these folks I'm sure can tell you, the capital investment in starting a brewery is very significant in terms of the brewery equipment and the rest of it and complying with the regulatory structures. Very, very few new craft brewers have the resources to make that investment and, in addition, to hire a sales force, to hire a delivery force, to establish refrigerated warehouses throughout their trade territory, to purchase rolling stock. What they do instead is that they leverage the resources of distributors in order to create a market for their product where it doesn't exist or to expand sales within that market. So I would submit that it's been a very successful partnership and part of the reason why we've enjoyed...there are many reasons. Many craft brewers are producing wonderful products that's regenerated the industry. It's been great for the industry. But another part of the reason why we've enjoyed such success in craft brewers is that consumers desire to purchase local and the partnership between brewers and distributors in creating a market for those products. [LB632]

SENATOR LARSON: Next, you said you've been involved specifically on the state side of working with solicitors general in terms of the cost. If the state of Nebraska were to get sued under the dormant Commerce Clause, specifically the at-rest provision, and were to lose, what are we looking at in terms of cost? What is to the state of Nebraska? [LB632]

MIKE MADIGAN: Well, I can't evaluate what the cost would be in terms of your Attorney General defending the case. But I can tell you that in cases where states have lost these dormant Commerce Clause challenges the attorney's fees in any other type, and there's a certain segment of the bar that has been pursuing those, have been in seven figures. It's well over a million dollars. [LB632]

SENATOR LARSON: So if we were to get sued specifically on the at-rest provision and lose, which...and we can talk about, you know, if the system isn't broke don't fix it, but there are concerns if we don't fix it and get sued, if we can agree that there is a constitutional concern with the at-rest provision, and could cost the state of Nebraska well over seven figures. [LB632]

MIKE MADIGAN: That's correct and it's not discretionary. It's the plaintiffs would be entitled to recover those fees. [LB632]

SENATOR LARSON: Okay, thank you, Mr. Madigan. Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. Are you aware right now that somebody is lining up to sue us? [LB632]

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

General Affairs Committee
February 13, 2017

MIKE MADIGAN: I'm sorry? [LB632]

SENATOR BLOOD: Are you aware that there is somebody lining up right now to sue us? [LB632]

MIKE MADIGAN: No, no. No, Senator, I'm not. [LB632]

SENATOR BLOOD: Thank you. [LB632]

SENATOR LARSON: No further questions, thank you, Mr. Madigan. [LB632]

MIKE MADIGAN: Thank you. [LB632]

SENATOR LARSON: Next proponent to LB632. [LB632]

LESTER JONES: Good afternoon, Chairman Larson and members of the General Affairs Committee. My name is Lester Jones; that's L-e-s-t-e-r J-o-n-e-s. I am an economist for the National Beer Wholesalers Association and I appear before you today in support of LB632. Around the country and in Nebraska, a regulated and orderly marketplace for alcoholic beverages has created a vibrant and highly competitive alcohol beverage industry where thousands of alcohol beverage suppliers have their products available to sell in more than 600,000 retail establishments and in over 5,000 in Nebraska. But around the country and in Nebraska the beer business has a turning point. Changes in demographics and consumer demand and where and how we consumer alcoholic beverages are all in play. Competition for the share of consumers' wallet and stomach are intense. Despite all these changes, the total beer excise tax collections in both the U.S. and in Nebraska are stagnant and, in fact, declining on a per capita basis. Nationally, per capita beer collections for malt beverages has fallen 7 percent. In Nebraska, per capita collections have fallen over 3 percent over the past several years. In fact, there is no new demand for alcoholic beverages. The total amount of ethanol that Nebraska consumes from all alcoholic beverages has remained constant at roughly 2.8 gallons per legal drinking-age consumer. Despite consumer demand for tasting and sampling alcoholic beverages, the origin of manufacturing has created a new business model. Through the taproom, the brewery tour, and the beer trail, consumers are drinking different beers in different places around the country. But with stagnant demand for alcoholic beverages and changing consumer demand, winners and losers in the industry begin to surface. For example, while the number of permitted brewers in Nebraska has increased from 15 in 2005 to over 47 in 2016, over the same period of time the same number of retail establishments that sell alcoholic beverages has declined from 737 to 610 according to the U.S. Bureau of Labor Statistics. In Nebraska and around the country,

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

General Affairs Committee
February 13, 2017

when, where, and what people are choosing to drink has changed the beer industry. Today manufacturers of alcohol seek greater retail privileges through the taproom and tasting room that are accompanied with direct-to-consumer sales. The tasting room business model is threatening to pull a thread which could potentially unravel the whole regulatory fabric and also affords a small number of industry players a competitive advantage not available to others. There are established industry players who built relationships and brands in the marketplace over a period of time with well-defined set of regulations and marketplace rules. Rewriting these rules in the middle of the game puts existing established industry players at a competitive disadvantage. Regulations are what balances the playing field for new entrants to the marketplace with existing industry players. Thank you for the opportunity to appear before you today. I would be happy to answer any questions. [LB632]

SENATOR LARSON: Thank you. Senator Blood. [LB632]

LESTER JONES: Yes, ma'am. [LB632]

SENATOR BLOOD: And you may not know the statistic...that was a lot of information. [LB632]

LESTER JONES: Yes, it was. [LB632]

SENATOR BLOOD: Thank you for sharing that. I'm still kind of filtering it all. Do you think the decline in sales has to do with perhaps that the millennials prefer to shop on the Internet? I know for my son-in-law, I got him a beer-of-the-month club membership for Christmas. [LB632]

LESTER JONES: No, it's...what is incredibly interesting to see, if you look at nationally, if you look at the amount of ethanol that we consume nationally has been incredibly stable since 2010, we're... [LB632]

SENATOR BLOOD: Why do you keep saying ethanol? [LB632]

LESTER JONES: Well, because if you take beer, wine, and spirits, they all contain different amounts of alcohol in them. [LB632]

SENATOR BLOOD: Right. [LB632]

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

General Affairs Committee
February 13, 2017

LESTER JONES: And so in order to analyze them on an equal basis, you need to reduce them down to their basic alcohol content: beer, typically, 4.6 percent; wine, 11.5 percent; distilled spirits, typically, 38 percent. So if you take all the alcoholic beverages we consume, you reduce it into ethanol and you put it in a pot in the middle of the room and everyone gathers around it, every year we consistently pull the same amount of ethanol per capita out there. So that's why I say we're in a very fierce, competitive marketplace. Everyone is fighting for share of consumer's time, wallet, and stomach. And what we see here is an industry where people are looking for new and different places to consume alcoholic beverages. We go on the beer trail; we go to the taproom; we go to the home brewer's club. So but that doesn't raise the total amount of ethanol we're consuming; it just spreads it out across different places. [LB632]

SENATOR BLOOD: I still don't know if I agree with using the word "ethanol" because ethanol itself is poison. I'm just saying...I'd just say I disagree with that. [LB632]

LESTER JONES: Oh, okay, the term. [LB632]

SENATOR BLOOD: You're welcome to use that terminology. [LB632]

LESTER JONES: Well, yeah, that's... [LB632]

SENATOR BLOOD: But I think it's kind of misleading. So the other question I have just went out of my head so you lucked out, so. (Laugh) [LB632]

LESTER JONES: Okay, well, if you remember, please ask me. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Krist. [LB632]

LESTER JONES: Yes, sir. [LB632]

SENATOR KRIST: Rewriting the rules right now is counterproductive to going forward? I'm not sure making changes through this...I don't understand your...you're a proponent of this bill. [LB632]

LESTER JONES: I'm a proponent for the bill, yes, sir. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: And we're trying to allow people to have taprooms and have more capability to experiment and taste test and do all that that never existed. So what we're saying is they're drinking less Budweiser and they're drinking more craft beer. [LB632]

LESTER JONES: Yes, they are. [LB632]

SENATOR KRIST: What's wrong with that? [LB632]

LESTER JONES: There's nothing wrong with that. There's absolutely...no, no, no, there's nothing...there's nothing...there's nothing...there's absolutely nothing wrong with... [LB632]

SENATOR LARSON: We do not take outbursts from the committee. It's common practice in the Legislature. Please hold all applause. [LB632]

SENATOR KRIST: So let me say it different; let me ask the question in a different way. I wasn't trying to get the sensational part of it. But I...does...as an econo...I've never understood economists or economy, so you have to bear with me. But you can use any measurement you want to, but I can take my district and I can take Lincoln and I can see all of the growth in business, small businesses, and I can see people taking chances and building up these different opportunities. That's good for our economy, Mr. Economist, so what's with... [LB632]

LESTER JONES: That's good, yes. [LB632]

SENATOR KRIST: What's wrong with having these different opportunities? [LB632]

LESTER JONES: Oh, there is nothing wrong with different opportunities. It's the rules in which we play by. It's a business that has been around for 100 years or a distributor that's been around for 70 years that has... [LB632]

SENATOR KRIST: Okay, so let me interrupt you there for just a second and then I'll let you finish your thought. [LB632]

LESTER JONES: Okay. [LB632]

SENATOR KRIST: We've had these rules in place in the state of Nebraska for a couple of decades, bumping up a couple of decades. We made a slight change last year in the way we were doing business in allowing for taprooms to be defined rather than just all out there. And now

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

General Affairs Committee
February 13, 2017

we're going to go back and change the rules again. So to your first point I would say your logic would tell me there's no reason to go forward with this portion of LB632. And the second thing is we've already established we may be drinking less of something else and more of something else, but it's pretty much an even playing field right now. So the argument that we're going to try to even the playing field doesn't hold, doesn't cut mustard with me. [LB632]

LESTER JONES: Okay. [LB632]

SENATOR KRIST: So if you want to respond to any or all of that, you... [LB632]

LESTER JONES: Yeah, I...it's...for me, for my perspective, it's a point of maintaining the existing structure of the three-tier system to ensure that everyone who enters the market is playing by the same rules. And creating winners and losers out of the policy needs to be evaluated, you know, effectively and with thought and not at, my apologies, but not at a local district level. And you need to understand that alcohol beverages across the state of Nebraska and across the United States are very much intertwined with importers domestic...domestic producers, importers, local brewers, local retailers, local distributors. It includes a much larger economic impact than just one single local player. [LB632]

SENATOR KRIST: Well, this is not local. This is the state of Nebraska. That's where we're at today. [LB632]

LESTER JONES: Yeah. [LB632]

SENATOR KRIST: And we're looking at a statewide policy, so I think we're doing... [LB632]

LESTER JONES: Okay. [LB632]

SENATOR KRIST: I think we're doing the right thing at the state level, so. [LB632]

SENATOR LARSON: Thank you, Senator Krist. Senator Blood. Oh, sir. Sir. [LB632]

SENATOR BLOOD: Apparently I don't have a question. (Laugh) [LB632]

LESTER JONES: Oh. I'm sorry. [LB632]

SENATOR LARSON: She had another question. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: I'm sorry, I remembered the other question. I apologize. So I'm hearing you talk about even playing field and economic development and stats allegedly going down. But you may not know this, but I come from a municipal background. [LB632]

LESTER JONES: Okay. [LB632]

SENATOR BLOOD: And so speaking with my municipal background, the one thing I can tell that is in almost every new development plan that I see, be it the new entertainment district idea that was passed by the Legislature I think a year ago that sounds like Omaha is going to take advantage of and the last craft bill that was passed, is that these crafters are being involved in almost every new development that I see across Nebraska. So I guess I'm confused when you're telling me that, you know, it looks dismal, it looks bad. But the people who make money off development, that make a lot more money than I make developing communities, all involve this in their big picture. So I'm a little confused how you can give such bad stats when everybody else is giving such good stats. [LB632]

LESTER JONES: Yes, because economic development is frequently confused with economic impact. I mean every business has an economic impact in their local community, in their county, in their state, in the nation. But economic development is about adding to the total, you know, betterment of the economy. And when you're in that...in an alcohol beverage market where we are spreading consumption out across many more businesses, you may be developing something here but you're actually taking away from somewhere else and that's not...that's economic impact, it's not...taking away from here and building up here is economic development with blinders on. And while there's a lot of news when people go out into the bars and they see all the excitement, what's happening is there's a whole bunch of other economic activity over there. So when you look in a local area where there's all this economic activity and there's economic development and there's brewers and there's distillers and there's a whole big party going on surrounding that alcohol, there's...and the alcohol consumption is flat, you know, you're kind of pushing on the balloon here and pushing up here and taking down there. So my point is that we have to be aware of the difference between economic impact and economic development and that there's a fine line between the two. [LB632]

SENATOR BLOOD: I would disagree and say that that is impactful. And I hear what you're saying. You're here. Out with the old, in with the new. Here's the thing, and I don't mean this to insult anybody, but did you notice it's beard day in here? And it's beard day in here because we have a lot of millennials in this room. And I'm really excited for the trend for when they start shaving again, by the way. (Laughter) So, that's the grandmother in me. [LB632]

LESTER JONES: That's the Dollar Shave Club. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: It's...but the one thing that I know, and I'm a business consultant by trade, so I'm a little insulted by the impact and economic development comparison because I do understand the difference. But the one thing that I know is that consumers change. They change with each decade. They change with what they want. You know, the good...the people in my demographic, maybe a little bit older than my demographic, they're the ones that are drinking the Bud, they're the ones that are drinking the Miller. They're good union beers. They pay a living wage. People support things like that. Millennials don't necessarily understand the importance of tradition. And I'm not saying that they won't pick up a Bud, they won't pick up a Miller, but I'm saying that, you know, what you're bringing into it, you keep talking about economic development and I think you're comparing apples to oranges. I think there's room for both. I think there's still a strong demographic that's going to want a Bud or Miller...Bud and Miller is getting all kinds of advertising today, aren't they? [LB632]

LESTER JONES: Um-hum. [LB632]

SENATOR BLOOD: ...a Bud or a Miller or Anheuser-Busch or...I don't drink beer so I don't even know what exists anymore. Coors? But I, gosh, I just...I don't understand why we would just lift up a group and then take the foundation out from under them because all of a sudden we're worried about a lawsuit. Where were all the attorneys when we were crafting the other bill? And I find that really confusing. Okay. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Any further questions? Seeing none, thank you for visiting today. [LB632]

LESTER JONES: Thank you. [LB632]

SENATOR LARSON: The next proponent. Welcome to the General Affairs Committee, Ms. Weber. [LB632]

MICHELLE WEBER: Hello, Chairman Larson and members of the committee. My name is Michelle Weber, M-i-c-h-e-l-l-e W-e-b-e-r. I'm testifying today on behalf of Kum&Go. Kum&Go is the fifth largest privately held, company-operated convenience store chain in the United States with more than 430 convenience stores in 11 states. Kum&Go has 20 stores here in Nebraska located in Omaha, Bellevue, Gretna, Papillion, South Sioux City, and Columbus. I'm here today to respectfully request your support of LB632, specifically Section 9 which would increase the bottling endorsement allowance for Class C license holders from 32 to 64 ounces. Under current law, Class C license holders may apply for a limited bottling endorsement known as a growler endorsement to allow for the retail of off-sale beer in a sealed container not larger than 32 ounces. Kum&Go is interested in investing in Nebraska to offer growlers of craft beer in

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

General Affairs Committee
February 13, 2017

its store as the company does currently in three other states. It's a considerable investment to install taps, dispensing equipment, sanitizing sinks, and to train and devote staff to this endeavor. This is an investment that Kum&Go will only make in Nebraska if a change is made to allow sales of 64-ounce growlers. This is the standard size of growlers that craft beer enthusiasts are most familiar with and it's the size that most customers want. Furthermore, the larger volume will allow larger sales volumes that will justify the investment. Under current law, the limiting bottling endorsement sales can only occur on the licensed premises of the licensee during the hours the licensee is authorized to sell beer. Licensee must use sanitary containers purchased by the customer from the licensee or exchange for containers previously purchased. Containers must prominently display the endorsement holder's trade name or logo or some other mark that's unique to the endorsement holder and the licensee must seal the product in a tamper-evident manner. The licensee must also provide a date stamped receipt to the customer and attach the dated receipt to the sealed product. At Kum&Go, the lid is heat sealed, and then another tamper-evident seal is put on, on top of that, and containers specifically identify the product and the date. And employees are specially trained to follow standard operating procedure to ensure quality product is consistently and safely dispensed. Kum&Go works with distributors to ensure lines are properly cleaned and maintained. As you can tell from the extensive investment needed and numerous requirements, a bottling endorsement is not something that a license holder would enter into lightly and Kum&Go is committed to making sure that the bottling is done right. Nebraska's craft beer industry is growing and increasing the bottling endorsement allowance would offer an additional outlet for these products that consumers are excited to buy. We appreciate the opportunity to invest and make this offering in Nebraska, appreciate your consideration and support of Section 9 of LB632. [LB632]

