

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 11, 2019

BRIESE: Good afternoon, everyone.

BLOOD: We'll finish later.

BRIESE: And welcome to the General Affairs Committee. My name is Tom Briese. I'm the senator for District 41, which includes nine counties in central and northeast Nebraska. And I'm the Chairman of this committee. We are here today for the purposes of conducting one appointment hearing and three bill hearings. We will be proceeding in the order of the agenda that is posted outside of this room. If you wish to testify on any of the matters before us, we ask that you fill out one of the green sheets of paper. The green sheets are located on either side of the room. If you're here and do not wish to testify but you do wish to state your support or opposition for any of the matters before us, we ask that you fill in one of the white sign-in sheets. Again, those sign-in sheets are located on either side of the room. If you do testify, we ask you begin your testimony by stating and spelling your name for the record, which is very important for our transcribers' office. The order of proceedings is that the introducers will be given an opportunity-- opportunity to open on their bills. Then we will listen to proponent testimony, followed by opponent testimony, and then neutral testimony. And the introducer will be given an opportunity to close. We ask that you listen very carefully to try not to be repetitive. We do use the light system in the General Affairs Committee. Each testifier is afforded five minutes to testify. When the yellow light comes on, you have one minute remaining, and we ask that you begin concluding your remarks. When the red light comes on, your time has expired, and we will open up the committee to any questions they may have of you. At this time, I'd like to encourage everyone to turn off or silence any cell phones or electronic devices, anything that makes noise. The General Affairs Committee is a committee that is equipped for electronics, so you may see members referencing their iPads, iPhones, or other electronic devices. I can assure you they're just researching the matters before us. If you have a prepared statement, an exhibit, or anything you would like distributed to the committee members, we ask that you provide 12 copies to our page. If you don't have 12 copies, don't worry, provide what you have to the page, and she'll-- she'll make copies for you. Our pages for today for the General Affairs Committee are Dana Mallett from Colorado, she is a sophomore, political science major at the University of Nebraska-Lincoln, and Katie Pallesen who is a senior at UNL studying political science and history. And with that, we'll

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proceed to the introduction of our members, beginning with Senator Blood.

BLOOD: Good afternoon. I'm Senator Carol Blood, and I represent District 3, which is western Bellevue and southeastern Papillion, Nebraska.

ARCH: John Arch, Legislative District 14: Papillion, La Vista, and Sarpy County.

LOWE: John Lowe, District 37, southeast half of Buffalo County.

LOGUEN BLAZEK: Loguen Blazek, I'm the legal counsel for General Affairs.

MOSER: Mike Moser, District 22, Platte County, Stanton County, and a small sliver of Colfax County.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Saline, Jefferson, and southwestern Lancaster County.

WAYNE: Justin Wayne, District 13, which is north Omaha and northeast Douglas County.

ALEX DeGARMO: Alex DeGarmo, committee clerk for General Affairs.

BRIESE: Thank you. And our first order of business is a confirmation hearing for Mr. Todd Zohner for the Commission on Problem Gambling. He's going to be calling in here shortly. We hope sooner, rather than later, but it could be a couple of minutes yet. So we'll just have to stand at ease here momentarily as we wait for him. And while we're waiting, perhaps Senator Hunt would like to introduce herself.

HUNT: Hi everybody, I'm Megan Hunt, and I'm from District 8, which includes the neighborhoods of Dundee and Benson in midtown Omaha.

BRIESE: Thank you. We-- we typically conduct these confirmation hearings in person, but oftentimes a phone conference is the best and appropriate way to do it. And due to the weather, I think today is probably why we're doing it over the phone today.

BLOOD: Maybe the phone lines are down. How much snow did they get there?

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BRIESE: I think it was scheduled here for 1:40, so that's-- for anybody that walked in late, we're waiting on a phone call for a confirmation appointment here. Should be coming in the next few minutes.

ALEX DeGARMO: I texted him at 1:35 and told him to call in, so we're just waiting.

BRIESE: OK. OK. Hello, Mr. Zohner?

TODD Zohner: Hello.

BRIESE: Yes, Mr. Zohner, can you hear me?

TODD Zohner: I can hear you well.

BRIESE: Yes, and we can hear you well also. I'm Tom Briese, Chairman of the General Affairs Committee, and I'm here with the members of the committee for your confirmation hearing. And good afternoon. I would welcome you to provide us with any information or any thoughts or any comments, anything you'd like to share with us relative to your confirmation.

TODD Zohner: Sure. Maybe just a-- I'll tell you who I am. I'm a lifelong Nebraska resident. I was born in 1961, graduated high school from Battle Creek High. I went to the military. I've been employed by the Department of Roads for about six years. When I got out of the military, I worked for Lincoln Electric System for about six years, and the last 20 years I've owned my own business. And I am a pipeliner. I build pipeline for natural gas. I'm married. I'm a father of seven children. I have 18 grandchildren. And that's pretty much in a nutshell who I am. You know, I'm an active person. I'm an avid skier, avid hiker, fishing, hunting, big Cornhusker fan, and a big Kansas City Chiefs fan. So that's-- you know everything about me now.

BRIESE: OK. Well, very good, Mr. Zohner, and we appreciate that. And I'm going to ask the committee if anyone has any questions for you.

TODD Zohner: Sure.

BRIESE: Senator Moser.

MOSER: Yes. I just read through your resume and listened to your discussion. What's your interest in this appointment? Do you have any

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experience with problem gambling, anybody in your family involved in it, or what about this is interesting to you?

TODD ZOHNER: You know, several things. I guess I'm a lifelong Nebraska resident which makes me, I think, on the conservative side of life in general. And so I've always, I guess, had a maybe a bent to that. Gambling could create problems in the society. And then I suppose what has really in the last about 15 years-- which has-- has maybe solidified my position on-- on gambling as-- as a-- I'm not per se against gambling, but I've been solidified in my opinion that gambling does cause problems, is that I have a family member, my mother-in-law, who-- about 15 years ago she lost her husband. At that time she was-- when she lost her husband, she was a wealthy woman. And my guess is at that time, I don't have exact numbers, but she was probably worth \$2 to \$2.5 million. And I watched her get involved in gambling. And in about five years, she would-- had a net worth of zero. And at that time, I watched her struggle for several years. She then came to me for help, my wife and I, and we took over her finances. And she gave us power of attorney because she didn't trust herself with the finances. And we were able to straighten out her finances, get her situated financially comfortable anyway. And then I watched her addiction basically drive her to sue me for control of her finances so that she could gamble some more. And as of right now, she is-- she's still gambling. She does not admit she has a gambling problem yet, and I've watched it pretty much destroy her life. So I have a personal interest in-- in gambling as a problem that [INAUDIBLE] now.

MOSER: Thank you very much.

BRIESE: Thank you, Senator Moser. Anyone else? Mr. Zohner, I do not see any further questions of the committee, and thank you for sharing a compelling story with us there. And we appreciate you calling in. And we will be in touch with you soon. But after we get done talking to you, I will ask if there are any proponents or opponents before we close the hearing. So thank you for now, Mr. Zohner.

TODD ZOHNER: Thank you very much.

BRIESE: Are there any proponents in support of Mr. Zohner's nomination? Any opponents? Any neutral testifiers? With that, we'll close the hearing on the appointment of Mr. Todd Zohner to the Commission on Problem Gambling. Next up we have LB635 and Senator Hilkemann. Welcome, Senator.

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HILKEMANN: Good afternoon, Chairman Briese and members of the committee. I'm Senator Robert Hilkemann, that's R-o-b-e-r-t H-i-l-k-e-m-a-n-n, and I represent Legislative District 4. I'm here to introduce LB635 which would add two members to the Nebraska Liquor Control Commission. I have also brought a white copy amendment to address one minor substantive change, and then a nonsubstantive change to the original introduced bill. I believe they are being distributed now. The Commission is currently comprised of three members with no two being citizens of the same congressional district. That math works out to three commissioners and three congressional districts. Since LB635 would increase the number of commissioners to five, you will see an AM233. The revised language reads: no more than two shall be citizens of the same congressional district as the boundaries of the state's congressional districts exist on the effective date of this act. The latter part of this would protect the geographical balance in the event of a future redistricting in congressional representation. I believe that all boards and commissions play an important role in state government and should operate as effectively and efficiently as possible. This can be problematic for a smaller board or commission, such as the three-member Nebraska Liquor Control Commission. If a member were to be absent from a hearing or a member were to resign, creating an unfilled vacancy, having only two members to serve on the public can create issues. For example, if the commissioners disagree and you have a one-to-one tie, there could be no resolution to the matter before them. Therefore, this puts a lot of pressure on the two members to come to consensus and would require a unanimous decision. This is a higher standard arguably than a majority which is how the Legislature intended this-- decisions to be made. Another issue you could see with only three commissioners is that no commissioner can discuss matters with another commissioner without violating the Open Meeting Act. Additionally, if two commissioners are seen together, having lunch as an example, even if they are not discussing commission business, this could create an appearance of impropriety. Attending conferences together could even be problematic, or at least appear so, which puts the commissioners in a vulnerable position. I fully believe that the Commission does an outstanding job. I don't want this bill to suggest that I feel that we are correcting any wrongdoing. I have a great deal of respect for Hobie and the job the commissioners do. When we take into consideration that the Nebraska Liquor Control Commission regulates an industry that once was prohibited by the United States Constitution, then repealed to allow that industry to operate legally and bring in \$30 million in excise tax a year to our state, I think we need to ask if the Legislature has equipped the commission to function

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as intended for the seriousness of the industry they regulate, as well as the many business owners they serve. Ensuring the Commission can function effectively and efficiently for the small business owners of our local bars and restaurants, farm wineries, craft breweries, microdistilleries, and distributors is a matter of livelihood of many of our citizens. If a Nebraska business owner is hoping to open the doors of their bar and restaurant that they have invested time and resources in and if that were to be delayed due to an illness or a vacancy on a small commission, we're then doing a great disservice to our citizens. Like I said, I know they're doing the best they can over there, and I applaud their work. But the question is can we make it better for them? It is for these reasons, I feel it is prudent that we add two more members to the Nebraska Liquor Control Commission. Thank you for your time, and I will try to answer what questions you may have.

BRIESE: Thank you, Senator Hilkemann. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. And thank you, Senator Hilkemann. When I read through this bill, the first thing I was curious about was where did you get the idea for this bill? Was there someone bring it to or--

HILKEMANN: Yes, Project Extra Mile.

BLOOD: Project Extra Mile.

HILKEMANN: Um-hum.

BLOOD: All right. And their reasoning was?

HILKEMANN: Well, for much of what I said, that a lot of times this Commission ends up having to carry on business with only two members present and that it makes it difficult to-- you know, and you have to have a decision that comes out of that Commission. Two people, what do you do? And so that-- that was one of the concerns that they've been expressing.

BLOOD: So-- so I'm going to keep digging because I'm trying to figure something out here. So were they concerned because issues weren't being addressed, or were they concerned because they felt more people should be involved in the decision?

HILKEMANN: More people should be involved in the decisions, plus there-- there are things that just do not get advanced properly or

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they felt properly because of just having the two commissioners that are making those decisions.

BLOOD: Do you have any examples of that--

HILKEMANN: You know, I think--

BLOOD: --of this Project Extra Mile?

HILKEMANN: --I think that they will probably be testifying also here, and may be better prepared for that.

BLOOD: Thank you very much.

HILKEMANN: Um-hum.

BRIESE: Thank you, Senator Blood. Any other questions? Seeing none, thank you, Senator Hilkemann.

HILKEMANN: OK.

BRIESE: Will you be staying for closing?

HILKEMANN: I will be here.

BRIESE: OK. Very good, thank you. Any proponent testimony? And welcome.

CHRIS WAGNER: Thank you, Chairman Briese and members of the committee. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r, I'm the executive director with Project Extra Mile. We're-- as I mentioned previously at this committee, we're a nonprofit working to prevent alcohol-related harms across the state. Our-- kind of part of the reason that Senator Hilkemann already laid out is really from our perspective a good governance issue. If you have two commissioners, if you have an absence, two commissioners essentially have to rule by consensus. Now to Senator Blood's question, we-- I cannot recall of any instance where an item has been delayed or continued in order to address the situation. But really-- and that maybe really speaks to our concerns is that, you know, is there a pressure to reach a consensus versus being able to vote one's conscience based-- based on the evidence that's presented. So that's really-- that's really one of our main concerns. The second would be really to use this opportunity to request that this committee consider adding language that would-- would require at least one commissioner to have a public health

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background and another to have a public safety background. And from our perspective, this is really to ensure that the policy of this Legislature, which I've laid out here in paragraph 3, the careful control and regulation over the manufacturer, distribute-- distribution and sale of alcoholic liquor, that these experts can really contribute to that in order to-- to protect the public health, safety, and welfare. And so it-- while there are, for example, law enforcement officers that are frequently before the quish-- the commission to answer questions on show causes or application hearings or on violations or for hearings to determine whether or not the Liquor Control Act was violated and determine penalties, it would certainly have-- having that commission with those experts being able to ask the questions. So currently, law enforcement officers are only really able to answer the questions that are asked of them. And so we feel having those experts at the table being part of the deliberative process, being able to ask the questions based on their experiences and their knowledge of, you know, the impact that alcohol has in their fields would be a benefit to the Commission and its-- in its deliberations. Secondly, I-- or rather also, I really want to-- given recent news-- and I know that the committee will eventually have a hearing on this, but I think it's really incumbent upon us as an organization to-- to bring this to your attention. There has been-- former Commissioner Bob Batt's position has been filled by the Governor, and it is a former industry executive of 30-plus years, a wholesaler, beer wholesaler. And we're very concerned about this, the presence on the Commission. And-- and really it's-- the question is should the industry be allowed to regulate itself, especially when the product has great potential for harm in communities across the state? And we-- and we see that on an annual basis. We're one of the worst states for binge drinking. We have, you know, about 77 average in the last five years, over the past five years, 77 alcohol-related traffic fatalities every year. We have even more alcohol-attributable deaths every year. So it is a serious issue. And so we would really also urge the committee to consider adding language that would further restrict former industry members from-- from serving as commissioners or being able to be eligible to serve. That-- that-- I will wrap up my comments and open-- open up for questions.

BRIESE: OK, thank you very much.

CHRIS WAGNER: Sorry.

BRIESE: Any questions? Senator Blood.

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BLOOD: Thank you, Chairman Briese. It's nice to see you again, Chris.

CHRIS WAGNER: Yes.

BLOOD: And I do support the work that Project Extra Mile does, but I have to say, sometimes I don't always agree with you. And I think this is one of the concerns that I have at this time. But that does not mean that I don't support the work that you do.

CHRIS WAGNER: Sure.

BLOOD: So I hear you saying that you would like to see somebody from public safety and public health because of their expertise, but yet you don't want somebody from the industry because apparently their expertise is not the one that you want.