SENATOR LARSON: Thank you, Ms. Weber. Any questions from the committee? Seeing none, thank you. The next proponent. Welcome back, Mr. Ballard. [LB632]

JIM BALLARD: Senator Larson, members of the General Affairs Committee, my name is Jim Ballard, J-i-m B-a-l-l-a-r-d, owner of wine maker James Arthur Vineyards in Raymond, Nebraska, and also representing Nebraska Wine and Grape Growers Association. And I'm here this afternoon in support of a specific portion of LB632 and that is the part pertaining to the music licensing, which is the very last section of the bill. Going to give you a personal overview of why I'm here to talk about that specific topic but please know that this issue affects nearly all the winery members in our association as well as a number of restaurants, retailers, and other venues that feature music at their establishments. Over the past several years I've been required, we've all been required to pay a licensing fee to have live music at our winery, and until I purchased a music system a couple weeks ago, also for playing of the radio, for background music in the tasting room as well, CDs or anything else that we needed. Now we don't charge a cover for our live music events at JAV, but look at it as part of the winery experience. We offer, to be quite honest, to highlight local musicians, which we have some incredibly talented performers

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

General Affairs Committee
February 13, 2017

in this area that we love to highlight at the winery. Now I don't mind paying the fee but what I do have a problem with or maybe at least I don't understand is why I have to pay numerous licensing companies. Currently there are three such companies that I pay a fee to. I understand there's a fourth on the way, might already be in existence, as well, collecting some of those licensing fees, as well as a persistent approach of collecting these fees with little regard to being responsive to numerous requests for information that many of us make, such as please send us a list of your licensed material or a breakdown of where my fees are actually going. I personally have been told that song lists are so long it's not feasible to send them, they're on their Web site, we need to find that ourselves, that's our responsibility, or that we cover so many songs I'm sure your performers are playing them so you need to pay those fees. And to date I'm still not exactly sure where all those fees actually do end up at. Wineries such as James Arthur Vineyards use music as a marketing tool and is a key aspect of agritourism. Whether it be music in the tasting room or a concert in the vineyard, music is an essential part of the experience of visiting a winery. I know of some smaller wineries across the state, because of the burden and pressures applied in paying these licensing fees, that are rethinking or are completely eliminating live music at their establishments. What this part of the bill proposes and what we're asking for is that music licensing agencies be open and fair. We only want a rational, sustainable, and transparent system for music use and distribution. The language in this bill requires regulatory requirements for licensing agencies that simply aren't in place right now and allows the state to have more oversight of their business practices while making those practices more transparent for businesses that utilize live music, as well as educating all of us on those specific licensing requirements. Thank you for your time this afternoon. I'd be happy to answer any questions you may have. [LB632]

SENATOR LARSON: Thank you for visiting us today. Any questions from the committee? Seeing none, thank you. [LB632]

JIM BALLARD: Thank you, Senators. [LB632]

SENATOR LARSON: Take the next proponent. Welcome back to the General Affairs Committee. [LB632]

CHRIS WAGNER: Thank you. Good afternoon, Chairman Larson, members of the committee. Again, my name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, with Project Extra Mile. And we are here today in support of LB632, and I would add the caveat, "as drafted." We haven't had a chance to look at the amendments but based on kind of the discussion thus far, we're concerned with those and I think my testimony will kind of outline why we support the bill as written. I'd like to speak to four components of the bill and will hopefully delineate those clearly for the record in light of the breadth of issues included here. First we'd like to thank Senator Larson for

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

General Affairs Committee
February 13, 2017

bringing forward the section of the bill that reaffirms and strengthens the three-tier system. We believe this portion of the bill is of primary importance. While some will argue the language in the bill strikes at craft breweries and that somehow there is a different standard being applied, it is just the opposite. The bill provides a correction and is important in order to keep the distinctions between the three tiers clear and separate: producers, wholesalers, and retailers. Big or small is not the issue. The issue is whether we maintain the very regulatory structure that was established to bring order to the distribution of alcohol while protecting the people in the communities served. The system acts as a safety net of sorts, offering checks and balances at every level while providing revenues to the state. The larger industry experiences certain market pressures, whether as a standard retail business or a craft brew business, and it must also share in the ever-important rules established and set in place to provide a safe environment for the sale of alcohol. Alcohol is no ordinary commodity and requires a separation in the levels that handle and regulate the product if we are to maintain efficient and safe standards for communities. This issue cannot be lost on an economic argument. Having a distinct three-tier system that includes producers, wholesalers, and retailers is imperative and non-negotiable if our desire is to maintain an effective system for tax collection, for public health and safety protection, and for maintaining an orderly market that doesn't encourage large fluctuations in pricing. The proposal is not about bringing small craft breweries into line with the larger producers. It's about bringing craft breweries into the regulatory system and framework in order to keep crucial balances while protecting the health of communities and collecting the appropriate revenue due the state. This is not about limiting growth for certain portions of the industry; rather, it is not carving out special treatment for segments of the industry at the peril of a regulatory system that simply must work for all. Over decades, many in the industry have found ample ways to profit and grow within the regulatory structure set in place for both businesses and community protection, as well as collection of revenues. Second, we are supportive of expanding the discretion of the Nebraska Liquor Control Commission to prescribe mandatory days of suspension for other subsequent violations of the Liquor Control Act. It would allow the judicious use of discretion on the part of the state regulatory body, allowing them sufficient teeth when serious violations of the act occur. Third, we support the provision that not more than 12 special designated licenses should be issued at any licensee in the calendar year. It's important to note that one of these licenses can be granted for up to six calendar days in the calendar year. As proposed, LB632 is ensuring that SDLs are reserved for infrequent community events and do not become an alternative to obtaining a full liquor license which confers significant public health, safety, and financial responsibilities on the license holder. Finally, we would oppose increasing the size of growlers from 32 to 64 ounces. Most recent data indicates that Nebraska is the eighth worst among the 50 states and the District of Columbia with 19.5 percent of adults reporting that they binge drink. And four communities rank in the top 15 worst out of nearly 200 indexed across the country. Additionally, excessive alcohol consumption cost our state \$1.16 billion in 2010, \$491 million of which was paid by taxpayers, and more than 75 percent which was attributable to binge drinking. That being said, we support the bill with the stated exception contained in our testimony. Thank

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

General Affairs Committee
February 13, 2017

you, Senator Larson, and we would encourage moving forward, particularly with the portion of the bill that secures the stability of the three-tier system. Thanks for (inaudible). [LB632]

SENATOR LARSON: Thank you, Mr. Wagner. Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. What was the demographic of Nebraskans that binge...that were binge drinking? It's getting late, sorry. [LB632]

CHRIS WAGNER: Sure, sure. So this is the CDC data and it's survey data that includes 18 and older. [LB632]

SENATOR BLOOD: So this 18 and older, we don't know if it was like 18 to 21? [LB632]

CHRIS WAGNER: No, it's not broken down into specific age groups. [LB632]

SENATOR BLOOD: Okay. And what was the alcohol of choice for binge drinking? I just...what I know from binge drinking, from being young and seeing others and what you see now, is I just don't see craft beer as being something that people would binge drink on because it's too expensive. (Laughter) [LB632]

CHRIS WAGNER: Senator, I don't believe there's a breakdown. However, I, you know, certainly wouldn't...I wouldn't suggest that, you know, that there aren't people...that the people that are, you know, for example, drinking and driving on our roads aren't only drinking Budweiser products. [LB632]

SENATOR BLOOD: Oh, no, no, and I'm not trying to insinuate craft beer over Budweiser. I'm saying usually when...just to make sure that this is clear, because I have absolutely nothing against Budweiser or any of the long well-known beers in the United States. My concern is statistically when, you know, when we put these statistics in the record, sometimes we don't clarify. And for me when we're talking about binge drinking, you know, those are people who are doing JELL-O shots and those are people doing shots of tequila. And, you know, are those people that are drinking craft beer? Well, I'm sure there's a very, very, very, very small demographic of people who are not controlling themselves with alcohol, but I don't know if it would necessarily be because it's craft beer. Do you know what I'm saying? It's that they just can't control themselves in general because they have a problem. [LB632]

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

General Affairs Committee
February 13, 2017

CHRIS WAGNER: I would, you know, I would say that there are certain strategies that...evidence-based strategies, so like increasing alcohol taxes, limiting access and availability,... [LB632]

SENATOR BLOOD: Right. [LB632]

CHRIS WAGNER: ...certainly those will help reduce excessive alcohol consumption which includes binge drinking and underage drinking. However, as I mentioned, there's no specific details in terms of that specific type of stuff, alcohol, but I would simply just argue that, you know, having those policies in place and reducing all kinds of excessive consumption of all different types of alcohol, those you've mentioned and craft brews as well, are the policies that we should be embracing in the state. [LB632]

SENATOR BLOOD: And I hear what you're saying. Drinking and driving: bad thing and nothing I would ever support. Binge drinking: bad thing. But again, statistically, if we're going to throw statistics out, we want to make sure that we're very clear, so that would be my only concern. [LB632]

CHRIS WAGNER: Right, and I guess, if I may, I would just clarify that, you know, and kind of in our...in my testimony I'm saying that we should create...we should treat all brewers equally so they should all be a part of this regulatory system to ensure that these harms are reduced to the best ability. [LB632]

SENATOR BLOOD: I hear what you're saying. Thank you. [LB632]

CHRIS WAGNER: Sure. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Riepe. [LB632]

SENATOR RIEPE: Thank you, Chairman Larson. Mr. Wagner, my question is this and I'd just like some clarification. And I quote, "it is about bringing craft breweries into the regulatory system," end of quote. That implies that they're now outside of any regulatory process. [LB632]

CHRIS WAGNER: No. I think in saying that we're speaking that there are clear lines between the three-tier system. And the craft brewers, they occupy a special place, if you will, in kind of the regulatory system so they're involved in the brewer on premise and they also sale...they sell their alcohol and now I think they're able to be, and I defer to the committee on this one, but I think what we're trying to address or what you're trying to address in the bill is the distribution

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

General Affairs Committee
February 13, 2017

between the different locations as well. So just making sure that those lines are clear and those system, those...the tiers of the system are independent of each other is what we're speaking of. [LB632]

SENATOR RIEPE: So are you saying, excuse me, that they have an advantage now from the absence of regulation? [LB632]

CHRIS WAGNER: I'm not saying that they're in a void of regulation; I'm just saying it would be best if we brought them into the three-tier system as the other brewers are engaged in currently. [LB632]

SENATOR RIEPE: And as you baited us a bit, too, by saying, I quote, collecting the appropriate revenue in this year's legislation, that always makes our ears perk up a little bit. I have no further questions. Thank you very much. [LB632]

CHRIS WAGNER: Okay. [LB632]

SENATOR LARSON: Thank you, Senator Riepe. Any further questions from the committee? Seeing none, thank you, Mr. Wagner. [LB632]

CHRIS WAGNER: Thank you. [LB632]

SENATOR LARSON: Any further proponents to LB632? We'll take the first opponent, Ms...or...welcome, Mr. Wilmoth. [LB632]

TOM WILMOTH: Good afternoon, members of the committee. Thank you, Chairman, appreciate the invitation. And thank you for allowing us to speak today to this bill, LB632. It would be remiss of me if I did not also thank all the people in this room behind me, all of their friends, their family, the people in the overflow room, the people on social media, and the people that have sent letters and phone calls in support of our industry. Bear with me, I have a cold today. One of the things that I understand has happened today is that the senator and with the assistance of the committee has made a commitment to provide an amendment that will keep in place the existing retail status for our members. And I would like to thank that gentleman for bringing me a cup of water (laughter) and also thank Senator Larson and the good people of the committee who worked diligently I know over the last few weeks to help address our issue. That is a critical issue, it affects all of our members, and we have had great concern over it primarily because we have a number of members who have gone very long in executing on those rights and developing investment and planning to make new hires and things like that on the back of

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

General Affairs Committee
February 13, 2017

that, those retail privileges. So I do want to thank you. I also want to thank ABDN as I understand them to being willing to commit to acknowledging that accommodation and removing its opposition to that provision. So as I understand it, that leaves one issue of concern to our group, and that is the come-to-rest provision. The come-to-rest provision has a number of problems with respect to the difficulty in moving beer through a distributor for our rural members as currently drafted in LB632. Basically it would turn a trip from a 30-yard trip into, say, a 300-mile round trip, requiring some of our members to go out of their way, their distributors to go out of their way to take product back to the warehouse. We have a number of members who will speak further to that. The only issue that I will say is my understanding of the Granholtm case and the constitutional issue that is raised by that is that Granholtm specifically allows distinctions based on geography and it doesn't make...it does not challenge the mind to realize that all of the out-of-state interests necessarily have to bring their beer into warehouses to get it distributed. In-state interests don't have to do that and it's quite convenient for our wholesaler friends to pick up beer and move it across the street rather than having to take it back to their warehouse. To the extent there are any issues with respect to bad actors, Senator Krist made a very good point. And I want to assure this committee and I want to assure Senator Larson that our membership has great camaraderie and part of that camaraderie is the trust that it's built on. We trust each other to do the right thing. We will regulate each other to make sure that that happens. We will not allow our members to circumvent any rules and regulations to the extent we know about them because it only serves to injure our own interests. [LB632]

SENATOR LARSON: I'll let you finish the thought. [LB632]

TOM WILMOTH: Thank you. The last thing I would simply say is to provide a simple answer to Senator Blood's very simple question. We were not in the room when this bill was developed and we very much would like to be. We were very successful in working with our brethren in the liquor lobby last year to develop LB1105 and I would underscore the fact that among the people present in that conversation were Mr. Madigan himself, his legal team, the distributor lobby, and the distributor attorneys. Nothing new has happened since that time. [LB632]

SENATOR LARSON: Thank you, Mr. Wilmoth. Questions from the committee? One question for you. [LB632]

TOM WILMOTH: Thank you. Yes, Senator. [LB632]

SENATOR LARSON: I...understanding the five locations, and I'll get a little bit more into that with your legal counsel and lobbyist, but specifically when it comes to the at rest, any one of your brewers can decide who they use as their distributor, right? They can pick a distributor in

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

General Affairs Committee
February 13, 2017

rural Nebraska or they can pick a distributor 300 miles from them if they choose to do so, correct? [LB632]

TOM WILMOTH: That's correct if I understood the question... [LB632]

SENATOR LARSON: Okay. [LB632]

TOM WILMOTH: ...as to whether they can select someone. There are a limited number of distributors available, therefore, when you... [LB632]

SENATOR LARSON: Correct, but they don't have to choose one 300 miles away from them should they not choose to, correct, for it to distribute their product throughout the whole state? [LB632]

TOM WILMOTH: I think the problem is that the only other options are those that are sponsoring this bill. (Laughter) [LB632]

SENATOR LARSON: Mr. Wilmoth, I would respectfully disagree on that but I appreciate you informing the committee that they can choose a distributor, a more local distributor should they choose to do so. [LB632]

TOM WILMOTH: Yes. [LB632]

SENATOR LARSON: Thank you. Senator Krist. [LB632]

SENATOR KRIST: Sometimes the way the question is asked allows for the answer to be more complete. Would you tell me, besides those that are sponsoring the bill, what your other alternatives would be to letting something rest closer to your location? [LB632]

TOM WILMOTH: Senator, if you would allow me to defer that question to those who are most impacted by that provision, I think you would get a better answer. My company, Zipline Brewing Company, is not directly affected by this provision because we don't have such an immediate problem with rural distribution. But I think there are a number of members here that could answer your question much better than I. [LB632]

SENATOR KRIST: Okay, thank you. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Thank you, Senator Krist. Any further questions? Seeing none, have a nice day. [LB632]

TOM WILMOTH: Thank you. [LB632]

SENATOR LARSON: Welcome back to the General Affairs Committee, Ms. Silke. [LB632]