CHRIS WAGNER: Well, I would say that I believe that the industry certainly already has a-- carries a lot of influence at the Commission. They are certainly--

BLOOD: How do they carry influence?

CHRIS WAGNER: Well, I-- I believe that they're, you know, that they are constantly in touch with the Commission regarding regulations. You certainly-- there is an industry forum portion of the hearings that, you know, that the industry can come and speak on matters before the Commission. I also know that there are, you know, the-- the Wine Board and the Craft Brewery Board that can act as advisers as well to the Commission. So I believe there is already significant input and-- and-- from the-- from the industry, and so I think it's wise to not only increase the-- the good governance part of the Commission, but also balance kind of the public health and safety impacts of the industry as well.

BLOOD: But based on that explanation, are not public safety and public health given the same opportunity to give input?

CHRIS WAGNER: I believe that-- yes, I think so. Certainly we could certainly call the Liquor Control Commission and express our concerns. I would say, you know, and I have been in this role in four years. I would say that our-- our-- the receptiveness of our arguments have not really been heard as strongly as-- as the-- as the industry's. And that's just based on our experiences.

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BLOOD: And so you have proof of that, that you're not being heard?

CHRIS WAGNER: It is a general feeling. I cannot point to one particular instance.

BLOOD: See and that's-- so that's-- I hear-- I just hear some red flags that concern me is that for the reason that you give for public safety and public health, of which I both support again. We hear this a lot when we sit in hearings like this. Somebody comes in and says, hey, I want these people for reason one, two, and three. But then the person or organization that they don't like, even though it's the same, they both have expertise in different areas. I don't agree with this first person here, so we don't want them even though one, two, three is the same. So I-- I just have concerns when we're trying to move things around based on because I feel this way or I'm really-- I follow them very closely and I'm not seeing biased decision making. And I can tell you, having dealt with them from a municipal level, that there are times when our-- the city council would vote no and turn down a liquor license and-- and they would vote yes, and vice versa. So I feel like it's very balanced. I feel like they work really hard. I don't feel like they're getting well paid for what they do and the hard decisions that they make. I just-- I'm a little concerned that-- that we're trying to stack up the odds in favor of one particular organization. And I'm not sure that I'm OK with that.

CHRIS WAGNER: And I would-- I would simply respond that this-- this is not about Project Extra Mile. We-- our goal is public health and safety. I guess we-- we don't necessarily benefit--

BLOOD: And you don't feel that that's being addressed right now?

CHRIS WAGNER: I'm not-- I'm not saying-- I guess, I don't-- I don't see that as the-- the-- the issue here. I-- I-- I-- I really see the fact that why wouldn't we? If-- if the goal, if the statement of policy of this Legislature is to protect public health, safety, and welfare through the careful regulation of the act, why would we not want to have those voices at the table and why would we not want the commission to be able to, you know, decide based on the merits of a case versus, you know, whether there's simply just happens to be two commissioners in the room at the time that those hearings are scheduled? So I guess-- I guess we would disagree, and I don't-- really don't think it's about Project Extra Mile. It's really about

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protecting public health and safety, and I believe that this is a good way to address it to make sure that it-- it's being addressed.

BLOOD: But again, you're not telling me that they haven't been doing that.

CHRIS WAGNER: I cannot. Again, our organization is 20-plus years in existence. And I know we've-- we've had some back and forth with the Commission in the past. I can think of one that jumps out to mind where we, you know, we needed to take the Commission to court on-- on the alcopop's issue. And eventually the-- the-- the Legislature did, you know, speak its mind on that and changed the tax rates. But you know, there-- there has been, in-- in our-- the organization's history in the past, a kind of contentious, but I believe a good working relationship with the Commission. And I don't want to cast aspersions on the current Commission. I-- I just-- I just feel that this is important, and that it should be-- that this is a good way to address it. And this is the time to address it.

BLOOD: Well, I appreciate you answering the hard questions, Chris. Thank you.

CHRIS WAGNER: Sure. Thank you.

BRIESE: Thank-- thank you, Senator Blood. Senator Arch.

ARCH: Do I understand correctly then that-- that the amendment-- neither the bill nor the amendment that is before us today has your suggestions regarding-- regarding membership?

CHRIS WAGNER: Correct. The bill as drafted--

ARCH: So right now, that's not, that's not--

CHRIS WAGNER: Correct, yes. The bill as drafted simply increases the number of commissioners to five.

ARCH: OK. Thank you very much.

CHRIS WAGNER: Sure.

BRIESE: Thank you, Senator Arch. Anyone else? Senator Moser.

MOSER: Thank you for coming to testify before us today. I recall we talked here a week or so ago. Do you, when there are openings on the

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Liquor Control Commission, ever send recommendations to the Governor on who you think would be a good commissioner?

CHRIS WAGNER: Not to my knowledge. This is the first vacancy that's occurred in my tenure at the organization.

MOSER: Or do you ever attend hearings for people that are nominated and either support or oppose?

CHRIS WAGNER: That again-- that is-- again, that hasn't happened in my tenure, so I can't speak to the entire history of the organization. I would-- I don't know if it's directly, but I did want to mention that, I do believe it's in my testimony, that we do kind of attend these hearings on a regular basis. And I would note that it's not a regular occurrence that-- that-- that a commissioner would be absent. But I would say in recent years it's become increasingly-- you know, it's happened increasingly. So I would-- I would-- just wanted to add that as well.

MOSER: I would think, you know, that suggesting some possible board members or attending the-- the appointment hearing and voicing your concerns would be a good way to address that rather than putting it in the law because otherwise you'd have definitions in the law, you'd limit the people who could serve on the Commission if they had to be a first responder or if they had to be, you know, a healthcare worker. I mean, you'd have definition issues, I think.

CHRIS WAGNER: Well, and I, you know, I think that really our perspective is, you know, you have this expertise, and, you know, that's important to have. You know, whether or not the Governor would listen to our recommendations, that I don't know. But I think, you know, based on the fact that we have so many problems, alcohol problems, related problems across our state, this would be a good opportunity to really bring that expertise and include that, you know, that expertise in the decision-making processes of the Commission.

MOSER: OK, thank you very much.

CHRIS WAGNER: Thank you.

BRIESE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Chris, thank you for testifying today, a couple of things. Most of our small counties only have three county commissioners, and they function quite well in that capacity. So I don't think, you know,

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just having two commissioners there is really much of a concern. This has worked very well. The thing that strikes me is the fiscal note, two years of this will cost us \$95,000. And all of us on the floor have sat through the Speaker and the chairman of Appropriations basically telling us any--

CHRIS WAGNER: Sure.

BRANDT: --new-- new money is going to be tough sledding. I mean, you're really going to have to find the money somewhere. So, I mean, that almost renders this an uphill climb.

CHRIS WAGNER: If I-- if I may just--

BRANDT: Sure.

CHRIS WAGNER: --follow up on that, Senator. Part of that, what we consider as an organization, is the economic cost that-- that this excessive consumption has on our-- on our taxpayers. And what we-- what-- there have been studies that have found that in 2010 alone, Nebraska had \$1.16 billion in economic costs. We're not even talking about, you know, the alcohol-related fatalities and innocent bystanders that-- that are harmed as a result of this. And taxpayers just alone-- taxpayers are on the hook for, you know, nearly \$500 million a year in Nebraska. So when we talk about the costs of, you know, increasing the, you know, adding two commissioners at \$95,000, it really pales in comparison to the economic costs alone that we experience as a state every year. So that would kind of be my-- my counterargument to that.

BRANDT: OK. Thank you.

CHRIS WAGNER: Thank you, Senator.

BRIESE: Thank you, Senator Brandt. Anyone else? Seeing no other questions, thank you for your testimony,--

CHRIS WAGNER: Thank you.

BRIESE: --Mr. Wagner. Any further proponents in support of LB635? Good afternoon.

LANETTE RICHARDS: Good afternoon. My name is Lanette Richards, L-a-n-e-t-t-e R-i-c-h-a-r-d-s, and I've traveled here from Scottsbluff. I did start out yesterday, so I beat some of the weather.

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But I've traveled across the state on behalf of our coalition, which is Monument Prevention Coalition in Scottsbluff. I'd like to voice our strong support for LB635. Monument Prevention also supports the expansion from three to five commissioners on the Liquor Commission. This expansion would ensure that each commissioner is free to make his own-- his or her own decision on pending cases when only two commissioners are present. In addition, we'd like to-- the Commission to, as Chris said too, in order for it to benefit all of us, that one commissioner would be with a public health background and the other with a public safety background. This is in alignment with the purpose of the Commission to protect the health and safety of the citizens of Nebraska as is outlined in Chapter 33-- 53-101.01(4) and what it states is to promote the health-- health, safety, and welfare of the people of the state and encourage temperance in the consumption of alcoholic liquor by sound and careful control and regulation on the manufacture, distribution, and sale of alcoholic liquor. It is our understanding also that there is a person that with an extensive alcohol industry experience has been appointed to fill the recent vacancy of Mr. Batt. Even though he may not be currently employed in the alcohol industry because of his retirement, can that commissioner be truly unbiased and adequately protect health-- public health and safety of our state over the interests of former colleagues? We do not believe having the industry regulate itself is in our state's best interest. We already have so many problems in our community related to alcohol, and this development is going to make that situation-- it has the possibility of making it worse. We would ask this committee-- committee to consider adding language in LB635 that would further restrict former industry members from being able to serve as commissioners. Being from western Nebraska and seeing the changes in Whiteclay since the closure of the liquor stores there, I cannot help but wonder whether the Whiteclay-- Whiteclay case would have been different had the industry-- if the industry would have had been part of that-- those deliberations. Again, please amend LB635 to require public health and safety representation and further restrict former industry members from serving as commissioners. Thank you for your consideration.

BRIESE: Thank you, Ms. Richards. Any questions? Senator Arch.

ARCH: Thank you for coming all the way from Scottsbluff.

LANETTE RICHARDS: Sure. Sure.

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ARCH: Could you-- what is Monument Prevention?

LANETTE RICHARDS: Monument Prevention is a community prevention for this county of Scotts Bluff, Scotts Bluff County, and we meet regularly for the prevention of underage drinking and excessive alcohol use.

ARCH: OK, thank you.

LANETTE RICHARDS: Um-hum.

BRIESE: Any other questions? I do have one question.

LANETTE RICHARDS: Sure.

BRIESE: Under the current system, we're ensured representation from each of the congressional districts.

LANETTE RICHARDS: Yes.

BRIESE: Is that a concern to you that one district might be underrepresented with this new proposed setup? Probably be two, two, and one.

LANETTE RICHARDS: Yes. You know, I think that we've been treated very fairly in the past. I know our representative right now on the Commission is in Kearney, which is not western Nebraska really, but-- but I think that they represent us well.

BRIESE: OK. Thank you.

LANETTE RICHARDS: Um-hum.

BRIESE: Seeing no other questions, thank you for your testimony.

LANETTE RICHARDS: Thank you.

BRIESE: Any other proponents? Seeing none, any opponents? Seeing none, anyone wishing to testify in the neutral capacity? Good afternoon.

HOBERT RUPE: Good afternoon, Chairman Briese, members of the General Affairs Committee. My name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission, testifying neutral. We are a creature of the Legislature. We are created by the Legislature, and how you constitute us is up to you. But I'm here [INAUDIBLE]. There are some questions that were raised, and I thought I may have the

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longest tenure to be able to answer some of those. I was the prosecutor from 2001 to 2004, the executive director from 2004 to present. So if I can answer any questions about how the Commission handles some of these issues or is structured, I'd be happy to answer any of those.

BRIESE: Senator Blood.

BLOOD: Thank you, Chairman Briese. I do have a question. You may or may not know this answer, but I'm curious. Do you know if the person that everybody is so concerned about, has he served on any other boards? Is that the same one that served on the-- the Fair Board?

HOBERT RUPE: Yes. Harry Hoch is-- I mean, I believe his committee-- his hearing will be in front of the Commission-- this committee probably the next couple weeks. He was a-- owned a family business based out of Grand Island, a beer "wholesalership." He retired. He was on the Fair Board. He since has relocated to Omaha, I believe, to be closer to grandkids or other issues, and the Governor has chosen him. So I can tell you he-- he has been-- served on as a Fair Board before.

BLOOD: Thank you.

BRIESE: Thank you, Senator Blood. Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Mr. Rupe, for being here and answering some of our questions. It was kind of brought out that being a three-three committee, and if one person was absent, the other two may vote in tandem so something may get accomplished even though they didn't feel that they should. Can you tell me that-- has that ever happened where they've been kind of thought to be pressured into that position?

HOBERT RUPE: No. Very rarely-- occasionally we only have two commissioners. A couple of times it was because of a health issue. The last time we only went with two was just last January when Mr. Batt retired. And then what the Commission-- committee does-- Commission does, because we are only a three-person commission, we sort of seat that person provisionally as they're going through the process because of that. As you saw, Mr. Hoch actually sat in on Friday-- last week, did very well for a person-- I didn't have to explain to him what a three-tiered system was, unlike most other commissioners. And so I don't believe this ever happened. And if-- the procedure we would follow is if there was a dispute, we would lay the matter over to the

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next month. Most licenses, I think I need to clarify this, most licenses are issued without the commissioners ever hearing them. Most of them are issued through the normal course of scope. The vast majority of those come in with a recommendation of approval by the local governing body, meeting the fire codes, nothing has been flagged up to-- for me to have a show cause hearing the background. And so the vast majority are just on the consent agenda every year, every month. The hearings are actually, on applications are, did the local governing body recommend denial? Did we get three or more citizen protesters? Or also a staff request, including mostly from law enforcement, where we'll request a-- what's called an administrative desk review, where I will look at the application and say is there something in the background that's problematic, that should go on the Commission's agenda? And I can tell you right now, if one of our NSP investigators asks for a show cause hearing, they get a show cause hearing because, you know, there's nothing-- that's the proper way to proceed. So I think law enforcement does have a big say in what goes before the commissioners. But going back, you know, the fact that we-- they only had two in January, there wasn't an issue there.

LOWE: One more question.

BRIESE: Sure.

LOWE: And since we are talking about Harry Hoch,--

HOBERT RUPE: Um-hum.

LOWE: --his expertise in the business has been there, as you stated, that he actually knows what the three-tier system is.

HOBERT RUPE: Um-hum.

LOWE: Do you think that is a benefit or not for the Commission, and do you think he will have any problems?

HOBERT RUPE: I can say that we've had, since in my tenure on the Commission, we've had people who have in the past been in the industry and have done fantastic. We've also had people who are former law enforcement on the Commission, city attorneys, former sheriffs on the Commission, and they've done well. One of the best examples I will give out is, he's since passed away, Chairman Bob Logsdon was on the Commission for over-- for 12 years, 8 of which is chairman. I don't know if anybody remembers, but he actually ran the Legion Club here in

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Lincoln for 20-plus years before he retired, did other things, then got appointed to the Commission. So he'd actually been on the side of a retailer, and he had that experience. And he brought that in, you know, as part of it. But you know, we had-- like I said, we've had sher-- we've had former Sheriff-- former Sheriff Pat Thomas served for about six months on the Commission at one point in time. So you know, everybody brings their own-- their own expertise at different times. But for the most part, I mean, they've-- I mean-- it's hard for me to say, oh, they've done great because, you know, technically they're my bosses. But I don't think there's been any person who has-- who has come on with an agenda and forced that down throats.

LOWE: Thank you very much.

BRIESE: Thank you, Senator Lowe. Any other questions? Senator Moser.

MOSER: What do you think of the idea of designating some of these seats for first responders or public health officials, or for that matter, designating that one has to come from the beer industry?

HOBERT RUPE: I would go-- first thing, I'm going to let-- let a little secret, and some of the people back here will laugh a little bit. To think that the industry is always 100 percent in tandem and agreeing with each other is tot-- a completely miss-- completely not seeing what's going on. So having one member from the industry, you would have other people, you know, fighting back and forth on that. I would go back-- and now this is primarily my view, not really so much of the Commission. You look back as to sort of the philosophical underpinnings of why the Commission was created the way it is. One of the best books on that is a book called Towards Liquor Control. And it was-- it was authored at the behest of Mr. Rockefeller who was an ardent prohibitionist who saw that prohibition had failed. And so he had two people, one an engineer, one a lawyer, draft up what's the best regulatory systems. And it's about as dry as you would assume considering it was drafted by an engineer and a lawyer. But the thing there is they said they should have the general citizens. They didn't say you should have experts one way or the other. You should have citizens of good, upstanding, moral character appointed to the oversight to sort of be the voice of the standard citizen. And I said-- and so before you start maybe trying to carve out fiefdoms of who should be there, I think you should see, does the existing system not work, and-- before you go down that route.

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MOSER: OK. Thank you very much.

BRIESE: Thank you, Senator Moser. Any other questions? Seeing none, thank you for your testimony.

HOBERT RUPE: Thank you.

BRIESE: Any other neutral testifiers? Seeing none, Senator Hilkemann, would you like to close for us?

HILKEMANN: Well, thank you very much for hearing the testimony here today. I think this is an issue that we're looking for better efficiency in government and will this allow it to be more efficient. Just to comment on Senator Brandt's comment about the county commissioners, you know, they're setting more policy. The-- the Liquor Control is really more of a quasi-judicial body with regulatory function over just policy establishment there. But thank you very much. If there are any additional questions, I'd be happy to. You know, as far as who's on that Commission, you know, I was-- just said to [INAUDIBLE], well, you know, I'm-- as a podiatrist, we have podiatrists on the podiatry board. So I mean, I think that there's a benefit of having people from all walks of life on boards.

BRIESE: OK, thank you. Any questions? Seeing none, thank you for being here today.

HILKEMANN: OK. Thank you very much.

BRIESE: And that closes the hearing on LB635. Now we have LB538, Senator Lathrop. Welcome, Senator.

LATHROP: Good afternoon. I don't think I've ever been in front of this committee ever, so this will be a new experience. Go easy on me. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Steve Lathrop, L-a-t-h-r-o-p, I'm the state senator from District 12, and I'm here today to introduce LB538. Nebraska law distinguishes between wager on games of skill, which are legal, and wagers on games of chance, which are not. Some game manufacturers noticed this distinction and began producing stand-alone video game machines by which players can place wagers and receive monetary prizes. Since the Nebraska Supreme Court's decision in 2011 examining one particular type of device called Bank Shot, regulators have found it difficult to clearly identify offending machines. And without adequate enforcement mechanism, machines with questionable

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skill elements have proliferated. Many of these devices play exactly like slot machines except players must touch the screen to line up the slot machine reels. The machine flashes a prop-- a prompt to either raise or lower the reel to make the match. The Department of Revenue recent-- recently began tracking devices that are capable of awarding cash prizes. As of 2017, the department was aware of hundreds of such devices in Nebraska claiming to be skill games. Some industry representatives estimate that the total number of such machines in Nebraska exceeds 10,000. These machines can be found in bars, gas stations, and even grocery stores in some communities. At least one distributor of these games has claimed that each machine could generate up to \$6,000 in revenue per month. There are no age restrictions on who can play these games and essentially no oversight to ensure that the games are fair to consumers. LB538 gives the Department of Revenue authority to determine which games that award cash are games of skill and which are chance before the mechanical amusement device stamp is issued. This provides a simple mechanism for enforcement. If the Department of Revenue does not approve the machine as a game of skill, it would not receive a mechanical amusement device stamp. Any machine that does not have a stamp and is capable of awarding cash would be presumptively illegal and subject to seizure. Notably, LB538 does not attempt to change how skill and chance are defined. Rather, it provides clear authority for the Department of Revenue and law enforcement to regulate and identify machines purporting to be games of skill. We also have an amendment, AM229, which harmonizes and clarifies some language in the bill and removes other verbiage from the statute that has previously been declared unconstitutional. The amendment also reflects requests by the Attorney General's Office and the Department of Rev-- Revenue. I'm happy to provide more detail on those if you wish. And with that, I'd ask for your support of LB538. I do know that there are a number of people that will testify. You'll have-- of course, hear from some proponents and some opponents. You'll also hear from a neutral testifier. I think that there are some who have interest in the subject matter that are still trying to work out some solutions. It may well be that this bill hopefully will go to the floor, and there will be people that just plain are going to oppose it. But there will be an opportunity, I think, from some of the stakeholders to try to work through some of their issues. And with that, I'd be happy to try to answer questions.

BRIESE: Thank you, Senator. Any questions? Senator Moser.

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MOSER: Is this an idea that kind of spontaneously came to you, or did you have somebody bring this idea for the bill? Or how did you--

LATHROP: Well, I did have somebody bring it to me who has some background in the subject matter. But really what's happening, I saw-- in doing some research, I saw an article where one person that had these in their establishment tried to advertise that he had slot machines. And the problem is, is that we don't permit gambling except for a couple of forms, right? We have keno and we have the lottery and that's about it.

MOSER: Bingo.

LATHROP: Bingo. And Bingo, that's a game of chance for sure. But I don't know if they award money or what they do with Bingo. But--

MOSER: Oh, yeah.

LATHROP: --but now with-- there are some of these devices, mechanical devices, that blur the lines. And I think that this bill is intended to get to providing some standard and some opportunity for the Department of Revenue to say this is a game of chance, and this is not a game of chance. And it provides some clarification. I didn't read the Bank Shot opinion from 2011. What I do understand about it is it's rather unclear. And this would provide some clarity, perhaps a little more certainty, and-- and that's why it's here.

MOSER: Thank you.

LATHROP: Thank you, Senator Moser. Anyone else? Senator Arch.

ARCH: In the fiscal note, it identifies cost to this. Is there-- is there no revenue associated with that to offset these costs?

LATHROP: There are no fees in this bill at this time. If you guys put one in there, that'll-- that'll be up to this committee. I read the fiscal note. Two things: one is that they will be getting-- they will be putting stamps on fewer machines--

ARCH: Right.

LATHROP: --because some of them are going to be determined to be gambling versus-- or a game of chance versus a game of skill. So

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they'll see some drop in revenue. But I think they also provide for one person to enforce it. And that's where the expense comes in.

BRIESE: Thank you, Senator Arch.

ARCH: Thank you.

BRIESE: Senator Blood.

BLOOD: Thank you, Chairman Briese. And Senator Lathrop, it's good news that you're a lawyer because I need some lawyer speak right now. So I-- and I don't say that very often.

LATHROP: Well, I don't practice in this area, I'll tell you that.

BLOOD: So-- so I did struggle through the decision, and it talks specifically about Bank Shot and that there, the judge's opinion was based on when it rotated. And that was definitely a game of chance. So the confusion that I'm having with the bill and with that decision is if it's already been decided that games like that are games of chance or skill-- excuse me, games of skill--

LATHROP: Games of skill.

BLOOD: --I'm sorry, then how can we come forward and say that we'd have other people come in and decide whether it is indeed a game of skill or not?

LATHROP: I don't think that with the amendment we're going to touch Bank Shot--

BLOOD: OK.

LATHROP: --because that's been-- that's been determined by the court to be a game of skill. There are others though where I've never-- honestly, I'm not a-- not somebody that does this. So I don't--

BLOOD: Yeah, nor I.

LATHROP: --I don't do the slot machines or anything like that. But these machines where you push a button and then some things scroll through there and then you touch it a second time and then the things line up a little bit differently and you see if you won or not, that's all determined by sort of the way the machine's been programmed. There's going to be a certain number of winners, a certain number of

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losers, and it doesn't have anything to do with how you're touching the machine. That's-- that's an example of a game of chance that looks like a game of skill, or is trying to be passed off as a game of skill, when, in fact, all you're doing is touching the machine. You're not-- you're not doing anything that takes any skill. You're just touching it twice, as opposed to a slot machine where you might touch that button once and then the reels go around and--

BLOOD: Well, but isn't the reasoning that-- that indeed that when you do a slot machine it's one motion while you decide when you stop or change things on the screen, making it a game of-- of skill?

LATHROP: So I think one of the things that you see is a standard that basically says if-- if the machine is programmed to allow a certain number of people to win and a certain number of people to lose, then it's not skill. It's going to be chance, right, because it's going to be predetermined. And it's not unlike Pickle Cards where they load the machine and there's going to be two winners and three people that win sort of at the intermediate level and a bunch of people that lose. It's already been predetermined, and there's no skill to it.

BLOOD: Interesting, thank you.

BRIESE: Thank you, Senator Blood. Senator Moser.

MOSER: All right. Just a follow-up question to something that Senator Blood said. The bill only allows us to decide whether these are games of skill or chance. It doesn't make it possible for us to legalize slot machines?

LATHROP: I don't think we could. I think that would require us-- a constitutional amendment. And frankly, that's why efforts to expand gambling often fail is because of the-- the high threshold--

MOSER: The hurdle.

LATHROP: --for getting-- to clearing the-- the constitution.

MOSER: Would there be a prohibition to taxing these machines differently than we are now?

LATHROP: That would be up to you. I did not put a fee or a tax on these devices in the bill.

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MOSEER: Pinball machines and things like that, do they have a like a document stamp or something they have to get?

LATHROP: I think-- I think they have a doc-- some kind of a revenue stamp on there. I believe they pay like \$35. They put the stamp on there. And what this would do would be require you to get that stamp and then get another one if it's a-- or one that indicates that it's a game of skill versus a game of chance.

MOSEER: Even if it's found to be a game of skill, is there a way to tax that or is that--

LATHROP: My guess is there's almost a way to tax everything.

MOSEER: I'm not saying we want to, but I mean,--

LATHROP: Right. Right.

MOSEER: --depending on how this breaks out, I'd like to see--

LATHROP: I suspect that's true. You-- you-- I don't know why you couldn't. If you were of a mind to tax games of skill, there's probably a way to do it. It's not in this bill. That doesn't mean you couldn't find a way to do it and amend it onto the bill. But that would be up to the committee.

MOSEER: That's just the-- I mean, some of the-- this particular bill has generated a lot of e-mail and a lot of calls from constituents. And it's-- one of the comments was-- is that, you know, we tax other forms of gambling, you know, and then first we have the question of whether this is gambling or not. But then beyond that, why-- if it is gambling, why aren't we taxing it? I guess if it is gambling, we're-- it's illegal so.

LATHROP: If it's-- if it's gambling, it's illegal. What we're doing is clarifying it and providing a process for making that determination where you take your-- an example of your machine to the Department of Revenue, and they make that determination. What you do with that after you decide which ones are legal from which ones are illegal is beyond the scope of what I'm bringing to you.

MOSEER: Thank you very much.

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LATHROP: I don't have an opinion about that. There may be people that are for and against and neutral that might have an opinion about that, but I don't.

MOSER: I'm sure. I'm sure they'll--

BRIESE: Thank you, Senator Moser. Anyone else? A couple questions, if I may.

LATHROP: Certainly.

BRIESE: You indicated that-- did you read the Bank-- the Bank Shot opinion?

LATHROP: I didn't. I'm sorry that I didn't. I--

BRIESE: But is it your--

LATHROP: --I actually ended up with a 1:00 hearing today, and I got cut short on my preparation time.

BRIESE: I understand completely. I understand completely. But would it be your understanding that the Bank Shot opinion was simply a question of statutory interpretation? I-- I-- I think it was.

LATHROP: OK.

BRIESE: And if that's the case, we're not really controlled by the Bank Shot opinion here, I don't believe, to the ex-- going back to Senator Blood's question.

LATHROP: I don't think we're controlled by the Bank Shot opinion because, at the end of the day, I think we can define what's gambling from what isn't or what's--

BRIESE: Yeah.

LATHROP: --wagering on a game of chance versus some kind of a game of skill.

BRIESE: Yeah. OK. Thank you. And looking at your amendment here, it's the first I've read it and seen it but--

LATHROP: By the way, I just got that today, so I apologize.

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BRIESE: No problem. No problem. But on page 2, line 27: the department may seize any mechanical amusement device if there's probable cause to believe it's not in compliance with this section or any rules and regulations. Does that create a lot of exposure for the owners of these machines?

LATHROP: By exposure, what do you mean?

BRIESE: In that they might have machines out there across the state, not knowing whether they're going to pass muster with the department just after--

LATHROP: After this passes?

BRIESE: Yes, if this would pass with the amended form.

LATHROP: So I don't know if people have purchased those machines or they're being placed in their-- in their establishments. Let's say you have a bar, this small town bar, and somebody from this-- the-- that has these machines says, I'm going to put this machine at the end of your bar, and we'll split the proceeds. I don't know if they own those machines, but certainly if these machines are found to be games of chance, then someone's going to have to take them back. I'm not sure who owns them or where they're going to go. They may have to take them to a state where it's OK.

BRIESE: But when you put in there may seize, that's essentially confiscation of these machines, correct,--

LATHROP: Yes.

BRIESE: --if they don't-- if they don't pass muster under what we might pass here?

LATHROP: Right.

BRIESE: OK, thank you. Senator Moser.

MOSER: It's my third question. I suppose I have to stop after this.

LATHROP: That's up to the Chair.

MOSER: Yeah, diplomatic answer. What would be the appeal process if the Department of Revenue felt that this machine was-- well, whichever

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way that they would rule, would it-- is there-- I don't-- I didn't notice, is it mentioned in the bill what the appeal process is?

LATHROP: I think there is an appeal process. If I'm remembering right, it may be in-- on page 6. There's an opportunity for an administrative hearing.

MOSER: So that would be conducted by the Department of Revenue then?

LATHROP: Through the administrative appeals process, yes.