VANESSA SILKE: I'm also recovering from a cold, so, appreciate it. Good afternoon, members of the General Affairs Committee. My name is Vanessa Silke. I'm the registered lobbyist for the Nebraska Craft Brewers Guild. I'm also an attorney with Baird Holm law firm. My name is spelled V-a-n-e-s-s-a; my last name is spelled S-i-l-k-e. I'm here today to testify in opposition to LB632 as written. But as Josh noted at the beginning when he introduced the bill, there is an amendment in progress and I'm encouraged to hear not only from Senator Larson and Senator Wayne, who are working hard to draft the scope of that amendment, but also from Mr. Madigan that there is no opposition to removing the portions of LB632 that deal with removing retail rights for craft brewery license holders and their ability to maintain up to five retail locations without any requirement of production on each of those sites. Those were the specific portions that were addressed by my letter which cited cases for your review today. I also want to highlight the reason why there's so much opposition to this bill from the Craft Brewers Guild and that deals with process. Senator Blood has touched on this in her questions for prior testimony. I was directly involved with the negotiation of LB1105 with Senator Larson and that process was very different from what we see with LB632 this year. Senator Larson agreed to work with the craft brewers through me and through our members to develop legislation last session to better clarify and confirm the rights that craft brewery license holders have held in some form for almost 20 years in Nebraska. But he put conditions on his willingness to introduce legislation. He told us that we had to find consensus with the other industry stakeholders before a bill would be introduced. And so we engaged in some really hard work with our friends at ABDN, other wholesalers in this state, retailers, other producer lobbyists as well, and we went through an interim study hearing at which Mr. Madigan directly participated. We had a number of meetings directly with the director of the Liquor Control Commission, also in which Mr. Madigan participated, and we continued to work together as a group. Now the large outcry that you see with LB632 isn't because we didn't get what we wanted in this bill. That didn't happen with LB1105. We actually took some significant suggested legislation off the table in that process of trying to come to a consensus with liquor industry stakeholders to find a way forward. Unlike that process, with LB632 my members of the Nebraska Craft Brewers Guild found out on the day it was introduced that Senator Larson wanted to strip out retail rights at all of their satellite locations, require production at each of their satellite locations, and announce to the media that our members are currently breaking the law, lying, or in violation of the constitution. That's the purpose of my letter is to highlight we don't have a court order saying that any of our laws are unconstitutional. We also have a Liquor Control Commission that's responsible for investigating

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

General Affairs Committee
February 13, 2017

any complaints. So I assure you, if there are any bad actors that hold a craft brewery license in Nebraska, Mr. Rupe has no trouble investigating them and coming to an order that he issues on behalf of the commission. And I've highlighted the process that interested parties can take if they disagree with the findings of the Liquor Control Commission on that score. And so again I come back to the intent and the process for this bill and I would ask that going forward we continue to engage the license holders that rely on these licenses when we identify potential issues or unintended consequences or bad actors that may be abusing this system. And so with that I'll take any questions that you might have. [LB632]

SENATOR LARSON: Questions from the committee? I'll start. [LB632]

VANESSA SILKE: Okay, great. [LB632]

SENATOR LARSON: Let's start basic. You said you're an attorney with Baird Holm. And we can just go simple yes/no on a few of these. The dormant Commerce Clause of the U.S. Constitution prohibits a state from passing a law which discriminates between in-state and out-of-state entities, correct? [LB632]

VANESSA SILKE: Yes. [LB632]

SENATOR LARSON: And with Rule 010.01 of the Nebraska Liquor Commission rule, that requires out-of-state brewers to adhere to the at rest but exempts Nebraska brewers from doing so as well. True? [LB632]

VANESSA SILKE: That's based on a geographic location. [LB632]

SENATOR LARSON: Okay. True it does exempt that, that that rule exempts in-state brewers versus out-of-state brewers, correct? [LB632]

VANESSA SILKE: It may be more helpful... [LB632]

SENATOR LARSON: Yes, it does. That rule exempts in-state... [LB632]

VANESSA SILKE: There is a difference between the treatment of parties there. [LB632]

SENATOR LARSON: Okay. So your argument is because it's based on geographic location it doesn't necessarily apply and, therefore, in your mind it doesn't violate the dormant Commerce

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

General Affairs Committee
February 13, 2017

Clause even though before you did admit that if you are discriminating against an in-state entity versus an out-of-state entity it does violate it, correct? [LB632]

VANESSA SILKE: What you're describing as discrimination is not what the court has held as a factor when they determine whether or not discrimination is occurring. Geographic presence in a physical state is not necessarily the basis for a court to find that there has been discrimination. That's why I cited the cases that I did. [LB632]

SENATOR LARSON: Well,... [LB632]

VANESSA SILKE: Also I think that it's important to understand that if we assess... [LB632]

SENATOR LARSON: Ms. Silke, Ms. Silke, I understand where you're coming from on that. I guess we can agree to disagree. I'm not a lawyer but from what I've read it's a little different. We can move forward. Or I'll wait. Do any other committee members...I don't want to stop and... [LB632]

SENATOR KRIST: No, go ahead. I have a question but I want to... [LB632]

SENATOR LARSON: Well, I can...I can let you go, Senator Krist, if you'd like to go. [LB632]

SENATOR KRIST: Okay, appreciate it. Thank you. Give me reasons why. And now again you heard the statement I made to Mr. Madigan: five lawyers in the room, you're going to get five different answers. An interpretation of a lawyer is not necessarily important to me unless that lawyer happens to be the Attorney General of the State of Nebraska and then I do respect the...what he opines to be a reasonable course of action and that's how I do my job as a legislator is trying to find those constitutional issues and making sure I stay in between the lines. Having said that, all those citings come from other states and other states do things differently than Nebraska. So I'm going to ask you one specific question, actually two. The first question is, if you have geographic presence in Lincoln, Nebraska, at your craft brewery location and you set it on the floor and then you pick it up and take it to one of your taps, what's the difference between having that physical location or setting it on the floor and moving it to the tap house as opposed to moving it to a warehouse and then moving it to your tap house? [LB632]

VANESSA SILKE: It's just a function of complying with...there really isn't any difference at all. [LB632]

SENATOR KRIST: No. [LB632]

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

General Affairs Committee
February 13, 2017

VANESSA SILKE: I mean there...I guess we could back up and it might be a little more helpful to note a few things here as we explore what is or isn't discriminatory. First of all, if we accept what Senator Larson is trying to get at, is there a difference? Well, if there is, then, therefore, there must be impermissible discrimination and Mr. Madigan alluded to that as well: I see a difference, therefore, it must be impermissible. But if we accepted that, then we need to think a little more broadly about everything every state has ever done to try and encourage the growth of production facilities within their state in any type of product manufacturing. [LB632]

SENATOR KRIST: So that geographic presence is not necessarily discriminatory in allowing for the three-tier system to be used the way it was designed. [LB632]

VANESSA SILKE: Yeah, the... [LB632]

SENATOR KRIST: And obviously if you don't live in the state and you don't brew in the state, then your geographic presence, you don't have the option of having a geographic presence and, therefore, you're coming from another state coming into our state. They have to have some presence, some resting, if you will, before it goes someplace else. Second question: Give me an example of what is a commerce law in this area. What would be a commerce law constitutional issue? What would be something that would be discriminatory that we definitely don't do but we should watch that we should never do that? [LB632]

VANESSA SILKE: Well, I think the Granholm case itself cites that there was...that case dealt with in one particular instance a state law that said you cannot, if you're out of state, access our market. So that case involved consumers ordering wine on-line or over the phone and having it shipped directly to their house and there was a state law that said you cannot ship wine directly to consumers in their home if you're an out-of-state winery. The market in question was consumers who want wine shipped directly to their home. In Nebraska, we don't have a prohibition on out-of-state producers accessing this particular market, which is distinct from what was dealt with in Granholm. And here we're dealing with a market of craft beer drinkers who want to go on site at a craft brewery or a retail location and buy beer. That's different. That requires an actual physical presence in order for someone to arrive at a taproom or a brewery, take a tour, sit down, meet the brewers and the folks in their local community that made that beer, and learn about it. That's a very specific, distinct marketplace and we have no laws on our books that preclude any out-of-state producer from accessing that market primarily because we issue retail licenses to craft brewers. That's how they're able to bring in out-of-state product into that specific setting, a setting that you don't get unless you have a physical presence in the state. [LB632]

SENATOR KRIST: Which, for the record, is an L class or an L license. [LB632]

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

General Affairs Committee
February 13, 2017

VANESSA SILKE: That's an L license holder. [LB632]

SENATOR KRIST: Okay. Thank you, Ms. Silke. [LB632]

SENATOR LARSON: All right. Since we're on Granholm and we've already heard Mr. Madigan, so, and I'll come back to some other questions I have, but with Granholm, as the case stands for proposition that the states cannot discriminate between in-state and out-of-state producers and their products under the dormant Commerce Clause, we've covered that, correct? [LB632]

VANESSA SILKE: That's a very general statement of the law. [LB632]

SENATOR LARSON: And you...I did read your letter and went through it and you cite several cases to support your argument of the at-rest provision does not violate the dormant Commerce Clause. One of those cases was the Southern Wine case in the Eighth Circuit but that case was examining a Missouri statute that regulated distributors, not producers, correct? [LB632]

VANESSA SILKE: Well, I want to back up first. The statement...but I want... [LB632]

SENATOR LARSON: I just want, I mean,... [LB632]

VANESSA SILKE: I want to make sure I understand the question because you started with my letter analyzes the at-rest provision. It doesn't. It analyzes retail rights that are afforded to craft brewery license holders and their ability to deliver directly to their provisions. It doesn't address come to rest. [LB632]

SENATOR LARSON: I think we're...I think the point that we're...as we heard, that case specifically was...said it...how do I want to say this? The dormant Commerce Clause didn't pertain to it because it regulated distributors, not producers. Correct? [LB632]

VANESSA SILKE: That was the statement Mr. Madigan made, yes. [LB632]

SENATOR LARSON: And you also stated the Arnold's Wines case which was in the Second Circuit and that case examined the New York statute that regulated retailers...correct? [LB632]

VANESSA SILKE: Yes. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: ...not producers. And in both those cases in the Eighth and Second Circuit held that Granholm didn't apply because the statutes in question did not regulate producers or products, correct? [LB632]

VANESSA SILKE: Correct. [LB632]

SENATOR LARSON: Okay. And but the specific, the at-rest provision...so let me back up. In essence the courts held that under the Twenty-first Amendment statutes which regulated distributors and retailers were exempt from the dormant Commerce Clause. [LB632]

VANESSA SILKE: No. There are no exemptions from the dormant Commerce Clause. [LB632]

SENATOR LARSON: Well, they, I should say, they didn't apply to the dormant Commerce Clause because they were distributors and retailers. [LB632]

VANESSA SILKE: It didn't reach a dormant Commerce Clause issue in those specific facts in that case. [LB632]

SENATOR LARSON: Okay. And the last case you cite was the Cherry Hill case. [LB632]

VANESSA SILKE: Yes. [LB632]

SENATOR LARSON: And in that case the First Circuit Court of Appeals examined the Maine statute which allowed a Maine winery to sell direct to consumers at the winery premises and in order to exercise that privilege the winery had to be present in the state on the basis that the law was upheld. Correct? [LB632]

VANESSA SILKE: Yes. [LB632]

SENATOR LARSON: And in contrast to the Nebraska statutes that we are dealing with today, it is not confined to the direct sales from manufacturing premises but, rather, gives Nebraska craft brewers the right to hold the five licenses while denying out-of-state brewers the right to hold such license. Correct? [LB632]

VANESSA SILKE: Those cases cite over and over and over again that it's up to the states to determine how best to regulate the three-tier system within their borders and they cite that if

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

General Affairs Committee
February 13, 2017

you're going to have a physical presence that's not in and of itself a basis to prove that there was any discriminatory intent or effect. [LB632]

SENATOR LARSON: Do you agree that the at-rest clause specifically...and we've already talked about Granholm in terms of it and how it focuses on producers and their products. Would you say that craft brewers are producers? [LB632]

VANESSA SILKE: Yes. [LB632]

SENATOR LARSON: Okay. So in essence, in every other case that was cited we were...that necessarily Granholm didn't apply, they weren't producers. They were distributors and retailers. Correct? [LB632]

VANESSA SILKE: You are free to search for any case that specifically addresses this law and, as Senator Krist has pointed out, the variation from one state to the next means that you'll always find a distinction in the cases. [LB632]

SENATOR LARSON: And...as I said, so if we know what the U.S. Supreme Court has said in Granholm, that the Twenty-first Amendment in Granholm does bring in producers, and you have admitted that craft brewers are producers, it would...and the...one could argue that those...how do I want to say this? They are receiving, because of the at-rest provision specifically, they are receiving benefits as producers that out-of-state producers do not get. Correct? [LB632]

VANESSA SILKE: As Mr. Wilmoth described, there are geographic differences when you ship beer from Oregon or California that don't impact in the same way as beer that's geographically produced here. You can't... [LB632]

SENATOR LARSON: Just as in Granholm there were geographic differences between... [LB632]

VANESSA SILKE: No, it was a complete embargo on an out-of-state producer's ability to even access this market. We don't have any kind of barrier for a producer to access this market. [LB632]

SENATOR LARSON: That's not my understanding of what Granholm is. They could...they just couldn't ship directly in Granholm. They could still access the market, but they were giving direct shipping benefits to one entity and the other entity couldn't. In a sense, that's what the at-rest provision goes to tackle is we are giving direct benefits to one producer but requiring another

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

General Affairs Committee
February 13, 2017

producer to go through another...and so they weren't restricting the market, they just couldn't ship directly, correct, in Granholm? [LB632]

VANESSA SILKE: They prevented any out-of-state producer from shipping directly to... [LB632]

SENATOR LARSON: So no out-of-state producers could sell wine in the state in what Granholm was is what... [LB632]

VANESSA SILKE: To that market, no. [LB632]

SENATOR LARSON: So they had no out-of-state wine in the state... [LB632]

VANESSA SILKE: That could ship directly to consumers in their homes. [LB632]

SENATOR LARSON: ...that could ship directly so... [LB632]

VANESSA SILKE: To consumers in their homes and, to be clear, no one in Nebraska is shipping beer directly to consumers at their homes. [LB632]

SENATOR LARSON: But in-state producers could. But in-state producers could in the Granholm case. [LB632]

VANESSA SILKE: Senator, there is no one in this state that is shipping beer directly to consumers in their homes. [LB632]

SENATOR LARSON: I have more but I'll let Senator Wayne. He has a direct question right now. [LB632]

SENATOR WAYNE: So I read your legal analysis and I guess I am the only elected attorney on here. Walking through, you can distinguish any case from any case. You can always do that. [LB632]

VANESSA SILKE: Yes. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR WAYNE: You can always make arguments of the factuals are a little bit different here versus there. How many cases...you cited cases you think supported your position. How many cases did you find that were against your position? [LB632]

VANESSA SILKE: The cases that are typically cited against our position are Granholm itself and, as I cited in that letter, Granholm only helps us so much. The court itself was dealing with very specific facts and they stated a basic statement of the law. The Twenty-first Amendment gives every state the right to determine for itself how it's going to regulate the production, distribution, and sale of alcohol within its borders and the only limit is the Commerce Clause. And so we're going to have a multitude of cases, some of them that look kind of like what we have here but not quite, something very different. And the court, we even see circuit splits from one to the next with... [LB632]

SENATOR WAYNE: That happens in every situation but you didn't answer my question. [LB632]

VANESSA SILKE: Yeah. I haven't found any cases that say that what we're doing specifically is unconstitutional. [LB632]

SENATOR WAYNE: There's no cases? That's not what I asked you. How many...you found three cases that you cited to support your position. I'm asking you how many cases did you...have you found that don't support your issue? [LB632]

VANESSA SILKE: I haven't found any that are directly on point to say that they're not. [LB632]

SENATOR WAYNE: But you don't...but let's be fair here. Are the cases you cited to directly on point? [LB632]

VANESSA SILKE: No, and for the reasons that I cite to in the letter. [LB632]

SENATOR WAYNE: Okay. Right. And I'm not trying to be combative. [LB632]

VANESSA SILKE: Yeah. [LB632]

SENATOR WAYNE: But you're citing cases that are on point and I'm asking you what cases out there that are not on point so we can have a fair conversation and dialogue that I can research. I mean I can pull up my own LexisNexis and whatever else and research them all. But if you've

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

General Affairs Committee
February 13, 2017

already done the research, you're finding cases that support, what I'm asking for is the balance side of that. What case...are there cases out there that...with the same distinctions that are a little bit different that are against your argument? And if your answer is none, I'll take that at face value but I'll still do research. But if there are, can you give us some of those? [LB632]

VANESSA SILKE: In my search, no, so far. But again, this goes back to process. If the Legislature is truly concerned about this and wants to engage in a process to best handle whatever perceived issue we have, the best way to do that is to sit down and work through it. [LB632]

SENATOR WAYNE: I'm not talking about...I'm not doubting the process. I wasn't here last year when you've had a new process or the old process or whatever it was. But we're talking about a Supreme Court case that's been around for awhile and there's multiple cases that come after that that cite Supreme Court cases. I just did a quick research and I found 165. So with all that, I don't think the argument that I'm okay with, and I guess my question is, I don't think the argument that I'm okay with it: If it's illegal, nobody has sued us yet so we should turn a blind eye. What I'm trying to find out is what is the issue? Is there cases on both sides? I would like to know both cases on both sides so I can figure out where it is. And you're saying right now that you've not found any case that would support the other side. [LB632]