MOSER: OK, I could see it--

LATHROP: Before the Tax Commissioner.

MOSER: --being appealed. That's why I asked, but thank you.

BRIESE: Thank you, Senator Moser. Senator Lowe.

LOWE: Thank you. I appreciate you coming and presenting the bill today. Going along with Chairman Briese's line of questioning. Say the machine is confiscated, and I'm sure they're not going to empty out the machine at that period of time, and all the funds inside were to be split in some manner, whether it's 50-50 or 40-60 or whatever, the bar would then be-- or the restaurant or the grocery store would then be out of those funds because it had been confiscated?

LATHROP: Great question. I can't tell you that I know the answer to that. I would think if it turns out to be a game of chance, then they shouldn't have been doing it in the first place. If this bill became law, then whoever manufactures these has to take them into the Tax Commissioner or the Department of Revenue and have them get the-- the seal of approval, if you will, as games of skill. And those that can't get that certification or that designation would then be unlawful games of chance and subject to seizure.

LOWE: Um-hum. I'm just trying to think if-- if the grocery store owner, the restaurant owner, the bar owner, whoever has this machine inside would actually know if that was a game of skill or chance and may lose some of his funds not knowingly he was violating the law.

LATHROP: Right. No question about it.

LOWE: OK.

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LATHROP: That-- that-- maybe-- maybe that the person that-- that talked him into it said this is a game of--

LOWE: Skill.

LATHROP: --skill, it's lawful in this state. And with the passage of LB538, that changes, and now they have an unlawful machine in their-- in their place. Whether they're buying these things or whether they are on some share of the revenue basis, I wouldn't be familiar with that. So I couldn't tell you whether they end up out a machine or whether they are just out whatever's inside the machine that they thought they were going to split.

LOWE: All right. Thank you very much.

BRIESE: Thank you, Senator Lowe. Any other questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. I have one last question, Senator Lathrop. It should be an easy one. So the biggest concerns I've heard are from rural Nebraska and-- who truly believe that they have skill games whether they are or are not. But they're heavily dependent on the income that it's generated, especially the VFWs. Why aren't we trying to regulate and license these? Is it just because we strongly feel that it's gambling and they need to go?

LATHROP: I think what we're doing is providing some clarification between the two because remember the constitution already prohibits games that are based on chance--

BLOOD: Right.

LATHROP: --versus games of skill. And we're providing some clarification. If it turns out that it's a form of gambling or a game of chance, then what we're doing is making the distinction for them. And at that point, the fact that they're reliant on them-- I guess the answer is--

BLOOD: Doesn't matter?

LATHROP: --go get a machine that's based on skill. Generate revenue in that fashion.

BLOOD: Fair enough. Thank you.

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BRIESE: Anyone else? Senator Wayne. Thank you, Senator Blood.

WAYNE: So I just want to-- not really a question, but more concerns that I have regarding this bill. And actually our constitution says that as long as it's lottery, we can do it. We can-- and the Legislature can define lottery as broad as it wants to, which is kind of [INAUDIBLE], but nevertheless. The problem that I have is that if you're in possession of a game or a gambling device, it's a Class II misdemeanor. So essentially if I buy a machine, I have to prove to the government that it's not and that I'm not violating the law. And so from a criminal defense attorney's perspective, usually the government has to prove to me that I broke the law, and I have to prove to them that I'm upholding the law. There's a-- there's a fundamental burden shift there that I don't know how we get around. And maybe somebody in the back who are-- who help in this industry could help me understand that. But then we also lower the burden of proof, even if it's a Class II misdemeanor, from a reasonable doubt to now it's preponderance of the evidence that I have to prove or disprove. So I think there's some problems. I'm not necessarily looking for an answer. The reason why I'm stating that is I have a very important meeting at 3:00 that I got to leave here in the next five minutes to go report-- prepare for. And so somewhere in the transcript, I'll try to read for an answer. But I just wanted to put that out there for somebody who's in this industry and knows it.

LATHROP: And my-- my initial reaction to that is if presenting the machine to the Department of Revenue was a criminal proceeding, I would agree with you. But the fact of the matter is all we're doing is identifying those that are from those that aren't. And that's not a criminal proceeding. So I don't think-- it's not a burden of proof in a criminal procedural matter.

WAYNE: It isn't, but-- it isn't, but 28-1107 is possession of a gambling device. So me presenting it, just because I'm in possession of it, I am in violation of the law. Just like possession of a drug, the fact that you have it, you're in violation. So I don't know how we would-- how that retail owner would be able to present it without violating the law.

LATHROP: But it's a little bit like registering a handgun, right? So you take your handgun down to the police station. It's not registered right before you get there, but when you get there you go through the process of getting it registered.

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WAYNE: I'm glad you brought that up because Senator Lowe had a bill on that last year where he was trying to clarify that gap from where you pick it up from the store and drive it because technically it is. We just choose not to prosecute. So that's my concern, again. I'm not-- I would like to stay, but everybody knows I'm dealing with a bill. And I have to meet with somebody that--

LOWE: I still have that bill this year.

WAYNE: Oh, I didn't know. I'm still not supporting it though.
[LAUGHTER]

LATHROP: Well, it sounds like I might be.

WAYNE: Thank you.

BRIESE: Thank you, Senator Wayne. Anyone else? Couple-- couple of follow-ups for you if you have a second.

LATHROP: Oh, sure.

BRIESE: The scenario Senator Wayne was describing, would you say that's more akin to an administrative procedure than a criminal procedure? Taking that--

LATHROP: Absolutely. If you're taking your machine in to have it certified as one or the other, then I don't-- I don't see that as a criminal proceeding.

BRIESE: Very good, thank you. And then on page 5 of the green copy, the circumstances under which a device shall not be considered a game of skill if one or more of the following apply and then on down and then I think also Section 5, who came up with that language? Can you share that with us or those various circumstances in there? Did you draft that or someone else?

LATHROP: Well, someone drafted this and brought it to me, as is common.

BRIESE: OK. [INAUDIBLE]

LATHROP: And I suspect they will be people that will testify as proponents.

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BRIESE: OK, very good. Fair to say that what we see in here is a restriction on these devices considerably beyond what the Bank Shot court was describing?

LATHROP: Again, have-- not having read the Bank Shot opinion,--

BRIESE: OK.

LATHROP: I'm a little embarrassed to say that I didn't read that before I got here.

BRIESE: Of course.

LATHROP: And I intended to, but apparently Business and Labor started at 1:00 today instead of 1:30, so I didn't get the opportunity.

BRIESE: OK. Very good, thank you. You'll be around to close, I assume?

LATHROP: Sure. I'd be happy to stick around.

BRIESE: Very good.

LATHROP: Thank you.

BRIESE: Thanks. Thanks. Any proponent testimony? Welcome.

NICK THIELEN: Thank you, Senator Briese and members of the committee. My name is Nick Thielen, T-h-i-e-l-e-n, I am deputy general counsel for EHPV Management Group and its affiliates, including Big Red Keno which is a lottery operator under the Nebraska County and City Lottery Act. In short, if counties and cities or villages vote to establish a keno game in their community, Big Red can set up the game infrastructure and operate that game on their behalf. Over the last 27 years, Big Red has produced millions in community betterment dollars for local communities in its capacity as a lottery operator. And presently Big Red acts as a lottery operator for over a dozen such communities in Nebraska which have used the community better-- betterment dollars to buy police cars, to build and maintain parks, to construct infrastructure, to fund and health human-- health and human services, and for direct property tax relief. As part of Big Red's operations, we frequently send our customer service representatives to bars and restaurants in the communities that we serve and-- to pay prizes, to install keno equipment, and to perform audits. Over the last several years our team has noticed an influx of console gaming devices that are clearly games of chance. Some operate in a way

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indistinguishable from video slot machines. Others offer digital keno games. We see these illegal gambling devices as a direct threat to our business and to the community betterment dollars that serve our Nebraska communities. Big Red has had conversations with bar owners who were considering giving up keno in favor of putting more of these slot machine style games into their facilities. Another lottery operator has also told us about a small community that lost significant revenue because of the introduction of these devices at one location which directly and significantly decreased the keno revenues in that city. It appears that these games have proliferated at least in part due to a gap in how Nebraska's gambling laws are enforced. Accordingly, we support any effort that clears the way for enforcement of the state's current laws, including LB538. That said, we have had-- heard some suggestions that the evaluation of skill should be outsourced to an independent lab. We find this to be problematic for a couple reasons. First, the evaluation of skill versus chance is a determination of law which should not be and perhaps cannot be outsourced to a private company. Second, we interact with these labs regularly in the testing of keno equipment, and they are very good at evaluating whether a hardware-software package does what it purports to do. They're also very capable of evaluating discrete factors in the skill-chance arena, such as how long it takes for a player to react to certain stimuli. However, these labs are not well-positioned to aggregate such factors and analyze whether a particular device is a game of skill as a matter of Nebraska law. An analogy that gets to the heart of the issue, though one arguably more appropriate to the task of evaluating Nebraska law, would be allowing a law firm chosen by the applicant to make the determination of whether their device is a game of skill. Neither of these options serves the interest of effective enforcement of these devices. That concludes my testimony, and I'm happy to answer any committee questions.

BRIESE: Thank you. Any questions? Seeing none, thank you for your testimony. Any further proponent testimony? Any opponent-- oh, excuse me, come on up. Proponent?

CALVIN BROWN: Thank you--

BRIESE: You're welcome.

CALVIN BROWN: --for giving me this opportunity. My name is Calvin Brown, C-a-l-v-i-n B-r-o-w-n. I am here to talk about the LB538 bill. And the way this bill is written up is going to be just pretty much

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for two machines. Like the senator said, that he had a lot of help doing this, putting this bill together. And that's just going to make it, if this bill goes through, pretty much those two machines in Nebraska. On page 5, line 27, they're talking about testing the machines in the lab. Well, if you're going to have more machines in Nebraska, the manufacturer or I will have to have these machines lab tests. And just like that gentleman over there mentioned, that Nebraska is going to have them have the lab test. Lab testing costs a lot of money, between \$25,000, \$30,000, and so that's going to be a debit on Nebraska. And I think you could make this bill into an asset for Nebraska instead of being a debit. And Nebraska has Nebraska deputy sheriffs went around checking these machines out. And they seem like they're real knowledgeable. They told us that we had a couple of machines that they didn't like. And we changed the programs in them and everything. And you got a police force out there already checking these machines, and you got them on the payroll already. So why add anything more to this bill and then make it into an asset for you? Talking about the revenue, you could have it written-- and they're talking about having a new stamp. Well, you could have a \$75 stamp or double the stamp of the \$35 to \$70 and making this into an asset for Nebraska. I don't oppose this bill, but I-- that one bill there where you have to have a lab test is going to be expensive on both sides of the fence. Any questions?

BRIESE: Very good, thank you.

CALVIN BROWN: Thank you.

BRIESE: Any questions? Seeing none, thank you for your testimony.

CALVIN BROWN: Thank you. Thank you.

BRIESE: Any other proponent testimony? No other proponents? Any opponent testimony? Good afternoon and welcome.

MATT KROEGER: Good afternoon. My name is Matt Kroeger, M-a-t-t, last name Kroeger, K-r-o-e-g-e-r. So I'm a-- my company is All American Games. I'm based out of Columbus, Nebraska. I own and operate skills games across the state here of Nebraska. I do all the installation, support, and service calls for the VFW. And I just want to talk to the senators here a little bit about what makes a game a game of skill versus a game of chance. So to make it as short as possible, when you play a game of chance, you press the button, your reels spin, and you have a chance to be a winner, OK? A game of skill, you press the play

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button, and you have to interact or manipulate the screen in a predetermined amount of time to enable a winner. Similar games, such as Jewel Quest, Candy Crush, that you all have played on your phones, I'm sure, we have those games on our machines. And if you've ever seen or played those games, again, you press the button, wait for the reels to spin, and make your selection. Sorry, I'm a little-- a little nervous. So I want to talk a little bit about the benefits of these skill games. It increases traffic flow and revenue to the locations, especially in the rural areas like we talked about-- or Senator Blood talked about earlier. The VFW is absolutely reliant on these games to keep their doors open. I guess I'm open for any questions.

BRIESE: Thank you. Thank you for your testimony. Any questions?
Senator Arch.

ARCH: Help me understand the-- the-- I guess the construction of these games. Can you-- can you adjust-- are the-- is the software in the game capable of adjusting whether it be-- whether it pays out or doesn't pay out, whether it is on a particular ratio of payout? Is there a lot of flexibility in the manufacture of these games?

MATT KROEGER: There's not. Not on the machines that I run, the software that we use, it comes to me--

ARCH: It's one game. It's set.

MATT KROEGER: Yes.

ARCH: You install-- you put it in, that's it.

MATT KROEGER: Yep.

ARCH: OK.

MATT KROEGER: Yep, I don't have the autonomy to change a payout or anything.

ARCH: OK.

MATT KROEGER: It's set and ready to go.

ARCH: OK. All right. Are-- do these games have set payouts?

MATT KROEGER: As-- like a predetermined?

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ARCH: Right. Ratio of winners-losers, all of that?

MATT KROEGER: No. You have to-- you have to solve a puzzle, OK? So if you're-- if you're playing one of these games-- and like I said, if you-- if you press the button on and it's a game of skill, you will lose 100 percent of the time if you don't manipulate the screen versus a game of chance where you hit the button and you could--

ARCH: You have to-- you have to participate. You have to hit-- hit it again.

MATT KROEGER: Yes, you have to do multiple things after pressing that button.

ARCH: Um-hum.

MATT KROEGER: It's not just a simple press-and-win scenario.

ARCH: OK. Thank you.

BRIESE: Thank you, Senator Arch. Senator Blood.

BLOOD: Thank you, Chairman Briese. And thank you. Don't be nervous. So I'm obviously a big fan of what keno does for municipalities with our community betterment funds. So I'm going to ask you the same question that I've already asked I think Senator Lathrop. What about if we, instead of trying to take these away from people, we try and regulate, license, maybe have you kick in money for community betterment?

MATT KROEGER: From a revenue perspective?

BLOOD: Yeah.

MATT KROEGER: I mean, I'm-- I'm open to any suggestions.

BLOOD: So that would be something that you think the vast majority of the community would be open to?

MATT KROEGER: I would think so.

BLOOD: Not to ask you to speak for other people, but I'm sure you've chatted with others.

MATT KROEGER: Sure. No, I can only speak for myself and my very small, small business. I just know that across the state I see there's an opportunity, specifically in towns that don't adopt keno as-- in their

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town. And that-- that revenue then goes to other towns that have keno. And so these machines give those proprietors an opportunity to attract customers into their business, rather than essentially pushing them out of town.

BLOOD: Well, and I think that we missed an opportunity to help keno last year when we couldn't get the bill passed that allowed them to have plays more frequently.

MATT KROEGER: OK.