VANESSA SILKE: I was looking for cases in support of our position. I didn't find anything that would say that specifically what was happening in Nebraska is impermissible. But I imagine with 165 cases there is a way to say that one of them speaks to what we're looking at. [LB632]

SENATOR WAYNE: And I understand that. [LB632]

VANESSA SILKE: I'm not trying to hide the ball or be cute about this. I'm telling you that I made this search and did my best to try to find which cases match. [LB632]

SENATOR WAYNE: (Inaudible) but you don't do research on a case and find just the case that supports you. They give you a list of cases and you have to go through them. [LB632]

VANESSA SILKE: Yes. [LB632]

SENATOR WAYNE: So I understand there's a new process. This process was kind of we were working out an agreement with this three-tier system, what I keep hearing about and I keep hearing about everything else. I just don't think everybody is being transparent here on what the issues are, what we can do to solve them. But I'm more than happy to figure out how to solve

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

General Affairs Committee
February 13, 2017

them and I think we can. So hopefully I look forward to the amendment and we can discuss that off-line. I was hoping you could give me some cases on what...maybe were against you but, okay, thank you. [LB632]

SENATOR LARSON: So we've kind of worked our way through the dormant Commerce Clause and how...and specifically Granholm and how Granholm dictates that it really only affects producers instead of the cases that you used which focus more on distributors and retailers. And you did say that your client is more on the...in the producing tier so under that logic, you know, I think many of us would say that they would fall under Granholm and specifically the at rest. In order...and kind of going off of Senator Wayne's trajectory here, in order to avoid having to litigate an issue such as this or Granholm in the years to come and incur attorney's fees that we've already...we know the state could incur, do you think it is prudent for the Legislature to remedy a constitutional defect if we feel that one exists? [LB632]

VANESSA SILKE: I feel that the process we undertook with LB1105 would be the best way to handle concerns that are raised to ensure that we're tailoring whatever efforts we have to try and fill gaps that are perceived that they're tailored. [LB632]

SENATOR LARSON: That wasn't necessarily my question and we'll...if you feel...if the members of this body feel that there is a constitutional defect specifically with the at-rest clause, do you think it is prudent for this Legislature to remedy that so we don't incur the attorney's fees, so we aren't sued to work towards fixing that constitutional defect that we may feel that exists? Do you think that's prudent? [LB632]

VANESSA SILKE: It's a valid concern to begin a process, yes. [LB632]

SENATOR LARSON: Okay. I've let others move in and if you're on that line of thinking, I'll let Senator Blood come in that right now. [LB632]

SENATOR BLOOD: I don't want to interrupt if you're... [LB632]

SENATOR LARSON: No, nope, I'm okay. [LB632]

SENATOR BLOOD: You seem deep in thought. [LB632]

SENATOR LARSON: I can hold. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR BLOOD: All right. Thank you, Senator Larson. Again, not a lawyer but obviously there's a lot of them in this room, I always think of Caveman Lawyer when I talk legal stuff and I don't get it. So one thing we haven't talked about, and maybe you can answer this, is that if we change to the new bill, isn't that going to open the state up for liability as well because we're changing midstream or is that just a wrong impression on my part? [LB632]

VANESSA SILKE: Well, as written, there was one portion that had a specific date cutoff. But what I understand is that the amendment will actually peel out that provision. [LB632]

SENATOR BLOOD: Okay, I haven't seen the amendment. [LB632]

VANESSA SILKE: That would trigger immediate litigation by folks who have breweries in planning and who have pending contracts to open breweries. But what I heard loud and clear today is that those provisions are actually going to be peeled out through the amendment process. [LB632]

SENATOR BLOOD: So the amendment is going to... [LB632]

VANESSA SILKE: Assuming the amendment captures what was promised today, that issue would go away. [LB632]

SENATOR BLOOD: Okay. No, I...yeah, go ahead. [LB632]

SENATOR LARSON: Okay. Real quick, even...and kind of back to the at-rest clause, would you say that because there...your brewer...the craft brewers don't have to do at rest and we, you and I, have both discussed off the record that the...such things as hotshots, since these occur, do you think that Nebraska craft brewers do enjoy competitive privileges that other outside distributors...or outside breweries, whether they're the big guys in InBev, you know, Anheuser-Busch, or whether they are Bell's Brewery in Michigan or another small craft brewer in Kansas, because of things of that nature, do you think that you...the Nebraska craft brewers enjoy a competitive privilege that other state, other craft brewers don't enjoy or other brewers don't enjoy across this country? [LB632]

VANESSA SILKE: Any privilege that they...that you perceive that's occurring there is a function of their geographic location. [LB632]

SENATOR LARSON: So... [LB632]

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

General Affairs Committee
February 13, 2017

VANESSA SILKE: You could never eliminate the cost differential between someone shipping their beer from, say, Oregon versus shipping their beer from Omaha. [LB632]

SENATOR LARSON: It's the... [LB632]

VANESSA SILKE: We would have to add on the cost for all Omaha brewers in order to capture the differential. There will always be a benefit. [LB632]

SENATOR LARSON: I'm not necessarily discussing cost. Obviously they don't have to ship it as far. But the fact that the out-of-state brewers are required to come at rest and your brewers can do hotshots or not arrive at rest, you don't feel that that gives the in-state brewers an advantage, not just geographic because geographic the shipping costs are obviously going to be a lot lower. But do you think hotshots provide in-state breweries a competitive advantage, or out-of-state breweries? [LB632]

VANESSA SILKE: I think that, again, that's a function of physically what's happening when we have a brewery across the street from a retailer. That's a very different geographic situation than what...how we would treat anything coming from much further away. [LB632]

SENATOR LARSON: So but a hotshot doesn't...never goes through a distributor, correct? [LB632]

VANESSA SILKE: They go through a distributor by way of paperwork. [LB632]

SENATOR LARSON: The paperwork but they aren't...they never actually go touch a truck or anything of that nature, correct? [LB632]

VANESSA SILKE: They're going through the distribution tier. [LB632]

SENATOR LARSON: Okay, on paper only. [LB632]

VANESSA SILKE: Again, in compliance with Liquor Control Commission rules on that point, it's not unlawful. [LB632]

SENATOR LARSON: Okay. So none of your member...so you would say that none of your members self-distribute even if it's a hotshot? [LB632]

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

General Affairs Committee
February 13, 2017

VANESSA SILKE: If there is anyone who is self-distributing in violation of the law, the Liquor Control Commission will investigate them. And if you're aware of any, it would be good to know which ones. And the Liquor Control Commission will certainly follow up. [LB632]

SENATOR LARSON: Okay, thank you. No other questions? Thank you, Ms. Silke. [LB632]

VANESSA SILKE: Thank you. [LB632]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB632]

CALEB POLLARD: Thank you, Senator Larson. My name is Caleb Pollard, spelled C-a-l-e-b; last name is Pollard, P-o-l-l-a-r-d. I am president and one of the owners and operators of Scratchtown Brewing Company in Ord, Nebraska, and I would like to speak to you directly about the issue of come to rest because there seems to be a little confusion about what that actually means and how it's been interpreted in the state of Nebraska for quite a while. I want to talk specifically about our geography as well and why come to rest is important to my brewery, as to the other four Sandhills breweries that are located in our region. You have a copy of my testimony that was distributed to you on Friday. I'm going to give you an annotated version of that and I'm going to cut to the quick about the 800-pound gorilla that sits in this room right now on why come to rest is important to rural breweries like mine. You have Ord, Broken Bow, Valentine, Taylor, and Atkinson, that have all opened since we were the first in 2013, the first brewery in the Nebraska Sandhills since Prohibition. Eighteen months after we opened, we started to investigate the different distribution models that we wanted to utilize to get our product from our little brewery to the markets that would buy them. The reason why we chose a distributor out of Omaha is varied but one particular reason that was important to us is it did not bear the logo of our competitor whom has shown a negative stance, not just in the state of Nebraska but beyond, when it comes to craft beer. And I will talk specifically about that here in a second. The issue that is important to me with the issue related to come to rest, it allows the distributor to pick up the product at my dock and that is important to understand for two very good reasons. Number one is that they are filing the proper paperwork and taking possession of that beer. That beer ceases to become my product at that time based off of both liability and contractual law. They now own the liability as well as that beer. What they are doing is they are driving that beer to a variety of accounts in my community and elsewhere, rather than taking it back to Omaha and dropping that product there. The second important point is that we are not circumventing any laws whatsoever. And I invited the senator to take a look at the compliance check that we had last year at Scratchtown Brewing Company that supported that case. And the point that I really want to get to here is that it changes the nature of how we're going to do business out in rural Nebraska. It's going to change how we're able to serve those accounts because we didn't want to do business with a large-scale corporate entity that has, up until last

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

General Affairs Committee
February 13, 2017

year, created disincentive in their distribution market by putting a quota of certain percentages of beers that had to be brand central. And what that means is that they rewarded their distributors by distributing AB InBev-owned products and disincentivizing the distribution of nonowned products. And that was a concern for us and that's why we chose to go with a distributor out of Omaha, Nebraska. [LB632]

SENATOR LARSON: Thank you, Mr. Pollard. Questions from the committee? Senator Krist. [LB632]

SENATOR KRIST: So you've got to go slow with me sometimes. What you're telling me is that you chose to do business with someone whose main operation is in Omaha but that beer really is never shipped all the way back to Omaha and back to the community, it's distributed within your area to the places you want to have it distributed to? [LB632]

CALEB POLLARD: In fact, it's distributed from accounts from McCook to Omaha, so there are...there is beer that does go to accounts in Omaha, Lincoln, and beyond, but that distributor is carrying that product in their truck which, up unto this point in review of LB632, has been a rule definition by the Liquor Control Commission that that truck is an extension of the warehouse and, therefore, it's allowed them to use that truck to make those service calls within the community. Rather than going back to Omaha and coming back to Ord, they drop that product in Ord and then they take that product back to Omaha. [LB632]

SENATOR KRIST: There's been a lot of discussion about advantages and disadvantages. But by doing this, it seems to me that what you're saying is I will put you at a disadvantage by forcing you to do something other than the model that you have chosen. [LB632]

CALEB POLLARD: It would make it more costly. [LB632]

SENATOR KRIST: Which is a disadvantage? [LB632]

CALEB POLLARD: Major. [LB632]

SENATOR KRIST: Okay, thank you very much. [LB632]

SENATOR LARSON: Thank you, Senator Krist. Other questions from the committee? [LB632]

SENATOR QUICK: I have one. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Senator Quick. [LB632]

SENATOR QUICK: Just on the...at the end you were talking about and it's shipped back and...or...and I can't remember your exact words but on the...with their percentage of...you had to have a certain percentage of beer or like compared to what? Like Budweiser would have, I mean, they're shipping a lot of beer out. [LB632]

CALEB POLLARD: Right. No, no. The point that I made is I believe is the Department of Justice. And if I can point you in that direction, there's a ruling, I believe it was last summer, on an investigation of AB InBev. And one of the things that was discovered in that process was an incentive program by the brewery to disincentivize their independent distributorships from actually selling nonaffiliated AB InBev products, which would include Scratchtown Brewing Company and a whole bunch of other breweries in this room; in fact, all of the breweries in this room are independently owned by citizens of the state of Nebraska. So it to me was a posture that I felt was antithetical to my interests as a business owner that I would have to go to a particular distributor 65 miles away--there are no distributors up in our neck of the woods at all--and do business with one that had a posture that was not, in my opinion, interested in selling my product the best of their ability. [LB632]

SENATOR QUICK: Okay, thank you. [LB632]

SENATOR LARSON: Thank you, Senator Quick. Do you distribute out of state? [LB632]

CALEB POLLARD: We do not. [LB632]

SENATOR LARSON: Okay. Do you...are you...how do...do you know if any craft brewers following you will be...have any out-of-state distribution? [LB632]

CALEB POLLARD: I can't say; that's a decision for them to make. [LB632]

SENATOR LARSON: Okay. I just didn't know if you were familiar with somebody else coming behind you. If you were to distribute out of state, would you have to go through a distributor? [LB632]

CALEB POLLARD: In any case that I'm aware of, and I'm not an attorney, thankfully, I assume... [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR WAYNE: That's wrong. [LB632]

CALEB POLLARD: No offense, Senator. I assume... [LB632]

SENATOR WAYNE: I (inaudible). [LB632]

CALEB POLLARD: ...that I would have to. And I understand that that is the expectation because I don't have a physical location in that other state. [LB632]

SENATOR LARSON: Okay, and...okay. I just wanted to...and if you ship to any other state, your product would go at rest at that distributor. [LB632]

CALEB POLLARD: As I said earlier in my testimony, Senator, the Liquor Control Commission has dictated for years, as long as I can remember, that the truck is an extension of the warehouse and a number, including all distributors in the state of Nebraska, have used that privilege that they have been granted with a number of their Nebraska-located breweries to distribute that product around town. Not every ounce of Nebraska-made beer lands in a Nebraska warehouse when it's picked up by a Nebraska distributor. A lot of it goes around town rather than go to the...goes to the dock. [LB632]

SENATOR LARSON: What's the closest distributor to you? [LB632]

CALEB POLLARD: Sixty-five miles away. [LB632]

SENATOR LARSON: Where? [LB632]

CALEB POLLARD: I have two choices in town. One is Eagle and the other one is Nebraskaland. [LB632]

SENATOR LARSON: Okay. Eagle is the closest one to you at 60... [LB632]

CALEB POLLARD: They're both located about a quarter-mile from each other in Grand Island. [LB632]

SENATOR LARSON: Okay. And Eagle would then get you to Norfolk and then it would essentially distribute the whole state for you, Eagle would, if you could get it to Grand Island, or they'd pick it up? [LB632]

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

General Affairs Committee
February 13, 2017

CALEB POLLARD: Given the unique circumstances of Nebraska franchise law, I'm not really at liberty to say which distributor at this point in time gets to carry my product other than the one of the contract in which I get to honor right now: House of Beers out of Omaha. So I can't create hypotheticals. [LB632]

SENATOR LARSON: Okay, thank you, Mr. Pollard. Any other questions? Seeing none, thank you. Welcome to the General Affairs Committee. [LB632]

MATT STINCHFIELD: Thank you, Committee. My name is Matt Stinchfield, S-t-i-n-c-h-f-i-e-l-d. I'm the brewer and founder of Ploughshare Brewing Company. I'm a resident of Nebraska and I'm a member of the Nebraska Craft Brewers Guild, although today I'm testifying on my own behalf as a beer producer and a consumer. I've had to edit my many thoughts to three minutes so please ask me some questions afterward. First I'd like to register my opposition to two provisions of the bill at least as I understand them described by Counselor Eickmeier earlier--I will have to see those changes--particularly, requiring beer to be picked up by distributors, to physically land at the distributor's dock before distribution to retailers. Although it doesn't affect me particularly, I find it punitive to brewers in rural Nebraska and it's a waste of petroleum fuel. Secondly, Ploughshare objects to expanding retailer's secondary package of draft beer from 32 to 64 ounces. I hope you'll ask me about that later. Secondly, I'm not a lawyer but I am a student of history and one of the catch phrases proponents of this bill have used before today and even today is "leveling the playing field." The beer distributors will tell you that they're operating under a time-tested system, that it ain't broke, don't fix it, and pat themselves on the back for how they collect taxes for state and federal coffers. And to these three points I say, time-tested? Time's up. It ain't broke? It is. And to the taxes question, all sorts of businesses collect taxes. And just for the record, Nebraska brewers submit their own excise tax records and excise tax fees monthly in this state, not the distributors. So here is a history of this playing field. By the early 1980s, the U.S. was at its lowest point for breweries. In 1983 there were only 51 breweries in this country; the top ten of these, many of whom you'd recognize today, were responsible for 93 percent of domestic beer production. But there were over 4,500 distributors at that time. Many were smaller, family-run operations with only a handful of breweries. Big beer had strong negotiating position with these distributors and if a distributor didn't want to accept big beer's terms, too bad, so sad, there was another distributor ready to take their place. Because of this disparity in contractual position, franchise laws were introduced at that time in the 1970s and '80s which gave distributors privileges. These made it nearly impossible for a brewer to fire their distributor, for example. But the landscape today has inverted to that of 35 years ago. We now have over 7,000 breweries. Most are small, local operations, while the distributors have consolidated to fewer than 2,900. These small breweries produce only about 15 percent of the beer sold in America and in Nebraska the number is closer to 3 percent. Big beer still rules the roost. And as exemplified by provisions in LB632, the distributors are using these privileges

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

General Affairs Committee
February 13, 2017

granted by earlier franchise law to bully small brewers. If you want to level the playing field, level it in favor of small, local brewers. This bill... [LB632]

SENATOR LARSON: Please finish your thoughts real quick in the next sentence. [LB632]

MATT STINCHFIELD: Thank you. Please get the distributor, lobby, and the brewers to the table, as we did with LB1105, and then let's talk about real reform and access to market. I'm happy to take questions. [LB632]

SENATOR LARSON: Thank you. Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. Do you know how many distributors there are in Nebraska for you guys? [LB632]

MATT STINCHFIELD: I believe there are about 20. I don't know the exact number. [LB632]

SENATOR BLOOD: There really are that many? That's been reduced, hasn't it, over the last decade? [LB632]

MATT STINCHFIELD: It has consolidated considerably and not all those distributors distribute in all territories of the state. [LB632]

SENATOR BLOOD: But they're all available to distribute on your behalf should you need them. [LB632]

MATT STINCHFIELD: If I were to go to a certain part of the state with my beer, yes. [LB632]

SENATOR BLOOD: Are they more likely to be on the east end of the state or are they pretty well distributed? [LB632]

MATT STINCHFIELD: I only distribute in the east end of the state. They seem to be more concentrated here based on my experience. [LB632]

SENATOR BLOOD: Thank you. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Krist. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: Senator Wayne and I were talking and we thought maybe the 64 ounces was a bunch of A&W Root Beer jugs leftover someplace and we wanted...kidding. Tell me why. [LB632]

MATT STINCHFIELD: Yes, because an argument that was brought up in the last two years in various legislative testimony, grocers, for example, and bar owners have talked about parity, that a craft brewery with an L license can package 64 ounces of beer and they ought to be able to too. And as far as parity goes, they did not invest a half a million to a million and a half dollars in locally manufactured equipment, in paying equipment taxes, utility taxes, and so forth and so on, to produce that beer. One of the few things that small brewers have left as an incentive for people to come visit the taproom is our opportunity to sell a 64-ounce container of beer. And incidentally, if we sell beer to a retailer, it goes through the three-tier wholesale system, we're selling our beer at less than half what it...what we would sell it to if we were to sell it at our own facility. So we've carved off the top half of it and thrown that out the window to get that keg to a retailer who has installed, as the grocer said, expensive equipment, yes, a \$3,000 machine. Compare that to my \$780,000 worth of investment to make the darn beer. [LB632]

SENATOR KRIST: Thanks, glad I asked. [LB632]

MATT STINCHFIELD: Thank you for asking. [LB632]

SENATOR LARSON: Senator Blood. [LB632]

SENATOR BLOOD: Thank you, Senator Larson. Would you say you feel passionate about this issue? (Laughter) [LB632]

MATT STINCHFIELD: I am full of beans, Senator. [LB632]

SENATOR LARSON: Senator Quick. [LB632]

SENATOR QUICK: Thank you, Senator Larson. And thank you for your testimony. Now were you on the board last year when they negotiated, went through LB1105 then? [LB632]

MATT STINCHFIELD: No, I was not. [LB632]

SENATOR QUICK: Okay. But you're on the board now, right? [LB632]

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

General Affairs Committee
February 13, 2017

MATT STINCHFIELD: No, I am not. [LB632]

SENATOR QUICK: Oh, okay. Okay. I thought... [LB632]

MATT STINCHFIELD: But others of my colleagues represent the brewers on the board. [LB632]

SENATOR QUICK: Okay. All right, thank you. [LB632]

SENATOR LARSON: Senator Wayne. [LB632]

SENATOR WAYNE: So besides being an attorney, I have a small construction company and I compete every bid with major companies that aren't always from Nebraska or particularly Omaha. How is what you're saying any different than any other small business in any other industry? [LB632]

MATT STINCHFIELD: Well, in the three-tier system and with franchise law in particular-- which I want to point out sometimes is led to believe happened after the repeal of Prohibition, but franchise law came in the '70s and '80s--distributors have been given a special role and they have taken that role very seriously right to their gilded pockets. And it's...the two largest cuts that come out of the cost of beer for the consumer (1) is the retailer's markup and (2) right after that is the distributor's markup. On a six-pack of beer I'm lucky if I make 30 cents a six-pack. Okay? And the retailer is making \$2.25 and the distributor is making \$1.60. So if we want to talk about leveling the playing field, if we want to talk about the fairness between small businesses competing with with big-business interests, understand that the big-business interests we're talking about here right now enjoy extensive privilege that the brewers, the small brewers do not. And this is what I'm saying. [LB632]

SENATOR WAYNE: Now understand my question though. My question isn't necessarily about big businesses. What about the small Iowa craft brewer who wants to come over to Omaha and has to go through different process or who wants to go to Lincoln? How is your situation any different than them? [LB632]

MATT STINCHFIELD: I'm a brother with that guy. I mean we...all the small brewers... [LB632]

SENATOR WAYNE: Don't they have to go... [LB632]

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

General Affairs Committee
February 13, 2017

MATT STINCHFIELD: All the small brewers are essentially going through the same procedure whether they're bringing beer to Nebraska or they're producing it in Nebraska. [LB632]

SENATOR WAYNE: But don't they have to go through the same...do they have to...does your business, if you want to go to Iowa or that Iowa business who wants to go to Nebraska, they have to file the same process, right? Correct? [LB632]

MATT STINCHFIELD: It depends on what state the beer is landing in, sir, so, and you pay the excise... [LB632]

SENATOR WAYNE: Well, okay. That's why I don't like lawyers because (inaudible). [LB632]

MATT STINCHFIELD: ...tax due to the state the beer is sold in, the state excise tax, so. [LB632]

SENATOR WAYNE: Right. [LB632]

MATT STINCHFIELD: Whereas here we have a punitively high state excise tax, beer produced in the state, we pay \$9.31 a barrel to the state for every barrel of beer we produce. If we were shipping our beer to another state nearby, say Colorado, we'd be paying the tax in Colorado is 5 cents a gallon, so. [LB632]

SENATOR WAYNE: Okay. So here's my general question then. And I was going to ask the last person but... [LB632]

SENATOR LARSON: I missed you. I'm sorry. [LB632]

SENATOR WAYNE: ...missed me. So where are you out of? I forgot. [LB632]

MATT STINCHFIELD: I'm right here in Lincoln at... [LB632]

SENATOR WAYNE: Lincoln, okay. [LB632]

MATT STINCHFIELD: ...1630 "P" Street. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR WAYNE: Okay. So if you want to send something to Omaha, your product to Omaha, is that allowable? Walk me through (inaudible). [LB632]

MATT STINCHFIELD: Yes, I have a distributor that has three counties in the Omaha area in their territory. [LB632]

SENATOR WAYNE: And they pick it up from your...and this is just helping me educate because,... [LB632]

MATT STINCHFIELD: Yes. [LB632]

SENATOR WAYNE: ...I'll be honest, I'm not a beer drinker so I'm trying to learn this whole process. [LB632]

MATT STINCHFIELD: They place an order through an e-mail to me. We prepare that order. We load it onto their truck and we hand over paperwork which we have in duplicate. We have a copy signed by the driver; they have a copy signed by the driver. And they have a chain of custody with that beer and then they drive it back to Omaha. [LB632]

SENATOR WAYNE: And then it gets...it can be there. So my question to you is, what happens differently, or do you know, if I'm coming from Iowa to Lincoln? [LB632]

MATT STINCHFIELD: If you're coming from Iowa to Lincoln, I think, as far as I know, sir, and it's a little above my pay grade, but an Iowa brewer would ship their beer to a distributor in Lincoln. It would be...come with paperwork just as that. And the major difference is that the distributor would be responsible for collecting the tax on that beer for the state excise tax... [LB632]

SENATOR WAYNE: All right. [LB632]

MATT STINCHFIELD: ...whereas brewers in Nebraska report that and pay that tax themselves. [LB632]

SENATOR WAYNE: Okay, thank you. [LB632]

SENATOR LARSON: Thank you for coming today. And we can...not specifically talking to the franchise laws and I am as aware as you that franchise laws don't necessarily date back to

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

General Affairs Committee
February 13, 2017

Prohibition. But do you...and alcohol, because of Prohibition and the only product that has two U.S. Constitutional amendments, you could say it kind of has a dark history in terms of this. [LB632]

MATT STINCHFIELD: Two: one to take it away and one to give it back? [LB632]

SENATOR LARSON: Exactly. [LB632]

MATT STINCHFIELD: Well, that's a net zero actually. (Laughter) [LB632]

SENATOR LARSON: So, but it's still two constitutional amendments addressing the issue. Do you know why...you mentioned that, you know, other systems are able to collect the taxes. Are you familiar specifically why we put the tax collection within the distribution system versus any...the other parts of the...the other tiers? [LB632]

MATT STINCHFIELD: If we're referring to beer that's coming from another state, sir? [LB632]

SENATOR LARSON: No, just...are you in general familiar historically why we have put the tax collection in the hands of the distributor, specifically the excise tax? [LB632]

MATT STINCHFIELD: But, sir, in Nebraska we're not. Nebraska-brewed beer, the brewers report and pay that tax themselves. [LB632]

SENATOR LARSON: You can do it if you sell it yourself but I'm specifically... [LB632]

AUDIENCE: No, no, no, no. (Laughter) [LB632]

SENATOR LARSON: So you're saying if you...if you give it to the distributor... [LB632]

MATT STINCHFIELD: I have already paid the tax on that, sir. [LB632]

SENATOR LARSON: Yeah. Okay. Let me rephrase the question, because you're right. Do you know why we...why the distributor and the at-rest provision and the paperwork is important to the Nebraska Liquor Control Commission? [LB632]

MATT STINCHFIELD: Which paperwork are we referring to? [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: The excise tax paperwork specifically, why and why... [LB632]

MATT STINCHFIELD: Well, I'm sure you don't want to miss out on any taxes. [LB632]

SENATOR LARSON: Specifically, so we can compare how much you're saying you as a Nebraska brewer produces and how much you're actually moving through a distributor because without the distributor's end, that's why the out-of-state... [LB632]

MATT STINCHFIELD: Yes, sir, I think a previous testifier mentioned that we're all auditable by the Liquor Commission and we all have to keep records on our production, on our taxable production. [LB632]

SENATOR LARSON: Okay. [LB632]

MATT STINCHFIELD: So I'm not sure that the distributor is the linchpin to measuring our tax liability. [LB632]

SENATOR LARSON: So how would...if...without the distributor, how would the Liquor Control Commission and that paperwork know that you are actually distributing what you say you're distributing? [LB632]

MATT STINCHFIELD: Excuse me for sounding trite, but how do, you know, the federal tax authorities know that you've been honest on your tax return? [LB632]

SENATOR LARSON: They can audit you. [LB632]

MATT STINCHFIELD: Right. Yes, sir, exactly. [LB632]

SENATOR LARSON: So how do they...but how would the Nebraska Liquor Control Commission know how much you have produced? [LB632]

MATT STINCHFIELD: Well, currently what they do is with every monthly excise tax statement that we report our taxable quantities on, we send them copies of every single invoice of beer which left and went to a distributor, so,... [LB632]

SENATOR LARSON: Exactly, and so right now... [LB632]

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

General Affairs Committee
February 13, 2017

MATT STINCHFIELD: ...which is a recent rule and incurs a lot more labor on our behalf, by the way. [LB632]

SENATOR LARSON: So, and that kind of was my point that that tier actually operates more as a check and without that that (inaudible). [LB632]

MATT STINCHFIELD: No, sir, I provide those records. [LB632]

SENATOR LARSON: I understand that you provide those records, but they can check with the distributor and their records to ensure that they match up. Correct? [LB632]

MATT STINCHFIELD: Well, they certainly can and I know they do. [LB632]

SENATOR LARSON: All right, thank you. Any further questions? Seeing none, have a nice day. [LB632]

MATT STINCHFIELD: Thank you. [LB632]

SENATOR LARSON: Take the next opponent. Welcome to the General Affairs Committee. [LB632]

CODY SCHMICK: Thank you. My name is Cody Schmick, C-o-d-y S-c-h-m-i-c-k. I am owner/operator of Kinkaider Brewing in Broken Bow, Nebraska. We are the 0.01 percent that ABDN's legal counsel was speaking of earlier. The come-to-rest portion of this law is something that affects us out in rural Nebraska. We are very passionate about putting our business in Broken Bow, Nebraska. We love Broken Bow, Nebraska, and we love our folks there. So we are very passionate about keeping it there. It does give us some disadvantage. We are 200 miles away from Omaha. And I know some of the conversations that have been brought up are, why didn't we choose a distributor closer to us? And I think Caleb hit on a number of those things. Part of it for us was we wanted somebody that just aligned with our goals and the way that we did business and just being the focus of their operation is going to be small Nebraska craft breweries. So we chose House of Beers in Omaha, Nebraska. They are a 200-mile drive from Broken Bow, but we felt like it was worth it because of the way these guys just operated and just knowing their love for craft beer the same as us. I do appreciate the amended...you know, some of the amendments that were talked about. We just announced our second location in Grand Island, Nebraska, so I'm hoping to have a beer with Senator Quick pretty soon here, so. But, you know, I just wanted to say like with us being clear out there in the middle of nowhere, that's where we chose to put our business and we would like to continue to run that business out of Broken Bow,

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

General Affairs Committee
February 13, 2017

Nebraska. And so we would like to just come in opposition of LB632. I know it's getting late. I was hoping the guy serving water would start serving beers at 5:00 but apparently that's not part of it, so. This is my first time here but I would love to take any questions. Make them easy, please. [LB632]

SENATOR LARSON: Thank you for your time today. Questions from the committee? Seeing none. [LB632]

CODY SCHMICK: Thanks. [LB632]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB632]

KIM KAVULAK: Thank you. Chairman Larson, Senators, my name is Kim Kavulak, K-i-m K-a-v-u-l-a-k, and I am here today representing Nebraska Brewing Company testifying in opposition of LB632. As cofounder/co-owner/vice president of our corporation, I had some serious concerns with some of the provisions that were outlined as the bill was introduced, one of those being the five retail locations. As you can appreciate, most craft brewery owners don't have a pile of cash sitting around to build new breweries every time we want to open a retail location so for us that provision is a big deal. I'm very optimistic about the talk today and the amendment that would come that would allow us to retain that privilege. So thank you so much for that. The second provision that I have a little concern about--and we've had a lot of talk about this today and I am one of those breweries, Senator, that operates in multistates, so be nice to me--but there are a couple of things to note. The Brewers Association statistics show that 33 states allow, currently allow self-distribution and three additional states that allow modified self-distribution. Let me be clear: None of us are really interested in self-distribution. We enjoy, personally at Nebraska Brewing Company we enjoy great relationships with our distributors and couldn't, quite frankly, distribute statewide and in multistates without wholesalers so we appreciate everything that they bring to the table. That said, I think there are times that even our own distributors pick up from our location because they ran short in their warehouse and they need to get beer to an account. This come-to-rest statute as it's written would prevent them from doing that. So it's not just a significant disadvantage particularly to our rural breweries, but in some cases it could be to the wholesalers themselves. I don't see any reason to change that provision because it's working right now. So those are my two biggest concerns. As a craft brewer in this state, we're really, really proud of what we do. And if you can't...haven't gotten it yet, we're really passionate about what we do. We are a small force. We are 2.7 percent of the beer volume in the state. We contributed \$60 million and 300 jobs last year. That's nothing really to sneeze at I don't think, so we're really proud of that. All we want to do is in our small businesses, in our communities, continue to grow, continue to contribute jobs, tax base, tourism,

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

General Affairs Committee
February 13, 2017

all the things that will help our state grow ultimately. Thank you. I'll take any questions.
[LB632]

SENATOR LARSON: Thank you. Any questions from the committee? Seeing none, thank you for coming. [LB632]

KIM KAVULAK: Thank you. [LB632]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB632]

ERIC SCHAFER: Thank you. My name is Eric Schafer, E-r-i-c S-c-h-a-f-e-r. I'm the president of Empyrean Brewing Company. I want to thank the General Affairs Committee for allowing me to testify. We're talking about the five retail locations. We appreciate the amendment that's coming through and look forward to reading that. My comments are just based on the green copy that I have today. Empyrean Brewing Company is the oldest brewery in Nebraska. We currently have four retail locations--Lazlo's and Fireworks--that offer not only our beers but we offer beers from MillerCoors and Anheuser-Busch InBev, and we also have wine and cocktails. So we've been a good customer of many distributors for over 25 years. When Pinnacle Bank Arena came into town, the city of Lincoln said, hey, what can we do about semitrucks in the middle of "Q" Street before an event? So that kind of prompted us to purchase the old Meadow Gold facility. It's a 174,000 square foot facility in the south Haymarket which the city now calls "SoHay." And we've spent a considerable amount of time with the city in getting that space ready. The city's vision for SoHay is to be like LoDo in Denver or Pearl Street in Portland which, interestingly enough, sit on the shoulders of breweries. So we think Empyrean is poised to serve that same role as it's done in the Historic Haymarket (District). We're in the process of an \$8 million renovation that includes a larger brewery, distillery, tasting room, and event spaces. It's in addition to the \$8.5 million we've already spent. So for us, LB1105, we didn't need that to expand; our state law supported it. Nebraska Liquor Control Commission came to us and said, hey, it's a good thing for us, it helps us clean up the paperwork. Our fellow distributors said it was a good idea, our fellow brewers said it was a good idea, so we supported it. But now the LB632 as it's written would take that opportunity away. Before I run out of time, our expansion, we hope to generate an additional \$2.5 million in salaries through job creation and \$875,000 in state, city, and county revenue. And I'll take any questions. [LB632]