BLOOD: I think people are looking for things maybe to do while they're waiting to do their keno.

MATT KROEGER: Got you.

BLOOD: For me personally, none of that-- if I'm in a bar, I wouldn't be playing anything, I'd be having a drink. I don't know. But I don't go to bars, and none of that's going to happen. So that's-- yeah, that's my concern. I just-- I don't know. I just wonder if we're biting off more than-- if we're making it harder than it needs to be. So for you personally, regulate and license potentially?

MATT KROEGER: Yes.

BLOOD: Thank you.

BRIESE: Thank you, Senator Blood. Anyone else? Senator Moser.

MOSER: Does your machine-- do your machines play more than one game on the same machine?

MATT KROEGER: Yes.

MOSER: So they have a variety of games that you can play?

MATT KROEGER: Yes.

MOSER: And if you're better at playing the game, you're going to do better than somebody that doesn't understand the game. I guess that's the meaning of skill. Somebody who knows how to do it is going to do better than a rookie?

MATT KROEGER: I mean, yeah, I think that applies to anything, yes.

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MOSER: Yeah. I would say, if you didn't say that, then we should just go home because this is a moot question. And then you put money in the machine and you-- if you play well, you get credits to play more games? Or can you sell those credits for cash back?

MATT KROEGER: You can continue to play the game as long as you so choose.

MOSER: Right.

MATT KROEGER: And then you can simply cash out.

MOSER: So you-- but show you-- if you had credits in the machine, you could get cash back for those credits?

MATT KROEGER: Correct.

MOSER: OK. All right. So when you were saying Candy Crush, is that a game kind of like Tetris, where you move the blocks around and they--

MATT KROEGER: Yep.

MOSER: --land and disappear, whatever?

MATT KROEGER: Candy Crush or Bejeweled. Our titles are Sweet Shop and Jewel Quest, but similar concept, yes.

MOSER: Are these machines legal in other states?

MATT KROEGER: Yes.

MOSER: For all states?

MATT KROEGER: I can't speak to specifically each individ-- individual state. I know they're legal-- we've been operating for five-plus years here in the state of Nebraska.

MOSER: You don't rent machines to other states?

MATT KROEGER: Personally, I do not, no. I'm owner/operator/distributor here in Nebraska only.

MOSER: Do you-- I don't know if this is a fair question. But in your business model, do you buy the machine and then you divide the revenue with the owner or the proprietor-- the proprietor of the business or--

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MATT KROEGER: Yep, so--

MOSER: They don't have to spend like ten grand for a machine or whatever?

MATT KROEGER: They don't. That's all cost to me. So I purchase a machine. I enter into a revenue share agreement with the proprietor, with the location. And then to take a step beyond that, I then pay sale-- or a personal property tax in every county that I operate these machines in.

MOSER: On the value of the machine?

MATT KROEGER: Correct, yep. So if there's one or two machines in there, then I just pay additional personal property tax. And I've been doing that for-- for years.

MOSER: The other day we had some folks in Lincoln for their legislative day, and they were talking, as Senator Blood was talking about the revenue that this raises for them. Is it \$500 a month, \$1,000 a month? What's the--

MATT KROEGER: I guess there really isn't an average. I mean, I don't have a lot of accounts or a lot of proprietors. And so it could be \$20 a month. It could potentially be \$200, \$500-- to \$500 a month just depending on--

MOSER: On each machine, you mean?

MATT KROEGER: Total per location.

MOSER: Oh, total?

MATT KROEGER: Yep.

MOSER: OK. Thank you very much.

BRIESE: Thank you, Senator Moser. Anyone else? Senator Arch.

ARCH: I'd like to ask the question that Senator Moser asked a little bit differently. He asked whether it's legal in other states. My question is do any other-- other states consider these games as gambling and that they're regulated under gambling-- under gambling laws, not under skill laws?

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MATT KROEGER: Not that I know of, no. I mean, these are predominantly-- it's skill.

ARCH: OK. Thank you.

MATT KROEGER: Sure, sure.

BRIESE: Thank you, Senator Arch. Senator Blood.

BLOOD: Thank you, Chairman Briese. I'm sorry, but you said something that makes me have another question. So I'm having so many people in the rural areas tell me that they need these machines to stay afloat. But you're giving me the range of how much they make on each machine a month as being \$2-- \$20 to \$5-- what was the range?

MATT KROEGER: It could be-- in a-- in a small rural area with one machine, they may make \$20, \$25 a month or they could make \$500 a month depending on the size of their facility or the number of their machines.

BLOOD: So the benefit to them is that the person stays there and drinks?

MATT KROEGER: Yeah.

BLOOD: All right.

MATT KROEGER: So they're making some revenue off the machine. They're attracting business into their location. If that person stays in there longer, they're maybe buying food. They're buying drinks. They're frequenting their location, their business, more often than maybe somebody down the street.

BLOOD: Thank you. Yeah, I'm trying to-- to understand the concern of losing the machines and losing income. But when you tell me that that's all the income they really, truly generate, there's got to be something behind it. So it must be a [INAUDIBLE].

MATT KROEGER: Yeah. I mean, like I said, it really varies by location. And I've got a pretty small section of the entire state.

BLOOD: Thank you.

MATT KROEGER: Um-hum.

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BRIESE: Thank you, Senator Blood. Anyone else? Where are these machines manufactured?

MATT KROEGER: So the company that I get my machines from comes from South Carolina.

BRIESE: OK. Manufactured there as far as we know?

MATT KROEGER: Um-hum.Yep.

BRIESE: And how many different types of machines do you distribute, just the one?

MATT KROEGER: Just the one, yeah.

BRIESE: Multiple games?

MATT KROEGER: Yep. Same one that's been around since-- since we've started doing this.

BRIESE: OK. The appearance of these machines, they-- they appear like what you see in a casino, like a slot machine or a version of a slot machine?

MATT KROEGER: I would not say they're anywhere near as fancy.

BRIESE: OK. But a lot of aspects of them are probably similar to a machine you see in a casino?

MATT KROEGER: My machines specifically? I mean they're-- they're a wooden cabinet. They're not-- they're not a metal cabinet with lots of flashing lights and sounds and all of those things. I mean, you sit at them with a-- with a stool or a chair.

BRIESE: OK. Very good, thank you. Senator Moser.

MOSER: They look like a video game?

MATT KROEGER: It's an interactive touchscreen, most definitely. And it's in a freestanding cabinet.

MOSER: Are they programmable?

MATT KROEGER: What do you mean?

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MOSER: Well, so you play Candy Crush or whatever. If people get tired of playing Candy Crush, can you reprogram it to play a different game?

MATT KROEGER: No. Our machines come loaded with the-- with the games on them.

MOSER: So you don't have options on what games it will play?

MATT KROEGER: No. And all of those games go through the independent lab testing which is the same testing that the State Patrol has used here in Nebraska as well, Eclipse lab testing.

MOSER: Thank you.

BRIESE: Thank you, Senator Moser. Senator Lowe.

LOWE: Let me ask that question a little different way. Can the customer change games once he's playing?

MATT KROEGER: No, there isn't--

LOWE: So the-- your console only has one game on it, or does it have multiple games?

MATT KROEGER: No, there's 20 games on the console--

LOWE: So--

MATT KROEGER: --and so--

LOWE: --if he's-- if he's playing Candy-- whatever it is that you guys have, can he take those credits and move them to another game inside the system if he's not having luck with the candy game?

MATT KROEGER: Yes, you can switch games. But it doesn't change the platform of a game of skill versus a game of chance.

LOWE: No. But you can change different games if you think you might have better skill at a different game than the one you're playing?

MATT KROEGER: Yes.

LOWE: OK.

MATT KROEGER: Um-hum.

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BRIESE: Thank you, Senator Lowe. Anyone else? Senator Moser.

MOSEER: What does it cost to play the game typically? Is that fixed, or is that set by the proprietor or?

MATT KROEGER: No, it's-- it's set on the machines that I put in the location.

MOSEER: Does it take cash or credit card or?

MATT KROEGER: Cash only.

MOSEER: Like dollar bills or?

MATT KROEGER: Yes.

MOSEER: So you could put \$20 in, and you get a certain number of credits?

MATT KROEGER: Correct.

MOSEER: And then do a certain number of credits equate back to \$20?

MATT KROEGER: Yeah, 20 is 20 is 20.

MOSEER: OK.

MATT KROEGER: And then you--

MOSEER: Just trying to understand--

MATT KROEGER: Sure.

MOSEER: --how this works. I have never played them. And we're being asked to kind of, you know, approve this, advance it to the Legislature. And I'm sure when we get there, we're going to have questions, so I'd--

MATT KROEGER: Sure.

MOSEER: --like to know everything about it.

MATT KROEGER: Oh, no, I understand. I'm trying to answer them as easy as I can.

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MOSER: I just was hoping you weren't getting annoyed at listening to all these questions.

MATT KROEGER: No, not-- no, not at all. I'm good.

MOSER: Thank you.

BRIESE: Thank you, Senator Moser. Anyone else? Seeing no further questions, thank you for your testimony.

MATT KROEGER: Thanks.

BRIESE: Next opponent. Welcome.

JOHN LINDSAY: Thank you, Senator Briese, members of the committee. My name is John Lindsay appearing as a registered lobbyist on behalf of All American Games. I want to take a little bit different approach than-- than Mr. Kroeger did and that is to look at it from the-- from the legal standpoint. And I apologize for boring all you with legalese. And Senator Briese, I apologize for taking you back to first-year constitutional law, but we're going to have to do that. You heard on the proponent testimony a couple of things that stuck out for me, and that is the term that the machines would be presumptively illegal, presumptively illegal. In the amendment, which I have not seen, but it references probable cause. Those are terms of criminal law. Let me call your attention to Section 1 of the bill. It's in Chapter 28, our criminal law sections. The rest of the bill is intended to enforce a criminal-- criminal code. Why is this important? And as Senator Wayne-- Senator Wayne was right on-- on target, and the U.S. Supreme Court agrees with him. In a case called *In re Winship*, trying to find the citation, 397 U.S. 358 started a line of cases in which the-- the court said that the-- in a civil case with basically criminal undertones, the state cannot shift the burden of proof and cannot lower its standard of proof. In this bill it requires in order to utilize a game of skill, you must go prove to the state that you're innocent. You must bear that burden of proving and instead of what the current law is which is that the state always bears the burden of proof and it is beyond a reasonable doubt. Senator Briese, you mentioned the *Bank Shot* case, and for the most part, a lot of that analysis is dealing with a factual determination with reference to the games that were available on the *Bank Shot* machines. But I would argue there is precedent in that case that we should look at. And that is-- it's-- I can't go to the page citation but in the section referring to burden of proof is beyond a reasonable doubt, the Nebraska Supreme

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Court said-- which by the way, Bank Shot was a declaratory action, a civil action seeking to-- to declare games as violative of the criminal code. Very similar to what's going on here. And the Supreme Court said that the burden of proof is beyond a reasonable doubt, and that it would be inconsistent if the standard of proof in a declaratory action involving an alleged criminal violation was less than the standard of proof in a criminal prosecution. In Bank Shot we do see that the court is following-- is adhering to that line of United States Supreme Court cases that really began with *In re Winship*. The-- there's further problems with the bill that I would argue is, number one, you simply cannot shift the burden to the-- to the individual. Imagine-- let's take it away from gambling devices or games of skill and say how offensive some would be if it was a gun. If you had to go get a sticker and prove to the State Patrol that your gun was legal before you were allowed to purchase or possess it, people I think would be going crazy. If it was any other legal conduct, presumptively legal conduct, which is typically what we do, people would go nuts if you had to go get it approved by the government before you could do it. Number-- number three, long line of cases that say when you deal with facts-- questions of facts in a criminal setting or a quasi-criminal setting, the jury must decide the facts. Every element on the fence must be determined by a jury, not by the Tax Commissioner. And finally, in order to get to-- to place this machine, you have to go provide a lot of information to the Tax Commissioner, probably violating your Fifth Amendment against self-incrimination if you're wrong, if you think it's a game of skill, if you have the mathematical lab testing that says that, but they make a different determination. My time is up. I would urge-- urge the committee to indefinitely postpone the bill.

BRIESE: Thank you for your testimony. Any questions? I think I've got a couple. A lot of your test-- thanks again for being here. A lot of your testimony, we're talking about flipping the burden upon the owners of these machines. But currently an owner of a coin-operated amusement, they have to fill out a Form 54, correct?

JOHN LINDSAY: Um-hum. Yes.

BRIESE: And on that Form 54 they have to certify or verify, basically swear that's a leg-- it's a legal device, correct?

JOHN LINDSAY: Yes.

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BRIESE: And so-- and so they are-- they shoulder a burden in having to do that. And would it be simply a matter of degree, the burden of certifying something is illegal on the Form 54 versus the need to demonstrate that, yes, this is jumping through the hoops this bill would require of them? To me, it simply-- is that simply a matter of degree?

JOHN LINDSAY: I would suggest two answers. One is I doubt Form 54 has ever been challenged.

BRIESE: Um-hum.

JOHN LINDSAY: And so we really don't know.

BRIESE: Um-hum.

JOHN LINDSAY: Probably OK, but I-- I don't know that. But it also doesn't ask for that much detail like in this bill that specifies exactly what you must provide. It just says I'm-- I certify that what I'm doing is legal.

BRIESE: Yeah. Well, I would suggest that it's, you know, simply a-- possibly simply a matter of degree here. And, you know, we're not talking about two different things. Then earlier, in response to Senator Wayne's question, Senator Lathrop suggested that's an administrative determination at this point. It's not a criminal matter. But your-- your assertion is that it's criminal more so than administrative?

JOHN LINDSAY: In the code-- or in page 2, line 16 through 18, it changes the criminal code to say that intent is provided by a failure to have this sticker. So what you do with the Tax Commissioner is part of an element of a criminal offense.

BRIESE: Um-hum.

JOHN LINDSAY: And so that's why it's-- it's not administrative. It is in fact a portion of what the state would have to prove, which is that you didn't prove to the state that it was legal.

BRIESE: OK. And then part of your testimony, I think, you were-- you were leading up to a concern about these machines would be placed and then you would have to indicate to the-- to the Commissioner on some form as to where they are placed, correct, thereby implicating your First Amendment right-- or excuse me, Fifth Amendment right, correct?

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Would we overcome that concern by having an implementation date down the road from the effective date of this act if we would pass that, give-- give it-- give all parties involved six months to make a determination on these machines before they are rendered illegal, and if the-- if they don't get the right determination on it, get them out of there?

JOHN LINDSAY: That would possibly address that concern. But even-- even when we go further and say before they are determined illegal by the Tax Commissioner based on evidence required to be produced by, in effect, a defendant, I think that would address that issue. But I think you-- I think to make it valid, we would have to move back to flipping the standard of proof back to the-- to the state. Re-- increasing that standard of proof back toward the state standard proof would be-- there's a-- I think you would have to correct all of them to save the constitutionality of the statute. But I would agree that the process you just talked about would address that portion of the flaw.

BRIESE: And it's fair to say the current system is a complaint-driven system?

JOHN LINDSAY: Probably. My understanding is that-- I assume the State Patrol could just go check. I think they-- the process now is the State Patrol can seize a machine and then pursue the criminal investigation and build a case.

BRIESE: If someone would suggest that the State Patrol is overburdened and doesn't have time to do all that, it's not doing a very good job of policing that, if that is the case, what is the answer short of what this bill is trying to do?

JOHN LINDSAY: I think the answer is that we-- I think we would be offended if we said, well, the State Patrol is kind of overburdened. So let's-- let's have you prove that you're not a burglar. Let's have you prove that you weren't speeding. And if we started shifting things in other areas of the law because the State Patrol is overburdened, I think that kind of starts down a path that I'm not sure we want to go.

BRIESE: OK. Thank you for your testimony. Any other questions? Thank you.

RUSS WESTERHOLD: Good afternoon, Senator Briese, members of the committee. My name is Russ, R-u-s-s, Westerhold, W-e-s-t-e-r-h-o-l-d

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as in David, appearing today as a registered lobbyist on behalf of a company called Winners Marketing, Inc. in opposition to LB538 as it's presently drafted. I want to follow on the-- the testimony that Mr. Lindsay just gave about the burden of proof and the issues with that. And my client would like me to discuss with you perhaps how it's done in other states, and I think that might be informative on some of the issues that were just brought up. My understanding is that in other states, the application process proceeds like this. When you file an application for the approval of a device, your application is accompanied by a report from an independent testing laboratory. That report contains all the information about how the game is played and all of its different modes of operation. I believe they also look into the software itself. Most of these games are software-based. They look at the algorithms of the game to ensure that it's a game of skill and not a game of chance. Then, when your application is filed, you actually have to file that report with it. And if you have a report that says this is a game of skill and not a game of chance, there is some sort of a presumption, a rebuttable presumption or a prima facie case, whatever the right legal term is, so that your application-- your device is presumed to be a device that constitutes a game of skill. That's not to say that whatever-- whatever applicable regulatory agency in other states doesn't have the power to further investigate, doesn't have the power to come forward with other evidence to dispute the presumption that the-- that the device is a permissible one. But I think that's how it's handled in other states. And the other states that my client specifically has experience with this sort of a system in are Virginia and Georgia. Currently, my client has about 250 devices deployed in Nebraska. We also think that this style of a change to the regulatory system would perhaps address some of the issues that were raised in the fiscal note, going to Senator Arch's question from before. If a device is submitted to the Department of Revenue, it appears to us that there would be a significant burden up front for the Department of Revenue to do all of that work. You have to play the game. You have to play it through all of its modes of operation to make sure that it is what it is and it does what it's supposed to do. Same thing with the software analysis. By I guess outsourcing, perhaps is the right word, this initial work, our hope or guess presumption would be that you could reduce that burden on the Department of Revenue and maybe mitigate the impact of the fiscal note or eliminate it. So those are the main points. So I'll conclude there, answer any questions that anyone might have.

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BRIESE: Thank you for your testimony. Any questions? Senator Moser.

MOSER: Does your client operate these machines in other states?

RUSS WESTERHOLD: Yes.

MOSER: Other states are allowing them to be used as they're being used in Nebraska?

RUSS WESTERHOLD: Yes.

MOSER: And they are considered a game of skill in those states?

RUSS WESTERHOLD: Yes.

MOSER: How many states would you guess?

RUSS WESTERHOLD: What I was specifically--

MOSER: Well, not so much-- I mean, that's not a fair question, how many states your client operates in. But do you think that there are other states, beside the ones that your client operates in, that regulate these and determine that there's a game of skill?

RUSS WESTERHOLD: I don't-- I don't know the answer to that. I mean, gaming laws are different in-- in-- in all states, Senator Moser. And so what I do know is that when a distributor has a new device and they want it to be certified, they will send it to an independent testing lab. And that testing lab will essentially evaluate that device against all of the laws and legal standards in all the states that they may wish to deploy it in and make a determination of whether it's legal in those states or not.

MOSER: OK. Thank you.

BRIESE: Thank you, Senator Moser. Anyone else? Go ahead, Senator Lowe.

LOWE: Thank you, Chairman. Thank you for coming and being here today. You may not be the right one to ask this question. It might have been the fellow with All American Games. But I'm taking it that these are skill-- games of skill. So one person could go in and continually win on this because his skill is that good. And yet another person could go in and never win a game because he is not that good. I would think from a proprietor point of view, you wouldn't want a predictable game

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that skill could be done at that because you would end up losing your shirt.

RUSS WESTERHOLD: Yeah, I'm not exactly sure how to respond to your question, Senator, because I am-- I have not played a lot of these games. And so I'm not familiar with how the game progresses through levels and if a higher degree of skill is required to win more. I just-- I don't know. I can't answer that, I'm sorry.

LOWE: Would the game-- if you're winning so many games, would you just-- the machine just basically makes it too tough for you to win at that point in time?

RUSS WESTERHOLD: Perhaps. I'm really not sure.

LOWE: OK. All right. Thank you.

BRIESE: Thank you, Senator Lowe. Senator Arch.

ARCH: You said in your-- you said just a couple of minutes ago that the third party that assesses these devices then uses the state's statutes to determine whether or not that qualifies.

RUSS WESTERHOLD: Correct.

ARCH: Isn't that our problem in Nebraska, we've not defined that, what is a game of skill? If we can't-- if we don't know with that particular device whether that's a game of skill, how would the third party know?

RUSS WESTERHOLD: I think that there are some standards. I think if you were to read the Bank Shot opinion, you would see that it's-- it's-- and I have not read it in some time. But I believe that it would tell you that we have some established legal precedent in Nebraska. Not necessarily a statute that you can look up in the-- in the statute books, but there are numerous decisions from our Supreme Court that-- against-- you know, against a particular device, evaluate it, and determine whether or not it's a game of skill or a game of chance. And so I think it's those court opinions that have sort of formed the-- sort of the established understanding in our state for a long time of what is and is not a game of skill or a game of chance. And I would expect that it's those legal opinions that the labs are using to make that determination.

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ARCH: Because as I-- as I read Senator Lathrop's bill, it-- it-- it appears as though that it-- because it's not clearly defined, it allows the Tax Commissioner, the Department of Revenue to make that determination. Do I read that correctly?

RUSS WESTERHOLD: Well, I-- I-- I'm not sure what the intent is. I would let Senator Lathrop speak to that. But it does provide certainly a more robust definition of game of skill versus game of chance than I think we presently have in our statute, that's for sure.

ARCH: Thank you.

RUSS WESTERHOLD: Sure.

BRIESE: Thank you, Senator Arch. Anyone else? If I may ask you a question or two. In those other states your client-- that your client deals with, you talked about filing an application with-- with the state for approval. And with that application you file a report from this independent lab, and that report is required.

RUSS WESTERHOLD: Um-hum.

BRIESE: So essentially in those states, your-- your clients have the burden of demonstrating that their games are games of skill, the burden of demonstrating that to the state? Would that be a fair statement?

RUSS WESTERHOLD: I-- yeah. I'm not sure exactly how to answer that. It's-- it is a condition precedent of filing an application that you have a report that determines that your game is permissible. So I don't know-- I'm not sure exactly how to characterize the burden of proof scheme, and that would be probably going back too far to civil procedure for me, Senator Briese. But-- but that is how it works in other states.

BRIESE: But fair to say if you want to get approval in that state, that report you file-- that independent report you file with your application had better conclude that it's a game of skill.

RUSS WESTERHOLD: Yeah, one would expect that that's what you would want.

BRIESE: OK.

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RUSS WESTERHOLD: And I don't know if that system necessarily addresses Senator Wayne's concern about possession of a device that doesn't meet the standard and whether that constitutes a criminal offense. But maybe it does. And so I'll make sure I get that in the transcript for him.

BRIESE: OK. Sure. Thank you very much.

RUSS WESTERHOLD: Sure.

BRIESE: Anyone else? Thank you for your testimony.

RUSS WESTERHOLD: Thank you.

BRIESE: Any other opponents? Welcome.

TIM KEIGHER: Thank you. Good afternoon, Chairman Briese and members of the committee. My name is Tim, T-i-m, last name is K-e-i-g-h-e-r, and I appear before you today as the registered lobbyist and executive director of the Nebraska Petroleum Marketers and Convenience Store Association in opposition to LB538 as it's written. I guess this is an issue that I don't have a lot of knowledge of. I just learned about it last Thursday from my members at a board meeting. Our biggest concern is we want to be sure that we are able to continue to offer these games for our customers who want to play them while they're in our stores, keep us on a level playing field with other people who have these opportunities to have them in their stores, and also, yes, it is a profit center to a lot of my smaller members out in the rural communities. So I'm willing to work with Senator Lathrop to make sure that our needs can be met as we move forward. And with that, I'll try and answer any questions.

BRIESE: OK. Thank you. Any questions? Seeing none, thank you for your testimony.

TIM KEIGHER: Thank you.

BRIESE: Any other opposition testimony? Seeing none, any neutral testimony? Good afternoon and welcome.

NATE GRASZ: Thank you. Good afternoon, Chairman Briese and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z, and I'm the policy director for Nebraska Family Alliance. There's a general view that electronic gaming devices are the most addictive form of gambling as those who play them become addicted three to four times faster than

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those who bet on traditional games of chance. People can place hundreds of bets an hour just by simply pushing a button. And these devices, mis-- misleadingly referred to as skill machines, are rapidly increasing in number across our state. Yet they remain uninspected, unregulated, and look just like slot machines. According to an article from the Omaha World-Herald, when one owner was asked what the difference was between a slot machine and these supposed skill machines, his response was, quote, not much, and that the skill involved is, quote, little to none. Despite the Legislature and people of Nebraska continually rejecting expanded gambling, there are now thousands of these electronic gambling devices in our state without so much as an age restriction on who can play. Furthermore, for those concerned about community betterment, which was the sole justification for lottery and keno, these machines are undermining that concept entirely. Currently, the state must prove that a device is illegal which has proven to be too expensive, time consuming, and burdensome for the state to take any action. LB538 corrects this by providing the state authority to regulate these devices and importantly placing the burden of proof on the applicant rather than the State Patrol. We are testifying in the neutral capacity today because there are still lingering questions of how certain language in the bill, such as the criteria for determining what constitutes a game of skill, will be interpreted and consequently which devices would be allowed to stay in place. Operators can also enable and disable different games, modes, and difficulty levels of the machines. Under this bill, there is still the concern that operators could simply add new games or switch the device to different modes after receiving a mechanical amusement device stamp. The committee needs to consider how to ensure that impermissible game modes aren't implemented on a device after receiving approval. We also believe that any legislation seeking to address this issue must include an age restriction of 21 years or older in order to play which this bill currently lacks. In conclusion, this is a pretty complicated issue. I think the number of questions today would speak to that. So I want to thank Senator Lathrop for his efforts in bringing this legislation, and we are committed to working with Senator Lathrop and members of this committee on crafting additional solutions and amendments to LB538. Thank you.

BRIESE: Thank you. Any questions? Have you ever seen one of these machines in operation or know-- know much about how they work and how they operate?

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NATE GRASZ: Yes, I have played these devices. I appreciate the question. I don't think I ever thought I would come into this committee and promote gambling. But I would encourage the members of this committee, if you have not seen these machines in action for yourself, to go try them out and see because it was shocking even to myself. It's hard to put into words how much of a stretch it is to say that these are games of skill. For example, the device I played, it looks like a slot machine and operates like a slot machine. You push a button, and the wheels turn. And it stops itself on its own. You don't-- you didn't control that at all, at least in the game that I was playing. At that point, if a certain number of icons align, which again is out of your control so it's entirely based on chance, it takes you to a second screen. And this is where you get to demonstrate your skill by touching the screen for a second time where the machine tells you to touch. And that was-- that was the only skill that was required, under that particularly game mode, was to touch the general area of the screen where you were directed.

BRIESE: OK, thank-- thank you very much. Senator Blood.

BLOOD: Thank you, Chairman Briese. I just want to make sure I heard this right. Are you testifying in neutral?

NATE GRASZ: Correct.

BLOOD: Because what I'm hearing is you are in favor of the bill.

NATE GRASZ: So, as I stated, we're testifying in neutral because we do think that currently-- the current situations where we have these machines entirely unregulated is a problem. And we think that under this bill, it gives the state some authority and places the burden on the applicant, which we think is important. We're not coming in support because, one, we knew there was an amendment coming, which we haven't seen, so I'm not sure if it is favorable or unfavorable to our position. Secondly, it does not include an age requirement in the bill of being 21 years or older, which is the requirement for other forms of gambling in Nebraska. And third, we think-- we think that there is still too much ambiguity in the language in the bill. And depending on how it's interpreted and implemented, could leave devices that we would consider to still be impermissible games of chance in place.

BLOOD: So I am-- I am hearing some pretty biased information. And I'm concerned that this may not be a neutral testimony. So I just-- I kind

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of what to put that out there that the things that you're saying are pretty opinionated and aren't really neutral. I mean you're taking a side.

NATE GRASZ: I disagree. I explained things that we both find favorable and problematic with the bill.

BLOOD: We'll agree to disagree this time. Thank you.

NATE GRASZ: Sure. Thank you.

BRIESE: Thank you, Senator Blood. And thank you for your testimony today.

NATE GRASZ: Thank you.

BRIESE: Any other neutral testimony? Good afternoon and welcome.