SENATOR LARSON: Senator Brasch. [LB632]

SENATOR BRASCH: Just a short...maybe it's a trivia question. You are one of the oldest breweries? [LB632]

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

General Affairs Committee
February 13, 2017

ERIC SCHAFER: We're the oldest operating brewery in Nebraska. [LB632]

SENATOR BRASCH: Okay. And are you one of the original owners that's... [LB632]

ERIC SCHAFER: Yep. [LB632]

SENATOR BRASCH: Okay. And did you have early start or association at the State Fair with brewing? [LB632]

ERIC SCHAFER: Nope. [LB632]

SENATOR BRASCH: I had heard that that was where some of the home crafters came from when the State Fair 30 years ago or so... [LB632]

ERIC SCHAFER: Our head brewer, maybe. [LB632]

SENATOR BRASCH: Okay. [LB632]

ERIC SCHAFER: But he owned a bike shop when we came up with this idea and so... [LB632]

SENATOR BRASCH: Okay. Well, I had heard 30 years ago that one of the beer crafters from the State Fair was now part of Lazlo's or growing commercial. [LB632]

ERIC SCHAFER: Oh. [LB632]

SENATOR BRASCH: Somebody is nodding their head back there. So it's true. It's not just a myth. So, well, congratulations on your growth. [LB632]

ERIC SCHAFER: Thank you, thank you. [LB632]

SENATOR BRASCH: And I'm looking forward to see what this committee can do with the bill moving forward. [LB632]

ERIC SCHAFER: Me too. Thank you. [LB632]

SENATOR BRASCH: Thank you. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Any other questions? Seeing none, how many more opponents do we have? Handful, all right. Welcome to the General Affairs Committee. [LB632]

MARCUS POWERS: Thank you. My name is Marcus Powers, M-a-r-c-u-s P-o-w-e-r-s. I'm a cofounder of Zipline Brewing Company. I've submitted written testimony in advance so I'm not going to labor through that. We've been through a long day. But I do really, echoing the sentiments of the other brewers, appreciate the amendment that takes care of the five satellite taprooms. That is of primary concern to our brewing facility. Because I haven't seen the amendment, I would like to go through and just kind of put a few highlights on the record as to how that impacts our company. When LB1105 was passed in 2016, we immediately set to work on making investments in...under that law. We opened the first satellite taproom in Nebraska I believe under that law, which is in southeast Lincoln, and we also in 2016 signed a lease for north downtown Omaha to put a taproom across from TD Ameritrade Park. We set to work on construction in 2016 and we set to invest about a quarter of a million dollars in that facility and create about 20 to 25 jobs. So those are kind of what we have on stake under that provision. And so as the amendment goes through, we would love to preserve those. And also, you know, we would love to exercise our full rights into that and not stop at just those two but, you know, have two more which we're entitled to under the law. So with that, I'll let you take a rest and if you have any questions I'll answer them. [LB632]

SENATOR LARSON: Senator Krist. [LB632]

SENATOR KRIST: Just because I don't think we've established the fact and the investment, with your original facility, how much did you invest in the actual brewing hardware? [LB632]

MARCUS POWERS: In our original brewing facility, it's kind of a moving target, but as of right now we have around \$3 million invested. [LB632]

SENATOR KRIST: And what kind of square footage does it take to put that kind of investment in place? [LB632]

MARCUS POWERS: Currently we have about 16,000 square feet of which all but 1,000 is production facility. [LB632]

SENATOR KRIST: Okay. And so just so we understand, you're trying to move into a pretty high-priced area in the Omaha market. And how many square feet is your taproom? [LB632]

MARCUS POWERS: The taproom in Omaha? [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: Uh-huh. [LB632]

MARCUS POWERS: It would be around 2,000 square feet. [LB632]

SENATOR KRIST: So it's no way that you could have a full brewing facility and continue to do that the way it was suggested. [LB632]

MARCUS POWERS: No, absolutely not, no. [LB632]

SENATOR KRIST: Okay, thank you very much just for the...I just wanted to put that on the record. [LB632]

MARCUS POWERS: I appreciate it. [LB632]

SENATOR LARSON: Thank you, Senator Krist. Any further questions? Seeing none, thank you for coming. [LB632]

MARCUS POWERS: Thanks. [LB632]

SENATOR LARSON: Welcome to the General Affairs Committee. [LB632]

CHRIS HERNSTROM: Thank you. Hello there. My name is Chris Hernstrom; that's C-h-r-i-s H-e-r-n-s-t-r-o-m. I'm here as the head brewer and part owner of Bolo Beer Company in Valentine, Nebraska. I'm sure you all know where Valentine is. Our closest distributor that can service Valentine is a 260-mile round trip. North Platte is the closest place that we can send our beer and we have two choices: one is Bud; one is MillerCoors. And we chose to go with an Omaha distributor that was more of a small brewery distributor, ship our beer down to them for distribution in the Omaha area. Well, they didn't go outside Omaha and Lincoln. So now we don't get beer in North Platte; we don't get it in Grand Island. The only way that we can service our market up in Valentine is through the hotshot distribution clause that we get that we still sell our beer to the distributor who then sells it back to the retailer. And then we do the legwork for that distributor under their authority, which we have to document, you know, in duplicate. So that's, you know, that's one of the reasons why we're opposed to this bill. That being said, there are some good points in that bill but to lump them all together is just...just doesn't sit well with us. And I'll take any questions. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Thank you for your testimony. Questions from the committee? Real quick,... [LB632]

CHRIS HERNSTROM: Yes. [LB632]

SENATOR LARSON: ...for the record, wouldn't your closest distributor be 222 miles round trip? [LB632]

CHRIS HERNSTROM: And who would that be, sir? [LB632]

SENATOR LARSON: Adamson. [LB632]

CHRIS HERNSTROM: They are in North Platte. [LB632]

SENATOR LARSON: No. [LB632]

CHRIS HERNSTROM: Yes. [LB632]

SENATOR LARSON: Eagle is North Platte; Adamson is O'Neill. [LB632]

CHRIS HERNSTROM: Ah, (laugh) yes, okay, you are correct and... [LB632]

SENATOR LARSON: Just...I just...just for the record's sake I wanted to make sure that... [LB632]

CHRIS HERNSTROM: Okay, okay. So... [LB632]

SENATOR LARSON: ...we don't discount the... [LB632]

CHRIS HERNSTROM: You are correct. I will give you your miles there. But still they would not be able to distribute beer that they picked up from my brewery in town without taking it back to their own place in O'Neill. [LB632]

SENATOR LARSON: Correct. You're right. [LB632]

CHRIS HERNSTROM: Okay, thank you for the clarification, sir. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: Thank you. [LB632]

CHRISTOPHER ROSACKER: Hello. My name is Chris Rosacker. I am with the Downtown Grand Island Business Improvement District. I am the secretary of that board. I am also the chair of its economic vitality committee. [LB632]

SENATOR LARSON: Can you spell your name. [LB632]

CHRISTOPHER ROSACKER: R-o-s-a-c-k-e-r. [LB632]

SENATOR LARSON: Thank you. I'm sorry. [LB632]

CHRISTOPHER ROSACKER: No, it's okay. My apologies. Economic vitality committee has many focuses with regard to the economics of our downtown area but we...one of our main focuses is business recruitment. I am here to talk about something that was mentioned a little bit earlier on and that is how a bill like this would affect our ability to recruit businesses, our economic development. We aren't Lincoln; we aren't Omaha. We don't have the downtown amenities. We don't have a university. We don't have a legislative industry. We are a rural community and like a lot of rural communities we have struggled with our downtown keeping businesses in there and recruiting them, keeping employers in place. A lot of people can understand that. Hand in hand with that problem is the problem of brain drain. We've all heard Nebraska's problem with brain drain. It's hard to see that here in Lincoln, per se, but I will tell you that it is a problem. And I was actually one of those few young professionals that did move back to the state of Nebraska. I lived in California until just a few years ago when I moved back to my hometown in Grand Island. And upon doing so I joined up with the Business Improvement District and there were a lot of tools in place to recruit and make that downtown vibrant and revitalize it. One of the ones that we've worked on in the last year is a rental assistance program. There were a lot of other tools, like I said, that were in place, and they did actually culminate with the development of our first brewery in downtown Grand Island. It's called Prairie Pride Brewery, something we're all very excited about because in a lot of our strategies of economic development we do talk about catalyst projects: What kind of businesses can you recruit that will bring other businesses with them? And breweries are very much that. Where a brewery goes, other businesses will also sprout up. With the rental assistance program I've spent the last six months pushing that. In December the city council of Grand Island did finally approve it and around that time Kinkaider started knocking and asking if we had any spots we could show them. Spent two months recruiting Kinkaider in conjunction with our convention and visitors bureau. And until I read the amendment that's been discussed here today about facilities and having to have production on site, we are very much against this bill and I would urge you to not push it because it, funnily, went exactly like this. On January 28 Kinkaider signed a lease to

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

General Affairs Committee
February 13, 2017

move into an old building that is completely underutilized in downtown Grand Island. On the 30th our local newspaper caught wind of it. And on February 1, LB632 was brought to our attention which would effectively kill that entire deal. I would overall just say that I would caution you guys about taking bills against breweries because we do use them for economic development and we do use them to keep young professionals in our state. Thank you. [LB632]

SENATOR LARSON: Thank you. Senator Blood. [LB632]

SENATOR BLOOD: In reference to the BID, for clarification, and you've said a little bit about it, you...I cannot talk it's so late. [LB632]

CHRISTOPHER ROSACKER: That's understandable. [LB632]

SENATOR BLOOD: You utilize craft brewers as a stimulus to encourage young millennials, young professionals to stay in your community because really in Grand Island, with the exception of industrial stuff, I think the most exciting thing that's happened down there was in the '70s when they built Conestoga Mall. [LB632]

CHRISTOPHER ROSACKER: You're opening the door of which I could disagree with you on many things. (Laughter) But I take your point. [LB632]

SENATOR BLOOD: But when it comes to the downtown area, the downtown area, I think that's very exciting though that you did your research and you found through your research that this is a great springboard to creating a better downtown community just like Midtown found that out, just like Old Towne Bellevue found out. [LB632]

CHRISTOPHER ROSACKER: Yeah, it's definitely an economic development issue and it's also a tourism one. You know, Hastings is really close to Grand Island. We're only like 20 miles apart or something. [LB632]

SENATOR BLOOD: Via the Tom Osborne Expressway. [LB632]

CHRISTOPHER ROSACKER: You betcha. [LB632]

SENATOR BLOOD: Yep. [LB632]

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

General Affairs Committee
February 13, 2017

CHRISTOPHER ROSACKER: And it is...they have two breweries. Grand Island has two breweries. That gives our part of the state a little bit of some brew "tourey," as they call it...tourism, excuse me, brewery tourism. But, yeah, breweries are very much an economic tool that we aimed for in conjunction with upper-level housing incentives, in conjunction with facade improvement incentives and other life-safety things. You know, it costs a lot to put businesses in downtown, old buildings, and breweries are willing to do it. [LB632]

SENATOR BLOOD: And to dispel some misinformation I think we got earlier, you're not really seeing a drop in the other locations where people drink at just because you're bringing breweries in, are you? You're not seeing mom-and-pop shops closing up and...because it's a different clientele. [LB632]

CHRISTOPHER ROSACKER: We don't really have much to compete with them. The only thing I could guess that you're maybe hinting at are bars and I'm...I wouldn't be aware of any impact that our local breweries are having on bars. I think it kind of fits into the same theory that when people are coming to a town to go to a couple of our breweries, you know, which are pretty prominent institutions, so to speak, if they'll go to one, they may be more willing to come if there's two there. And so I don't see that breweries necessarily are having an impact on our other industries. But I don't know if the people that go to breweries are necessarily the people that goes to bars. [LB632]

SENATOR BLOOD: Because breweries tend to be destination points. [LB632]

CHRISTOPHER ROSACKER: Little bit. [LB632]

SENATOR BLOOD: Yeah. Thank you. [LB632]

CHRISTOPHER ROSACKER: Um-hum. [LB632]

SENATOR LARSON: Thank you, Senator Blood. Senator Brasch. [LB632]

SENATOR BRASCH: Thank you, Chairman Larson. And thank you for coming to testify today. You just made the statement that you are against this bill. [LB632]

CHRISTOPHER ROSACKER: Um-hum. [LB632]

SENATOR BRASCH: Are you aware of the various amendments forthcoming? [LB632]

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

General Affairs Committee
February 13, 2017

CHRISTOPHER ROSACKER: Yes. [LB632]

SENATOR BRASCH: Are you... [LB632]

CHRISTOPHER ROSACKER: I haven't read those amendments. [LB632]

SENATOR BRASCH: Okay. [LB632]

CHRISTOPHER ROSACKER: That's why I'm still against it. [LB632]

SENATOR BRASCH: All right, okay, so with those changes that you may be for it with the exception of it seems we've come to a situation where we're looking at some constitutional legal boundaries perhaps. And so with the amendments that we made, you are...once you read those, it's a better bill? Would you agree? [LB632]

CHRISTOPHER ROSACKER: I would say that fixing that portion of it would make that portion better. [LB632]

SENATOR BRASCH: Better, okay. And so what you're standing opposed to basically is the last question remaining or was there more of it? [LB632]

CHRISTOPHER ROSACKER: No, I would say that I came here with the knowledge that there was three minutes for me to articulate a point and I decided to focus, walking in the door, on that specific portion. [LB632]

SENATOR BRASCH: Okay. [LB632]

CHRISTOPHER ROSACKER: There are many portions of this bill that I have question about. [LB632]

SENATOR BRASCH: Okay. [LB632]

CHRISTOPHER ROSACKER: The constitutional discussions are...that's a whole topic we could delve into. [LB632]

SENATOR BRASCH: All right. [LB632]

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

General Affairs Committee
February 13, 2017

CHRISTOPHER ROSACKER: But I would say that eliminating the...I would say the amendment that's been discussed does not necessarily remove my opposition to it, nor my organization's. [LB632]

SENATOR BRASCH: All right. I have no other questions. Thank you. [LB632]

SENATOR LARSON: Thank you, Senator Brasch. Seeing no further questions, thank you for coming. [LB632]

CHRISTOPHER ROSACKER: Thank you. [LB632]

SENATOR LARSON: The next opponent. Welcome to the General Affairs Committee. [LB632]

DUSTIN RUTLEDGE: Thank you, General Affairs Committee. My name is Dustin Rutledge, spelled D-u-s-t-i-n R-u-t-l-e-d-g-e. I'm the vice president of the Nebraska Hop Growers Association so I'm coming at this from a little bit different perspective. Our people members of our organizations are not brewers, might be home brewers but they're not commercial brewers. We do not own or work at breweries; however, we are a group of families that grow a quality product for our Nebraska brewers and we hope to continue to do so and do more of it. Last year through the assistance of Chairman Senator Larson, Senator Coash, and the General Affairs Committee and the entire legislative body, great strides were made through the adoption of LB1105. Accomplishments through the passage of that bill are, however, under attack through the proposed language in LB632. The expanding industry of commercial craft breweries are providing great economic benefits across our state in both rural and urban areas. This bill will limit the growth potential for the brewers themselves and the associated agricultural inputs grown within our state's borders. The Hop Growers Association represents 26 commercial hop growers and potential hop growers. There is a great potential for the expansion of hops grown in our state and we rely on the expansion of the local craft breweries and the retail sale locations. The Nebraska Hop Growers Association feels strongly that this bill will severely limit the growth potential of expanded hop acres across our state. According to the Brewers Association, the United States needs to grow an additional 12,000 to 20,000 acres of hops by 2020 to meet the national demand. Our farmers and brewers can reap the benefits of this continued growth through ensuring LB632 does not move beyond the General Affairs Committee. On behalf of the Nebraska Hop Growers Association, I respectfully request your no vote on LB632. Thank you. [LB632]