WALT RADCLIFFE: Good afternoon, Mr. Chairman. My name is Walt Radcliffe, R-a-d-c-l-i-f-f-e, appearing before you today as a registered lobbyist on behalf of American Amusements company in a neutral position on LB538. American Amusements' president John Fox is here and he's going to follow me. He is the one who is responsible for Bank Shot and the litigation. So I think he will be able to shed quite a bit of light on what-- what the situation is. I want to address Senator Blood for just a moment. You've heard me testify a lot, and seldom do you see me here neutrally. But we are supportive of what Senator Lathrop is trying to do in this bill which is to come up with a statutory scheme as to what is a game of chance and what is a game of skill. We'd submit, and I think Bank Shot and some of its preceding cases have set up a-- a judicial scheme for what a game of chance and a game of skill is. But Senator Lathrop's attempt to make it a statutory scheme is something that we support. So from that standpoint, we're supportive of the bill. However, we-- we are not supportive specifically of the language that's in the bill and, thus, we're working with the senator to come up with-- with an amendment. And that's why we're here neutrally. The-- the-- so there's no question there's games out there today that are-- that are purely gambling devices. I mean, if you don't-- you know, if you're not doing anything in an hour, come with me, and I'll have you back here by 5:30. But-- but it is very difficult to prove that. My client had his machine-- Bank Shot was seized, came in for a declaratory action, went to the Nebraska Supreme Court, and was ultimately held to be a game of skill. That's the only game out there that really has the imprimatur

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of the court-- or the imprimatur of the laws, as far as it being a game of skill. And I-- I do agree the-- it is very difficult given the fact that there is not a, for lack of a better word or description, a checklist as to what constitutes a game of skill or what constitutes a game a chance. That's, in my opinion, what Senator Lathrop is trying to do with LB538, and that's why we're supportive of it. I'll give you an example of something that I don't think you have any intention of outlawing, darts, clearly a game of skill. And yes, you can win money by-- by playing in a dart tournament. So therefore, to simply say that a game is a game of chance if you can win money, you are right, Senator Briese, the Legislature can call a dog a cat and it's going to meow. However, I don't think that's what Senator Lathrop is trying to get at on LB538. And we'd like to work with him and with the committee to come up with a clear definition, or as clear as you can, of what a game of chance and what a game of skill is, and being mindful of the point that Senator-- that Senator Wayne raises as far as-- as far as the burden of proof is concerned. So with that, I'll be quiet. I'd like Mr. Fox to follow. I think he'll be able to shed some light and certainly be informative as to what he has done and what the status, if you will, of the gaming industry is. But I would try to answer any questions if you have some.

BRIESE: Thank you. Any questions? Question for you. Under the bill that we're talking about here, would Bank Shot still be permissible?

WALT RADCLIFFE: I believe that it would. And I'd like to have John more specifically address that. But my answer is I believe it would.

BRIESE: And you--

WALT RADCLIFFE: But I think it's-- I think it causes some problems with other kinds-- just the old pinball machines, I think, what we all think of with the flippers. And I think there's some questions raised with regards to that because of the price structure.

BRIESE: OK. And the criteria in this bill, you know, regardless of your thoughts on the merits of it, how would you rate the clarity of it?

WALT RADCLIFFE: Oh, as good as anything else that the Legislature deals with, Senator.

BRIESE: OK. Very good. Thank-- thank you.

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WALT RADCLIFFE: It's why people like me are in business. Thank you.

BRIESE: OK, thank you. Any other neutral testimony? Good afternoon and welcome.

JOHN FOX: Senator. My name is John Fox, F-o-x, president of American Amusements, among other things, the manufacturer and developer of a game called Bank Shot. Just for the record, I have read the decision. Says-- well, I'll just state in-- in concept we're in favor of-- of removing ambiguity and making the issue perhaps more clear. We're not sure the bill gets there yet, which is why I'm speaking neutral as well. And I'd be happy to answer anyone-- anyone's questions.

BRIESE: Any questions? Would you consider Bank Shot permissible under this bill as written?

JOHN FOX: As the bill is written, the-- the-- in the-- in the original draft of the bill, perhaps not. In the amendment that's-- that I've seen today where-- where the device is-- is-- permissible device is defined as a-- as a game that's preponderantly skill, yes.

BRIESE: OK. And you speak to clarity and the search for clarity, the need for clarity. This bill as originally drafted does not provide a whole lot of clarity in my view, does it?

JOHN FOX: And that's why I'm speaking neutral.

BRIESE: OK. OK, very good. Thank you. Senator Moser.

MOSER: Your other machines that you manufacture, are they similar to the games that kind of precipitated all this action?

JOHN FOX: Yeah, the Bank Shot line of games, if you will, are the only games that we run in Nebraska. We also-- we also run Bank Shot games in Iowa and Wyoming and the state of Michigan. We-- we will make other games for other markets with-- with different-- different requirements. But your Bank Shot being a game of preponderant skill, which is the standard in Nebraska and the standard in Iowa, for example, it comes down to Bank Shot.

MOSER: Thank you.

BRIESE: Thank you, Senator Moser. Anyone else? Senator Lowe.

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LOWE: Thank you, Chairman. Thank you, Mr. Fox, for coming and testifying today. I asked this question earlier about if-- if a person-- if this is a Bank Shot-- we'll focus on Bank Shot. It's a-- it's a game of skill, correct?

JOHN FOX: Correct.

LOWE: OK. So if you are very good at Bank Shot, could you continually win through the day or evening and end up never losing?

JOHN FOX: There-- without question, there are people that play at a much higher level. And-- and if we-- we tried hard and we could find out where they live, we could find you some people that probably make their living playing Bank Shot. I can't speak for-- for any other manufacturers' game, but without question there are people that perform very poorly and generally stop playing. And there are-- are people that-- that win the vast preponderance of time.

LOWE: I stopped playing Pong because I was playing it very poorly. But so that's about as far as my skill goes in-- in video games. So-- so the game does not progressively get so hard that you end up losing by default?

JOHN FOX: It-- it does not. And-- and if it-- there was an argument made to that effect in the-- in the Bank Shot trial by the state which was-- which was incorrect. They-- they argued that the-- that the timer sped up continuously so the player had less time to-- to select a puzzle. That just simply is factually incorrect. And the-- and the-- the-- that really culminated with a demonstration of the game itself for-- for the judge in the-- in the courtroom to kind of disprove that, if you will. And I-- if it became too difficult for-- for someone to win, then it would, in fact, become a game of chance.

LOWE: OK. Thank you.

BRIESE: Thank you, Senator Lowe. Anyone else? Seeing no other testimony, thank you--

JOHN FOX: That was short.

BRIESE: --and no other questions, thank you for your testimony.

JOHN FOX: Thank you.

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BRIESE: Any other neutral testimony? Seeing none, Senator Lathrop.

LATHROP: Thank you. I think this has been an interesting hearing, and I'm sure this is the bill you've been waiting to hear probably all year. So while I was sitting at the chair listening to people, pulled up the Bank Shot opinion. And here's-- here's, I guess, the way I'd say this bill is, and maybe the best way to describe it is how are we going to enforce gambling? If you look at it from-- from that point of view, the current system basically allows people to come into the state, put machines, whatever they do and however gray the area may be that they operate in or however far they are across the line by anybody's standard. The current process requires the State Patrol to go in to seize it, and then a criminal proceeding against the person that has the machine or the person that's operating the machine is instituted. And then you end up having to go to trial to prove that your machine-- or not to prove, the state would then have to prove that your machine is a gambling device. Let's say that they prove it's a gambling device, and then somebody changes the software in the same machine, and now we're back to seizing the machine and then going through this process over and over again. In the Bank Shot decision, the court went back to an interpretation of our statute and tried to determine is this predominantly determined by chance-- is the game predominantly determined by chance? So the current system is, is it a game predominantly determined by chance? We have no preauthorization for that. Somebody puts a machine in not knowing one way or the other. The State Patrol seizes it and then prosecutes somebody for having the machine that the outcomes from which are determined predominantly by chance, conviction, Class II misdemeanor. What we're doing with this bill is saying two things: one is instead of going out and arresting people for having these machines, we're going to have you take them and clear them past the Department of Revenue, all right? If it clears the Department of Revenue, you get a sticker. And by the way, we have a standard for what-- what do we mean when we talk about predominantly determined by chance? That's the language you find on page 5 of the bill, which is trying to tighten up what do we mean by predominantly determined by chance? Well, if the machine is programmed and only a certain number of people get to win and a certain number of people are going to lose no matter what you do with the machine, that's kind of what's in there, then it's a game of chance because no matter how many times you play it, as a percentage, you're going to have a certain number of wins and a certain number of losses. So what this does is it says instead of going through the current process of a, I won't call it a vague standard but it's certainly more vague than the criteria in

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this bill, and having the State Patrol pick it up, having them write a ticket, going through a prosecution to determine is this a game of chance or not, we're going to have you run it by the-- by the Department of Revenue and then you'll get a sticker, OK? It will be based upon tighter criteria or more objective criteria and not subjective is this predominantly determined by chance, which is what the whole opinion was struggling with. And-- and there were, by the way, experts on both sides, which illustrates the folly of having this sent over to an independent lab because I can pretty much tell you that you can determine whether you're-- whether you're going to get the certificate depending upon which lab you go to. So it should be determined by the Department of Revenue in advance. You get a sticker. And then the presumption that we're talking about is if you don't have a sticker, it's illegal. It's not just illegal as a gaming device, but you haven't gone through the process of getting it approved. And that would make it illegal. So the illegal part comes from not getting it approved and getting the sticker and demonstrating that the sticker is in place and that this has been an approved machine. I hope that's helpful. One last thing. As I listened to the-- the testimony they're doing this in other states, there's a lot of other states that may have different criteria. An awful lot of them already have gambling, so what's the point in trying to break this down whether it's gambling or not gambling if you're in Iowa and they already have casinos? So I'm not sure what they're doing in other states that's instructive for Nebraska, which still has this provision in the constitution which prohibits this type of an activity when it is determined by chance.

BRIESE: OK, thank you. Questions? Senator Moser?

MOSER: Senator Lathrop, have you ever played Tetris?

LATHROP: I got to tell you, no.

MOSER: Yeah.

LATHROP: I see people doing it. It's like--

MOSER: Yeah. And so I'm just thinking--

LATHROP: --I don't know, it seems like a waste of time.

MOSER: Well, maybe I'm testifying now, I apologize for that. But you listened to the interpretation--

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LATHROP: I just did it in Business and Labor, so.

MOSER: Yes. Well, I mostly listen when you talk because I think you know a lot about a lot of things. But anyway, Tetris, there are all these little blocks of different shapes and colors, and they kind of float down. And if you assemble them so that they, I believe, so that they fill a certain number of similar colored blocks, they disappear. And if you don't rearrange them so they geometrically fit, then they clog up this bottle or whatever, and you lose the game. So I'd say there's some skill involved because you have to look down here, visualize the block as it's coming along, look what color it is, what color the adjacent blocks are, and get them in the right spot. But as the game goes on, it speeds up. And I would suppose you could speed it up so fast that there's no way you could win it. So then there's skill involved in dropping the blocks where they should be, but whether you win it or not, does that make it a game of chance?

LATHROP: This game-- or this bill does talk about a game that would-- where the skill required is beyond the capability of a reasonable or a normal person. So if somebody speeds that up to the point where, sure, if you're lined them up but no-- but no human being can do that fast enough to win, then it would become a game of chance. I'll leave this to your capable hands. I'm happy to be involved in it, happy to work with those folks that have come forward and expressed concerns. But I think you see the point, what we're trying to accomplish.

MOSER: Thank you.

BRIESE: Thank you, Senator Moser. Anyone else? Excuse me, Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Senator Lathrop, for being here. You-- we're now in the digital age where there are no longer things moving within our machines like we're all picture-- picturing here. They're all digital and with Wi-Fi and with Bluetooth and everything else. Could it be that once these machines get the stamp, because they come in proximity with a Bluetooth device somewhere and all of a sudden now they change just so slightly where it is a skill-- a game of skill when it is inspected, that it is now a game of slight chance-- still a lot of skill involved, but there is slight chance there? And somebody reports it. They grab the machine. They take it away. Because it is away from this device, this Bluetooth device, it goes back to the way it was before, and it's all hunky-dory. Are-- are

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we coming into an age where it's going to be hard to keep up with technology and our legislation?

LATHROP: Well, I think-- answer is, yes. And somebody talked to me about that over the lunch hour, that some of these things could be hooked up to Wi-Fi and then updated from some place in South Carolina. Whether-- you know, they are hooked up to the bar's Wi-Fi, and unknowingly they're updated to diminish the probabilities of a win. Yeah, I think that deserves some attention in the bill that, if it's been approved, then-- then it can't be updated in a way that changes any of the factors. Like if they want to update the digital and make it-- make the pictures more clear or go to-- go to something that-- that has to do with the graphics, that may be one thing. But updating any of those things that affect the-- the factors that are in there that-- that go to whether it's predominantly a game of chance, I think that's-- those are fair considerations for this bill.

LOWE: But would we ever know if that ever happened is-- is-- is my point about this.

LATHROP: No, I-- I think that's an enforcement question as well. And the only way you would, I suppose, is if you went back to the old way of enforcing this. Somebody sees the machine and determined whether it's changed in a material way from the circumstances that existed when it got the Department of Revenue stamp.

BRIESE: Thank you, Senator Lowe.

LATHROP: Great question, though.

BRIESE: Anyone else? Senator Moser.

MOSER: Just one last comment. I kind of recall that in a previous discussion about illegal gaming that there was a magnetic switch hidden in the machine somewhere, and somebody could put a magnet on the side of the machine to get it to play in a different mode. So that's not an unusual-- I mean, it's-- with Bluetooth it would be easier. But still it's-- those things are computers, and they can be programmed to do most anything.

BRIESE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Somebody brought up earlier about age limit. Do you think that would be appropriate in this bill?

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LATHROP: I don't think an age limit's necessary if you identify what's a game of chance and then stop it from happening. The-- the age limit's important if you're going to let somebody engage in a game of chance, in my judgment, right? So that-- that-- it's like if people are going to play keno, you want to put an age limit on that because that's clearly a game determined by chance. But if it's a game of skill, I don't know that you need to.

BRIESE: Thank you, Senator Brandt.

LATHROP: Maybe you'll-- maybe you'll see fit to do that.

BRIESE: Senator Blood.

BLOOD: Thank you, Chairman Briese. So are we talking about games that first-time developers are doing or are we talking about games that have been around for a while? Because--

LATHROP: Well--

BLOOD: --games that have been around for a while are known to not be hacked, while the ones that are done by like newer developers are known to more likely be hacked.

LATHROP: So Senator Lowe's Pong game could not be updated. But-- but the things--

BLOOD: I don't know how much technology's in Pong.

LATHROP: --that they're doing now-- the things that they're doing now on the Internet where the kids are playing one another remotely, those games are updated all the time. So I think it kind of depends on the technology.

BLOOD: It does. I agree.

BRIESE: Thank you, Senator. Blood. Anything else? Seeing no other questions, thank you for presenting this.

LATHROP: Thank you. Appreciate your courtesy.

BRIESE: You bet. And we have one letter in opposition from Jeremy Smith. And that will close the hearing on LB538. Now we'll open the hearing on LB584. Welcome.