SENATOR LARSON: Thank you. Questions from the committee? Seeing none, thank you for coming today. How many more opponents? Just the one? Welcome to the General Affairs Committee. [LB632]

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

General Affairs Committee
February 13, 2017

BEN STALDER: Thank you. Good evening, Senator Larson and members of the General Affairs Committee. My name is Ben Stalder; that's B-e-n S-t-a-l-d-e-r. I'm here on behalf of Brickway Brewery and Distillery and, as well, on behalf of Zac Triemert. He regrets that he cannot be here; he was also at a funeral earlier today and has personal affairs to attend to. This testimony is prepared mostly by Zac as president of Brickway Brewery and Distillery; however, he is also the chair of the newly formed Nebraska Craft Brewers Board and a member of the Nebraska Craft Brewers Guild. Zac has been a part of the Nebraska craft brewing scene for the past 16 years. When he started, there were fewer than ten breweries in Nebraska; and as few as five years ago, he had seen some of the breweries open and some close. The growth that has taken place over the most recent five years has been tremendous. As of today, there are nearly 40 breweries in Nebraska and growth continues. This is all new business and is benefiting Nebraska and Nebraskans in so many different, terrific ways. In 2007, Zac was also in front of this committee testifying as a proponent of LB549. This was the bill that Senator John Synowiecki and several others and Zac had worked on to make craft distilling legal in Nebraska. After Zac illustrated the benefits of increased jobs, tourism, Nebraska agriculture and excise taxes, one of the members of Senator McDonald's committee said to the rest of the committee, why wouldn't we vote for this? The committee subsequently voted unanimously to approve the bill in committee. As I mentioned, Zac owns Brickway Brewery and Distillery in Omaha's Old Market. However, in 2012, he owned a brewery called Lucky Bucket Brewing. Back then, Senator Jim Smith, several others, and Zac successfully worked on LB780 to increase the volume of craft brewers to produce over ten...excuse me. I lost my place. [LB632]

SENATOR LARSON: 20,000. [LB632]

BEN STALDER: Yes, increase it from 10,000 to 20,000--appreciate that. He testified in front of this same committee that craft brewing was going to continue to increase and that supporting this bill would grow jobs, tourism, Nebraska agriculture, and excise tax payments. We can now see that all of this has come true. Last year's bill, LB1105, was the next step to help craft brewers continue to grow in Nebraska. All the terms in this bill were negotiated in the open with all the concerned parties. LB632 was unexpected and designed to strip away the key items from LB1105, particularly the retail rights embodied in LB1105. A bill that decreases jobs and slows the growth of tourism, Nebraska agriculture and excise tax goes against what I, Zac, and the rest of the Craft Brewers Guild have seen this committee do in the past. With all of this as an example, we ask that you please consider the negative effects of LB632 and not go backwards for brewing and small businesses in Nebraska. [LB632]

SENATOR LARSON: Thank you for your time. Questions from the committee? Seeing none, thank you. [LB632]

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

General Affairs Committee
February 13, 2017

BEN STALDER: Thank you. [LB632]

SENATOR LARSON: Double-check: Anyone here...we did pick up an extra opponent. Welcome to the General Affairs Committee. [LB632]

ANNETTE WILES: Thank you. My name is Annette Wiles, A-n-n-e-t-t-e W-i-l-e-s. I'm representing Midwest Hop Producers who is Nebraska's largest commercial hop grower. I also want to say that I am...was recently appointed as vice chair of the Nebraska Craft Brewery Board and I also sit on the USA Hop Growers of America Board. I'm here to speak in opposition to LB632. I'd like to thank you, Chairman Larson and General Affairs Committee, for allowing me to speak. I'd like to start with all the positives that have occurred since LB1105 was passed as LB632 targets to change some of that. Not only have the number of craft brewers and locations grown, so have other industries in the state and businesses, including hop growers as well as beer equipment manufacturers, the distributors, the retailers. Everyone has seen a great increase in business because of the craft brewers. Three years ago Nebraska had 12 acres of hops; today we have over 40 acres of hops. My husband Bruce and I are Nebraska's largest hop grower with 25 acres currently in the ground and plans to build an additional 125 acres over the next three years. We are currently building Nebraska's first commercial hop harvesting and processing facility. We currently have eight full-time employees and we hire additional staff throughout the summer. It should be known that the Nebraska Craft Brewers Guild, the Nebraska Hop Growers Association, the University of Nebraska-Lincoln, and Midwest Hop Producers hosted Nebraska's first grower and brewer conference and trade show at Innovation Campus in January where over 180 people registered to attend, which I don't think is bad for a first conference, inaugural conference. UNL has also recognized the opportunities brought to agriculture and to the brewing perspectives based on the bill last year. From a grower's side, the university has worked with us to test hops on alphas and betas which the brewers need. They have provided a breeder for us to work with on identifying Nebraska wild hops which give us an opportunity to develop a proprietary variety potentially known as a Husker hop. The engineering department is also working with us on a small hop drier through a Department of Economic Development grant. On the brewers' side, food processing has been involved and has been working with the Nebraska Craft Brewers Guild on water testing, yeast, and also looking at providing brewer workshops so people that want to get into brewing can start where they're in college and learn it from the chemistry side on food processing at the Innovation Campus. Lastly, their specialty crop block grant, an extension position has been approved and is currently being interviewed for that was hired with a specific focus on Nebraska hops and beverages. I know everyone that was up here previously spoke on the negative things that could come from LB632. But to be quite honest, I've always been very proud of our state. When I'm a part of a U.S. or a national board or an organization, Nebraska sets itself aside and I am here to tell you that. With our incentives, our grants that we have, the collaboration between organizations and our Legislature to work together to further our state coffers, the craft brewery is one of the pieces but there's a lot of other

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

General Affairs Committee
February 13, 2017

people that are going to be impacted by the decisions that you make. So I just wanted to ask that you take all those other things into consideration because people have started those wheels turning and what you may do is potentially stop them. [LB632]

SENATOR LARSON: All right. Thank you for your time. Questions from the committee? Seeing none, thank you for coming. Any more opponents? Seeing none, how many neutral testifiers do I have? All right, just the one: Mr. Rupe. Welcome back to the General Affairs Committee. [LB632]

HOBERT RUPE: Thank you, Chairman. Once again, my name is Hobie Rupe. I'm the executive director of the Nebraska Liquor Control Commission and will be testifying in the neutral capacity. And the reason why we're testifying neutral is anytime you get a big omnibus, there's parts you like, parts you don't like, and parts you really don't care about. And so first off I'm going to go over a few things we like that really have not been discussed yet. I assume, hopefully, that people will ask me questions afterwards so I can go on, maybe answer some of the specific questions. And although I'm not the Attorney General, I used to work for two of them so hopefully I can answer that question appropriately for you. One reason I think it's in there that hasn't been spoken of yet is sort of, you know, the law of unintended consequences; 2004, the bottle club had ceased to exist primarily through court orders and through interpretation, so you didn't have bottle clubs. Remember, people used to use bottle clubs because they couldn't get...sell by the drink in their...in those locations. So in 2004, in LB805, we clarified, we got rid of about 14 different retail licenses, went down to just the 5 retail licenses and tried to keep that going forward. Nature abhors a vacuum. Recently there have been many instances where people are attempting to use a bottle club-type license to avoid oversight from the commission saying, well, we're not selling alcohol and you don't have a definition in your statutes anymore. And so we...our...the bill--and I want to thank Senator Larson for--in there clearly puts...gives it very much. I updated the old 1950s definition of a bottle club and then added that to the list of people that you have to...if you're going to operate that (inaudible) you have to have the appropriate retail license: either an A, B, or consumption. Unfortunately, most of the people who were trying to use those were trying to avoid oversight either of the smoking bans or of regulations regarding adult entertainment. The other part that's in there that has not been discussed yet is the third-party reporting requirements for people like UPS and FedEx. Very simply, whenever we're looking at taxation--it's been brought up earlier--the commission always looks for two points of contact, i.e., the principal taxpayer and the secondary person who is dealing with that product, because that's why we can get by only having two auditors and three accountants. What this does is one of the sort of weaknesses is on the direct shipping license, the S1 license which pays an annual tax the first of the year to direct ship to a final end consumer, we've sort of got to trust them because I don't have the staff or resources to send them out to Napa Valley to do an audit at their location. Trust me, my auditors have offered to go there but we haven't been able to afford sending them there. This is what like many other states are doing

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

General Affairs Committee
February 13, 2017

is then requiring the third-party shippers who are shipping that product into the country, into the state, to file an annual report saying where they delivered to so we can do a targeted cross-check. And what a cross-check is, whenever we're looking at taxation--and it's...it will apply later on to the discussion regarding the come-to-rest statute--is you're trying to have that second, that two points of contact to make sure that the appropriate tax is being paid so you can do a cross-check so we're not...so we can do a desk audit so we're not having to go out and physically count beer cans; we can do targeted desk audits. The other thing which has not really been discussed yet is there is a motion there. Currently the commission can...all right, this is a little confusing. We can suspend, cancel, revoke a liquor license. We can't fine somebody; however, the statute allows somebody to pay off days of suspension at \$50 per day for their first offense ever, and otherwise it's \$100 per day, except we can use days of mandatory suspension for second and subsequent offenses of sales to a minor within a four-year period. We would like to have that ability to address other concerns because I can tell you right now they worry more about those two to five days of mandatory closure rather than the \$5,000 fine they might be getting. It's the bigger stick and it would only be applicable on second and subsequent offenses of the same type within a four-year look back period. So it's not, hopefully, it's not going to happen. The commission generally uses progressive discipline to try to bring a licensee back into compliance. That seems to be one of the better tools. We've had many times they'll appeal, they'll fail a second compliance check within two years, and be looking at 2 days' mandatory plus 30 days' suspension. They're more than happy to pay the \$3,000 fine but they don't want to put that lovely little red-and-white sign on their door for two days that says they can't sell alcohol because they sold to a minor. So we really appreciate that being in there, we really support that. One issue that we sort of oppose the bill--parts will be taken care of by the things that Josh discussed--was the SDLs. You heard earlier Mr. Madigan stated about how the 12...limit to 12. Well, that's sort of misreading our current rule. The current statute says you can get six unless you are a caterer in which case they can get unlimited amounts of special designated licenses. The 12 rule that the commission has is only to locations. What the commission was finding was caterers were trying to use a specific location multiple, multiple times to get around the fire code, the health code, the electrical code, and they were trying, basically running the bars on the weekends using SDLs. And so what the commission does, has a rule that if any single location is going to be having more than 12 SDLs, it triggers a review by the commission. Now generally we waive those because oftentimes more than 12 could not be licensed. It would be like a farmer's market which is open every single weekend: more than 12, it's temporary, can't be licensed, so we waive those. Or that would be like a community center in a small town which might have 15 or 16 but is using five or six different vendors, and so it's not one person trying to play shenanigans with the rule. One of the unintended consequences I think in the bill here, and I sent it electronically to Mr. Bos and you should have it, is in your files, and I'm not going to ask you to look at them now because they're pretty hard, is sort of the last six months where the commission has waived rules under its ability under the SDLs. And especially one of the things they're trying to do is keep us from utilizing under L...to waive 53-175 which is the acquisition from other than a wholesaler

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

General Affairs Committee
February 13, 2017

which that sounds, well, they should go through a wholesaler, until you look at the people who are utilizing that rule: churches, Pheasants Forever. What they're doing is they're utilizing...they'd rather if they...instead of going to Omaha from McCook to buy five cases of wine, they're going to the local wine merchant and buying it from him for their nonprofit charities. So I just want to make sure that we're not going to be...that that's a negative consequence if we draw that noose too tight. So I'd be happy to answer any questions on that. We have no position on the live music portion. I have enough trouble regulating alcohol, let alone music. And so I guess then I'll deal with sort of the big issues which have been discussed in here. And first I want to give everybody a sort of turn back...turn the "way, way back" machine on and look at how these licenses were structured back in 1987 back when they were originally constructed. They weren't seen as manufacturers. They were seen as primarily retailers who were going to have a limited manufacturing component to their business model. The theory back then, and it has been proven out to be 100 percent erroneous, was that, you know, that they would be making just a little bit of alcohol/beer on the side, that they would primarily be restaurants, full-service bars that are making a little bit of beer and there was...and for their own consumption on premise, and there was the idea that they could then ship that...what they couldn't sell out their own taps through the wholesale tier. The existing rule on come to rest, it is not a statute, it is a rule and I will agree and I will...I cannot agree that it is violative of the Commerce Clause, Granholm, because then somebody could use that against us if we are sued on it. I will acknowledge there are significant concerns about it. The reason how it developed was it came to us as a request from the wholesale tier because they were moving such small beer it was primarily...the request was K&Z and Emyrean. They were moving beer and they didn't want to have to take it all the way back out to Cornhusker when they were already downtown and they were moving (inaudible). That's actually where the waiver, why that rule says everything has got to come to rest except we don't...doesn't apply to a craft brewery. Okay. Senator Krist is correct we're trying to address that rule. The same concerns that were brought to Senator Larson were brought to me that we may be looking at a facially questionable rule by just saying, ah, we're just going to exclude a whole part of the industry that's in state and not out of state. Granholm, and I'll try to say it so...because Granholm is (inaudible) confusing. At its core, Granholm said two things. First: States, you are subject to the dormant Commerce Clause, you can't just get by with saying, ah, we're utilizing our Twenty-first Amendment rights, we can do whatever we want. Now compare that to most other conflicts under the Commerce Clause where...which are utilizing strict scrutiny; in other words, if you try to do that selling we'll go back to brownies, you're not even getting past the courthouse door; you're going to be found violative. But because the courts are weighing and comparing two separate constitutional provisions--i.e., the dormant Commerce Clause and the state's rights as under the Twenty-first Amendment, they usually use a rational basis test. And so the statements that they're going to come at was, if you're treating these differently, out-of-state and in-state interests differently, you'd better have an articulable reason utilizing probably public health, safety, welfare, to justify why you're doing it and it better not just be because you're trying to promote your in-state interest because that's going to be the quickest way you're going

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

General Affairs Committee
February 13, 2017

to run into problems. So what the commission did with the rule, remember, we started the rule process prior to this bill being introduced; in fact, it was supposed to be heard this month in February, but the Journal Star forgot to publish our notice timely so we had to move it to March. What it's going to do is it's going to clearly go through and try to kill two birds with one stone. It's going to say, hey, you've got to come to rest except for product that you're going through...you're delivering to your satellite locations. And then we're defining what a satellite location is, is that 100-percent owned in commonality with the brewery under 53...under the changes under LB1105. So it's clear...we're trying to clear it up that they can take it to their own breweries without going through the system but otherwise it's going to have to come to rest. One of the provisions in LB632 makes that come-to-rest statute even more important is the proposed language changes the taxpaying location. Currently if I make 100 gallons at "Hobie's House of Hops" and I'm selling 30 gallons out my front door, I'm selling 30 gallons to my local distributor, and I'm selling 60 over to a wholesaler in Iowa, I'm paying all the taxes on those 60 which are staying in state. You know, you're not...we don't care about the other 40. They just have to document, have the bill of lading how it's going out of state to a licensed wholesaler. That brewpub pays all that. One of the changes in LB632 changes, it says that that 30 gallons I'm still making...30 gallons that I'm making that are going through my own taps I'm paying that tax on them but that gallons I'm shipping over to the wholesaler, that wholesaler is now paying the tax. From our auditing perspective that changes things because we've always required more documentation from the principal taxpayer rather than the second point of contact. And that point there, no offense to the beer drivers, the paperwork coming through just to maintain it as a second point of contact, the current is okay because they're not the guys in charge of collecting the tax. If you change that tax point, two things kick in: (1) the statute requires it come to rest under 53-169, for tax does; and (2) they're then going to be the principal taxpayer and so, therefore, we're going to be expressing more concern on those. So depending upon how, whatever comes out, you have to remember that the come-to-rest statute from our perspective is inextricably linked into the proposal under the changing of the tax timing. All right. Is that...and it's probably about as clear as mud, as late as we get. I'd be happy to answer any questions.
[LB632]

SENATOR LARSON: Senator Krist. [LB632]

SENATOR KRIST: I said it earlier in the day and I have a great deal of faith in you and in the commission itself. My exposure to you over the last eight years has been nothing but...you've been nothing but exemplary. I think there's more lobbyists involved with this LB632 than I've seen collectively on many things of much more importance. And I really think that the issue rests solely in the commission's hearing in March to look at what I called a bad actor earlier who may have been someone who was misinterpreting black and white and others were not, so let's not call them all a bad actor. They're all in business to make money and that being wholly owned issue, this with the Granholm potential constitutional issue which I still don't see a constitutional

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

General Affairs Committee
February 13, 2017

issue, I see a gray area, but I also see that we are the state of Nebraska. We are not New York. We are not Maine. We are not anyone else. And if the truck is an extension of the warehouse, that by itself is a decision that we have made to make sure that the at-rest portion is complied with, without going back to the warehouse itself, which is different with us in the state of Nebraska. There's a question in here someplace; just let me get to it. [LB632]

HOBERT RUPE: Okay. [LB632]

SENATOR KRIST: So with all the things that we've heard and all the different sides we have heard and with all of the fear, I mean I learned a long time ago that the best way to kill something is to say that there is a constitutional issue with it because then all of a sudden people are running scared. Do you think that this portion of LB632 should be removed and/or this bill should be held, at least this portion of it, until after the commission meets in March and we get a report back from you? [LB632]

HOBERT RUPE: Well, the problem that you're going to have, of course, is that I don't think that the commission under the APA can have its work done before you're going to have to make the decision to go forward. That would be our public hearing. At our public hearing we will take public testimony on the proposed rule as it sits. Generally then we hold it for 30 days for written consult after that and then it will appear on the commission's agenda and then proceed. Unfortunately I'm going to say the rule-making procedure let's...I mean, as you're probably well aware, because then we got to send it to the Executive Board,... [LB632]

SENATOR KRIST: Right. [LB632]

HOBERT RUPE: ...go through the process. We won't have a final rule I think before you guys are going to have to act on this. I don't think there's anything in here that would be in conflict with our proposed rule, and if there is we would have to then of course amend because the statute takes primacy over the rule. [LB632]

SENATOR KRIST: So the sense of urgency involved with having to move or we're going to be found in violation and spend a million dollars defending ourself, you're a lawyer. [LB632]

HOBERT RUPE: Yes. [LB632]

SENATOR KRIST: You've worked for Attorneys General. [LB632]

HOBERT RUPE: Um-hum. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: Everything that you're... [LB632]

HOBERT RUPE: I've defended those lawsuits. [LB632]

SENATOR KRIST: Yeah, you...you're going to, as the commission, you're going to deal with this subject matter. [LB632]

HOBERT RUPE: If we're in the process of trying to fix this, there isn't a Supreme Court in the land that's going to say you're in violation. You're in the process of trying to work through the process. [LB632]

HOBERT RUPE: Yeah. [LB632]

SENATOR KRIST: My point in this is this doesn't belong in this omnibus bill. [LB632]

HOBERT RUPE: Okay. [LB632]

SENATOR KRIST: There is a...I think there's too many issues here. There's small business, there's large business, there's Granholm, there's...it's a complicated issue and a couple of them come together. Even though you want to try to separate them, they come together; there is a confluence. I'd like to see it removed and do the things we need to do, let you do your thing, and in the second of this biennium, second session this biennium, come back in here and discuss if you need to have legislation that definitively changes, and in the meantime establish a legislative record that says we're aware that there might be issues that we are trying to work out. [LB632]

HOBERT RUPE: As I said, I mean, the question I'll take from that is that (1) you know, you guys run how you guys are going to do things. I have to go through the process. A lot of the same concerns, which I can only assume were brought to Senator Larson, were brought to the commission on our older rule. And that rule, the exemption, you know, under the come to rest was pre-Granholm. That was 1995, '96 when the rule came...that exemption got put in there and at the request of the wholesalers. That's what's funny. They asked us for that. So am I sitting here right now, is there a possible Granholm issue? Yes. Is the commission trying to address it in the way that it can under its rule making? Yes. Is the Legislature trying to address it under its authority? Yes. How you guys...I mean, we are a creature of statute. I mean we take our marching orders from how you guys change the statute on that. In this case here, there was no come-to-rest statute. There is a come-to-rest rule. And it primarily was put in there for taxation reconciliation purposes. And so, you know, and so that's where I'm saying I guess I can't say you should hold it. That's your decision. I'm just saying the commission will go forward under our

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

General Affairs Committee
February 13, 2017

usual rule making. If it ends up being a problem, I'm sure that someone along the lines will either object to it, the Attorney General will reject them, or the Governor will choose not to sign them or go from that perspective. [LB632]

SENATOR KRIST: Thank you. [LB632]

SENATOR LARSON: Thank you, Senator Krist. A few things kind of going off...well, I'll start with Senator Krist's questioning. Could the state of Nebraska essentially...you've admitted that there's the possibility of a Granolm issue. [LB632]

HOBERT RUPE: Yes. [LB632]

SENATOR LARSON: As you remember...or as the head of the Liquor Control Commission you don't want to say that it is unconstitutional because that puts the state at further risk. [LB632]

HOBERT RUPE: One hundred percent correct. [LB632]

SENATOR LARSON: But you can say that you are aware and deeply concerned of what's happening. [LB632]

HOBERT RUPE: Well, I'm aware, I mean, and when older rules get brought for attention we need to try to address them. [LB632]

SENATOR LARSON: And if you weren't concerned, you wouldn't be trying to change the rule essentially. [LB632]

HOBERT RUPE: You're absolutely right. [LB632]

SENATOR LARSON: Could the state be sued tomorrow on this issue? [LB632]

HOBERT RUPE: Well,... [LB632]

SENATOR LARSON: Hypo...you're (inaudible). [LB632]

HOBERT RUPE: Hypothetically we could all be sued for anything. I got sued for a billion dollars last year for some reason. (Laughter) [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: I remember that. You managed your (inaudible). [LB632]

HOBERT RUPE: And I'm not joking--it was a billion dollars. The commission could be sued. Primarily I can tell you where the issues that you're looking at, where most Granholm lawsuits have happened are is if there is a clear difference in how an out-of-state entity versus an in-state entity is being treated or at least if it's easy. (Looks around) Make sure they're not around here. Most of the lawsuits which are going to be brought out right after Granholm were being brought by a bunch of law professors out of Indiana and the reason they were doing it: because they had older statutes which were clearly out of date, the states hadn't had a chance to fix them, and by coming in they were able to get attorney's fees because under Section 1983 you get attorney's fees. Now one of the most important problems, and just to give you guys...one of the challenges under Granholm a couple of years ago was a case in Illinois. Illinois allowed their craft breweries to self-distribute. Somehow through some mists of time Budweiser, i.e., the manufacturer, had acquired a minority shareholder interest in City Beverage which was a Chicago-area wholesaler. And so they were trying to say, well, how come I can't wholesale our own product; how come Budweiser can't wholesale our own product and not have to go through the second tier? The court there found, well, you're probably right but we're going to hold off making the decision to allow the legislature to fix it. So at least state courts when it's brought up to them will allow...will...if they think that the commission or the state is working on it, will sort of elect that because the court of course was left with one decision. They could either level down in which case allow anybody...basically get rid of the wholesale tier, or level up, taking those rights and abilities away from the Illinois craft breweries. [LB632]

SENATOR LARSON: State courts do that. What about federal? [LB632]

HOBERT RUPE: Federal courts, you know, probably not as easily but hopefully they won't act too fast if they think the state is trying to look at it because unfortunately a lot of times those statutes came about rules drafted far long ago and people say, well, Granholm was, you know, over 12 years ago. Anytime you have a seismic shift in how the courts are going to look at that regulatory scheme, you're not going to really know how they're...you're going to look at the individual things until its progeny have a way to work through which is one reason why we had three different circuits looking at is it interstate, is it not interstate, how are they going to look at it, and there is more. As Senator Wayne said, I think, last I checked, there's almost 170 direct...now the Supreme Court has not dealt with it since then but a lot of the circuits have. And although there have been some split among some of the circuits, there's nothing been sufficient enough to...for the court to take a look at it again. [LB632]

SENATOR LARSON: Okay. Moving on, you talk a little bit about the...LB632 changes the way that the taxes are collected. [LB632]

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

General Affairs Committee
February 13, 2017

HOBERT RUPE: Yes. [LB632]

SENATOR LARSON: Are you aware why or can you guess why we moved to change where the taxes were collected? [LB632]

HOBERT RUPE: If I were to guess or if I were to say, I think the come-to-rest statute would give us a stronger paper trail at that location because the principal taxpayer always keeps a better paper trail than the secondary connecting point. [LB632]

SENATOR LARSON: And it also, by moving where that tax collected, it offers essentially you guys an extra audit check... [LB632]

HOBERT RUPE: Yes. [LB632]

SENATOR LARSON: ...to ensure that the taxes are being collected. So not only does it offer the Liquor Control Commission a second...essentially a stronger...offer the Liquor Control Commission a stronger audit check to ensure it also...essentially to give you guys that audit check and that ability, that essentially demands it come at rest. And by doing that, it also strengthens essentially any Granholm concerns specifically on the at-rest provision that you would... [LB632]

HOBERT RUPE: It does. I mean it would address those concerns. I mean I'm just saying if you want...I mean... [LB632]

SENATOR LARSON: So the tax provision has... [LB632]

HOBERT RUPE: Yeah. [LB632]

SENATOR LARSON: ...huge benefits for you, the state of Nebraska. [LB632]

HOBERT RUPE: The tax provision is there and I've got to say, and I'm not trying to sound disparaging of my licensees who have Class L licenses, but generally we have less discrepancies from the wholesalers of what's coming in, what's going out, than we do our craft breweries. For instance, this last year I've been playing Whack-a-mole trying to get them into compliance on our requirement that they have a...some of them did right away, wasn't a problem; some of them came kicking and screaming of when they're shipping state product out of state--which more and more of them are, some are actually selling internationally now--we require a bill of sale and a

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

General Affairs Committee
February 13, 2017

bill of lading. You know, the sales are going to be the bill of lading for what's leaving because we keep track of their production for the 20,000 barrels. But it's the difference between total gallonage and net taxable gallonage, and so we've got to have a second point of contact for that, basically for the...for why are you not over 31 cents a gallon. [LB632]

SENATOR LARSON: So essentially you have had, not with all of them but with a number of them, a very difficult time in terms of the compliance thing, hence the reason the tax provision is shifting in LB632 to help with a lot of the problems that the Liquor Control Commission has been having, therefore, by changing the tax provision we have to change the at-rest provision. [LB632]

HOBERT RUPE: One of the...yeah. [LB632]

SENATOR LARSON: And it helps the state in the end. [LB632]

HOBERT RUPE: One of the best things about the existing three-tier system is your principal taxpayers are of almost...you know, we bring in almost \$33 million. Your principal taxpayers are about 40 or 50 payees. That gives us an audit trail and a cross-check trail without looking at a whole bunch of payees and, more importantly, why there...because there used to be the whole...the manufacturer had to pay it. Shockingly enough, a local wholesaler is going to pay more attention to me when I show up than Budweiser is in St. Louis when I want to look at their audit records; plus, it's easier for us to audit because we're local. [LB632]

SENATOR LARSON: So, though Senator Krist brings up the point that we could wait to see if your rule changed and if there's still Granholtm concerns, we would come back next year, but it's also important that we clarify the tax provision essentially to give the Liquor Control Commission an easier ability to audit because some have shown their unwillingness to audit and... [LB632]

HOBERT RUPE: I wouldn't say unwillingness; it's unsophistication. [LB632]

SENATOR LARSON: Okay. [LB632]

HOBERT RUPE: I mean let's be honest, dealing with some of the tax records...these guys know how to make beer. They make great beer. Sometimes the filing the correct paperwork sometimes needs a little...leaves a little bit to be desired. [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR LARSON: So the change in the tax provision simplifies the process significantly and ensures that... [LB632]

HOBERT RUPE: Well, to at least for that portion of that that's...which is going through. [LB632]

SENATOR LARSON: Okay. [LB632]

HOBERT RUPE: They'll still be responsible for the tax going through their own taps. [LB632]

SENATOR LARSON: Okay. Thank you, Mr. Rupe. Seeing no other questions, thank you for coming. [LB632]

HOBERT RUPE: Thank you very much. [LB632]

SENATOR LARSON: And I saw another neutral testifier came in after I asked for neutral testifiers. I will...please be short, Mr. Brady. [LB632]

JUSTIN BRADY: I will do that. [LB632]

HOBERT RUPE: He waited till I was done because I know what he's (inaudible). [LB632]

JUSTIN BRADY: Senator Larson and members of the committee, I'm here, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm appearing before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association. We have no position on LB632 as it currently is drafted. I will repeat that so those in the room know that we have no position on the bill as it's currently drafted. The issue I want to bring to you though is an issue that's come up since bill introduction. Many of you may have read or heard in the paper the issue of Brix in Omaha and what's come to our attention from the wholesalers is, without boring you all with the details now, liquor and wine can be sold on credit; beer has to be sold cash on delivery. What has happened is after a retailer goes more than 30 days on credit, we have to report them to the Liquor Commission; they are delinquent; they can no longer purchase alcohol technically under the law. The process unfortunately is it took with Brix under the current system 77 days and cost the wholesalers about, combined, four wholesalers, about \$400,000 of inventory they aren't going to get paid on. And so what I would ask is that I know typically I would like to come to you in the fall and talk to you and say, hey, we need a bill, here's what's coming. This issue has come up since bill introduction and I think it's something that I'm willing to sit down and work with the retailers, the bankers, any of the other wholesalers, this committee, the commission. I know

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

General Affairs Committee
February 13, 2017

when I spoke to Hobie he said, hey, you know, we may need to hire another full-time employee. I understand that. I also understand that I think that highlights how big the problem could be is if all of a sudden the Liquor Commission needs a full-time employee to figure out the delinquents that are happening in the liquor, at least the liquor and wine wholesalers. So I have a proposed amendment that I've sent to Aaron and asked to send out. I also brought copies in case you don't have that. But with that, I'll try to answer any questions and go from there. [LB632]

SENATOR LARSON: Thank you, Mr. Brady. Senator Krist. [LB632]

SENATOR KRIST: You actually brought a written amendment to a committee? [LB632]

JUSTIN BRADY: I brought both just to be covered, Senator Krist. I e-mailed and I brought a written... [LB632]

SENATOR KRIST: You get... [LB632]

JUSTIN BRADY: ...despite the rule of... [LB632]

SENATOR KRIST: You get a gold star. So here's my question. If they're allowed to buy liquor on credit, and the Brix situation is, it's an honest question--I'm not trying to...there's no trickery--the Brix situation, and I've heard as high as a half a million dollars, you're saying it's about \$400,000 of...right? [LB632]

JUSTIN BRADY: Well, the four...I've spoken to four wholesalers and know it's hit \$400,000. So it might be higher. I haven't asked the other... [LB632]

SENATOR KRIST: Can they not recoup the stock that's been put in place or are you saying they drank it all before they went out of business? [LB632]

JUSTIN BRADY: No. What happened in this case is a judge in Omaha ruled that the inventory belongs to the Mutual of Omaha Bank so that Mutual of Omaha now owns that \$400,000 to \$500,000 worth of inventory. One of the pieces in this--and this was a provision that was brought from the Texas law, I've been trying to find some state out there--it says that the wholesaler for 30 days after delinquent retains a secured asset in the inventory. Now that's a piece the bankers don't like which I'm willing to sit down and I will, you know, work with them. But, no, so what happened there is the inventory was awarded to Mutual of Omaha Bank to pay off the \$469,000 that Mutual of Omaha Bank was owed. Yeah. Unfortunately we have a very bad actor here that happened with the Brix and... [LB632]

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

General Affairs Committee
February 13, 2017

SENATOR KRIST: So you get to talk to Bob Halstead (sic: Hallstrom) about the... [LB632]

JUSTIN BRADY: Yes. [LB632]

SENATOR KRIST: ...banker. [LB632]

JUSTIN BRADY: Yes. [LB632]

SENATOR KRIST: Lucky you. [LB632]

SENATOR LARSON: Senator Wayne. [LB632]

SENATOR WAYNE: So is Mutual of Omaha now a retailer or...? (Laughter) I'm getting a lot of education in here because I'm trying to... [LB632]

SENATOR KRIST: Three tier. [LB632]

SENATOR WAYNE: Do they have to... [LB632]

JUSTIN BRADY: I think Mutual of Omaha... [LB632]

SENATOR WAYNE: ...use a distributor to... [LB632]

JUSTIN BRADY: ...has to go now ask for an SDL to be able to figure out how they're going to sell it. (Laughter) Thank you. [LB632]

SENATOR LARSON: Wait, Mr. Wayne (sic). Are there any further... [LB632]

SENATOR WAYNE: You said, "Mr. Wayne." [LB632]

JUSTIN BRADY: That's Senator Wayne. I'm Justin Brady. (Laughter) [LB632]

SENATOR LARSON: Sorry, it...long day, Mr. Brady. Any further questions from the committee? Seeing none, thank you. And for the committee members, we passed out the amendment that Mr. Brady was referring to. Any further neutral testifiers? Seeing none, that will close the hearing on LB632. Thank you. [LB632]