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BEAU BALLARD: Thank you. Senator Hilgers sends his apologies but he is being tied up in Transportation today. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Beau Ballard, and for the record that is B-e-a-u B-a-l-l-a-r-d, and I'm the legislative aide for Senator Mike Hilgers, who represents District 21 in northwest Lincoln and Lancaster County. I'm here today to present LB584. LB584 would make four changes to the Farm Winery Act. Number one, it would change the requirement of Nebraska-grown grapes from 75 percent to 60 percent. In recent years, farm wineries have found it difficult to hire contracted grape growers. Just in short, there is not enough grapes to meet the demand of Nebraska wine drinkers. So this provision would ease the burden on Nebraska farm wineries to find grapes in order to grow the industry. Number two, it would increase the gallon cap from 30,000 to 50,000. The gallon cap has not been adjust-- not been adjusted in almost 20 years and is a vital step to grow this industry. Number three, it would allow sampling and selling at four branch locations. Currently, Nebraska farm wineries are permitted to have one satellite location, but a large portion of farm wineries-- wineries are in rural areas of the state. So farm wineries want the opportunity to expand to more densely-populated areas to broaden their consumer base. And then number four, it would allow farm wineries to sell other alcoholic beverages at their location. And then finally, the last provision of the bill would also create a promotional SDL for craft breweries, microdistilleries, and farm wineries. So in conclusion, farm wine-- wineries are an important part of grow-- the growing tourism in Nebraska. Farm winery-- the farm winery industry accounts for about \$280 million in economic impact. These dollars go right back into our community to help grow Nebraska. In sum, this bill is about growing Nebraska and growing industry in Nebraska. I would be happy to take any questions, but there's also industry leaders that will testify behind me.

BRIESE: Very-- very good. Thank you for your opening. And we'll go ahead and ask--

BEAU BALLARD: Thank you.

BRIESE: --the next testifier to come up. Thank you. Next proponent? Good afternoon and welcome.

MIKE SCHILLING: Good afternoon. Chairman Briese and members of the General Affairs Committee, my name is Mike Schilling, M-i-k-e S-c-h-i-l-l-i-n-g. I'm representing SchillingBridge Winery and Microbrewery in Pawnee City, Nebraska. I'm here to support the passage

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of LB584. All the contents of LB584 are equally important. However, today I would like to speak primarily on the ability for a wine license to obtain additional licenses. I believe I'd be one of the most qualified people to speak on this since SchillingBridge was the first in the nation to receive a federally-issued winery microbrewery permit, a state-issued winery microbrewery permit, and the only winery in the state operating with a Class C license for the last 14 years. Let me explain how this all came to be. Starting in 2004, my wife Sharon and I made the decision to open a winery microbrewery under one corporate roof. We first contacted the TTB to get the paperwork started. It was then we were informed by the TTB that they had never structured a license as such but would be happy to help us since there were no barriers to prevent us from applying for and receiving both a federal brewer's license and a federal winery license together under one corporate structure. The TTB worked with Sharon for approximately six months and completed the base model used today for this licensing structure. Next, Sharon and I contacted the Nebraska Liquor Control Commission to obtain the licensing for the winery microbrewery. It was then we were informed that the Nebraska Liquor Commission-- that there was no licensing structure available on the state or federal level. We advised the Liquor Commission that we'd just been informed by the TTB that the federal government had licensing for such a structure in place. Hobie Rupe then worked with the TTB and put together the licensing structure we have in place today. After working with the TTB, the Nebraska Liquor Commission issued SchillingBridge an L which is the brewery license, a Y which is the farm winery license, and a C which is the on- and off-sale alcohol license. A few months later, an opinion from the Attorney General's Office regarding this license was issued. They advised to not issue any more Class C licenses to anyone who possessed or was trying to apply for a Class Y license. To this day, I have no idea why the opinion was issued by the Attorney General's Office or who asked for the opinion. I would like to explain why a C license has been so important to our business. After a large expansion in late 2007 and early 2008, you're aware our country suffered one of the most devastating recess-- recessions in history. When faced with the multiple challenges during the recession, closing our doors was not an option. We knew, in order to survive, we needed to incorporate another value-added benefit to our guests. We did this by being the first winery brewery in the state to offer an expanded food menu. We believe that the success of this new profit center was in part because of our ability to use our C retail license, allowing us to purchase liquor through our Nebraska wholesale distributor partners. Only 5 percent of our sales come from the utilization of our

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C license, however, we are sure we would not have been able to attract the additional customers needed for our continued survival without the option of the variety of alcoholic beverages. The option to apply for a Class C license most definitely means you do not have to. This leaves those who want to only hold a Y license that option. Please keep in mind that the Y licenses in the state are just asking to do business with the Nebraska wholesalers. I would like to take a quick moment here to briefly discuss the number of locations a Y license holder may also be allowed to possess. Knowing that L licenses are allowed five additional locations, our industry is also asking for the opportunity to have four additional locations, understanding the majority of our wineries in this state are in rural areas where our vineyards can be planted. Having legislature in place for us to grow our business model while still maintaining the agribusiness aspect is crucial to our industry's ability to grow and to survive. I would like to thank everybody on the General Affairs Committee for listening and consider all the recommendations our-- our organization has carefully put together to compose LB584. I would be happy to answer any questions that you might have following my testimony.

BRIESE: Thank you for your testimony. Any-- any questions? Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Mr. Schilling, for being here today and testifying. I-- I know that self-distribution is very important to the wine entry-- industry.

MIKE SCHILLING: Um-hum.

LOWE: Will this in any way infringe on your self-distribution of your wine by-- by combining the Class C licenses and-- and everything else?

MIKE SCHILLING: Not that I'm aware of. No.

LOWE: OK, thank you.

BRIESE: Thank you, Senator Lowe. Senator Moser.

MOSER: Why do you feel that someone would object to you getting a Class C license or-- or further people getting Class C licenses? Are there tax advantages or--

MIKE SCHILLING: No, I'm--

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MOSER: --comparative competition that changes?

MIKE SCHILLING: No, I'm not for sure why that is fearful. We're actually, like I said, we have purchased-- we have to purchase through the distribution chain, which we have done for ourself, for our business. I can give you a couple examples of why it's crucial. One being we all have that Uncle Joe who says I'm not going to this location if I can't get a Crown and Coke, and he brings 14 of his family members with him. So we-- that's why we only have 5 percent of our sales comes from the C license. The majority of the-- the supermajority of the people use-- taste our wine and our-- and our beer that we produce. Also, just two days ago, we got an event from our local crop insurance agency. And we had 185 people there, but we had to have the opportunity to sell some mixed drinks as well. So--

MOSER: Thank you.

MIKE SCHILLING: --it just helps our business.

BRIESE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Mike, for coming here today. So how does licensing work? And I know you have-- your main location's in Pawnee City, and you have a location here in Lincoln. Those are separate licenses for each location or does a license apply at all four locations if you had four locations?

MIKE SCHILLING: First, I need to correct you. The Lincoln location is owned by my son and daughter.

BRANDT: OK.

MIKE SCHILLING: They branched out on their own. So we have our own license structure in Pawnee City. They have their own licensing structure in Lincoln. So even though it's used--

BRANDT: But under this-- under this proposal then, to go-- they're asking for four branch locations--

MIKE SCHILLING: Um-hum.

BRANDT: --let's say, of Pawnee City, and-- and-- and you did that. Is that a separate license for each branch, or does the main license cover all four branches?

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MIKE SCHILLING: Well, under your-- under your main license, you would be allowed to have four additional branches. Is that what you're asking?

BRANDT: I think so. Yeah.

MIKE SCHILLING: Yeah. I mean, it wouldn't affect what my son and daughter have.

BRANDT: Right. Yeah.

MIKE SCHILLING: I mean, it would be if I choose to do something.

BRANDT: Yeah, I mean if you chose to open a location here in Omaha and Beatrice.

MIKE SCHILLING: We-- we would have the privilege to do that.

BRANDT: Yeah, you would just-- the one license would cover all those locations.

MIKE SCHILLING: As far as I know. Mr. Rupe can probably answer that question better than myself.

BRANDT: OK. And then there's one other requirement in the-- in the bill, in the summary, and that would-- to change the requirement of Nebraska-grown grapes from 75 to 60 percent.

MIKE SCHILLING: Um-hum.

BRANDT: Would you know why you would want to drop that requirement?

MIKE SCHILLING: I can tell you exactly why. This year our vineyard was also attacked by spray drift. We lost over 40 percent of our vineyard, and it's happening across the state. So I have hundreds of thousands of dollars invested in my winery, and for the state to say you have to buy 75 percent, there's no way we can accomplish that with-- if-- if drift damages several vineyards. We need the ability to purchase grapes to keep our-- our wineries going. So does that answer your question? Is that--

BRANDT: Yes, it does. Thank you.

MIKE SCHILLING: Um-hum.

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BRIESE: Thank you, Senator Brandt. Anyone else? Senator Lowe.

LOWE: Couple of questions. With the four branch locations, it would just be covered under-- under the Y permit then? Not all-- not the Class C, not the class L?

MIKE SCHILLING: No. If you went to separate-- every location would have to have the licensing structure in place that you're going-- for the alcohol you're going to provide. Is that what you're asking? So if--

LOWE: Well, I'm-- I'm just saying so SchillingBridge--

MIKE SCHILLING: Um-hum.

LOWE: --decides to open one in Omaha,--

MIKE SCHILLING: Um-hum.

LOWE: --but they just serve mixed drinks. That's not covered under this?

MIKE SCHILLING: That's a great question. I believe it-- I believe you could potentially do that--

LOWE: I'm-- I'm just saying this is more of a winery.

MIKE SCHILLING: --but I don't know why you would. Yeah, the whole point of it is so we can take our--

LOWE: Product.

MIKE SCHILLING: --products that we make ourselves to four or five different locations because of our rural setting. If you all remember during the recession, when fuel was \$4, traffic flow literally stopped to our rural locations. And I think if that would ever happen again, where we get a complete traf-- or just generational changes, we may need to move to more urban areas. But we can't move our grapes, they have to stay where they're at. So we'd like the opportunity to have additional locations in more urban areas.

LOWE: And my second question, with you moving from 75 to 60 percent--

MIKE SCHILLING: Um-hum.

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LOWE: --would you be able to make and bottle more of a California-style wine, a different variety of wine than what you're making now as another line?

MIKE SCHILLING: I suppose you could, but I'm pretty sure I can speak for every winery in the state of Nebraska. We're very proud that we grow grapes here in Nebraska, and we would prefer to always use Nebraska grapes. We're-- we're just struggling with, if-- should something happen and we don't have enough grapes, we just want another avenue to purchase. Most of us, though, purchase grapes if need be just across like in Missouri. They-- they grow grapes that we grow. So--

LOWE: So they're very similar.

MIKE SCHILLING: Yeah, I-- I don't think people would be after trying to do a chardonnay or whatever. Yeah. I don't believe that's the backbone of Nebraska's industry.

LOWE: OK, thank you.

BRIESE: Thank you, Senator Lowe. Anyone else? Seeing no other questions, thank you for your testimony.

MIKE SCHILLING: Thank you.

BRIESE: Proponents of LB584? Good afternoon and welcome.

JIM BALLARD: Good afternoon, Senator Briese and members of the General Affairs Committee. My name is Jim Ballard, B-a-l-l-a-r-d, and I'm with James Arthur Vineyards in Raymond, Nebraska. I think with this bill, there may be some discussion that it is-- it is aimed at eroding the three-tier system. And I am here to ensure you that, that was never the intent, and it is not the intent of LB584. Basically the genesis behind this bill was to create a piece of the pie to make Nebraska wineries and vineyards more sustainable. And Mike just gave testimony-- and as part of this bill, there is an option or would be an opportunity for a winery to apply for another class of license. And I'll give you a great example of that. There are some wineries that do events, weddings, things of that nature. And in a small rural community, they may have somebody down the road that wants to come up and do an event at their winery. Under the current Farm Winery Act, we can only sell what we produce. And like Mike said, a lot of us strive to be 100 percent Nebraska, and we're very proud of what we do. But

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there are circumstances sometimes where we lose out on-- on other revenues because we can't serve other alcohol. And again, we emphasize that if you brought some craft brewery in or something else for that event, you have to go through the three-tier system to do that. So again, you know, I just would like to emphasize that-- that the reason behind this bill is to promote and to create sustainability for the Nebraska wine and grape industry. And in no-- no way, shape, or form is it-- is it meant to break down a three-tier system. So I would be happy to answer any questions. We've been doing this longer than anybody else in the state and have seen a lot of things come and go. So I'd be more than happy to answer any questions.

BRIESE: OK. Thank you. Any questions? Seeing none, thank you for your testimony.

JIM BALLARD: Thank you.

BRIESE: Any other proponent testimony? Good afternoon and welcome.

JOHN SIEBERT: Thank you. Chairman Briese, members of the General Affairs Committee, my name is John Siebert, spelled S-i-e-b-e-r-t. I'm here today representing Junto Wine and to support passage of LB584. Our winery is located between here and Seward, right off Highway 34. We opened in 2014. We have nine acres of grapes, a tasting room, and an event venue for weddings and private events. Nebraska typically ranks near the bottom of the country in tourism. We're all familiar with our state slogan that created a buzz last year. Outside of sports, there's not many draws. But this bill doesn't just help Nebraska wineries grow; it helps Nebraska tourism grow. Wineries generate tourism not just for themselves, but for-- for other businesses in their areas. Every year we host dozens of events. Our industry hosts dozens of events with thousands of guests, partnerships with local vendors. Wine trips often include a trip to the local restaurant or the boutique or local shops, and reservations at B&Bs and local hotels. Our winery has had visitors from every state in the country, including Hawaii and Alaska, and from dozens of countries across the world, from France and Spain to China and South Korea. There's not many industries in the state that can say the same. The current rules make it nearly impossible for-- for new wineries to get started and extremely difficult for-- for existing wineries to grow. Every year we're competing with other wineries for grapes. Every year we lose a grower. They retire or they lose out on their entire harvest for whatever reason. It's just part of growing grapes in Nebraska. But Nebraska, Wyoming, Kansas, and South Dakota combined have fewer

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wineries than Iowa, and I think that says a lot. There's only about 15 wineries in Nebraska that produce over 1,000 gallons per year, which is the equivalent of about 5,000 bottles, so that's not a lot-- not a lot of wine. So do we want to be a state with a thriving wine scene or just a state with a few-- just a few wineries? I think that's kind of the question. This-- this bill would remove barriers to growth. It reflects-- you know, we studied this for a year and a half. It reflects what has worked with other states, including Missouri, Colorado, Wisconsin, Iowa, and states with similar climates that now have hundreds of wineries. This bill will help Nebraska wineries grow and Nebraska tourism to grow. And one last point, I just want to reference the-- the 60/40. The federal rules are always 75/25. So even if I were to use say 100 percent California grapes in our wine, to call it a Nebraska wine, it has to have 75 percent Nebraska fruit. So that's-- that's a federal requirement. So this does not change that. This just gives us the ability to get grapes more easily from-- you know, if we have troubles here in Nebraska getting grapes. I'm happy to take any-- any questions.

BRIESE: Thank you. Any questions? Senator Blood.

BLOOD: Thank you, Chairman Briese. Thank you for your testimony. I-- I just want you to know before I ask you this question that I'm not against this bill in any fashion. I'm a big fan of Nebraska wineries. I think you're one of the fewer standard, nonmonument things we have for tourism here in Nebraska that's done such a good job. But I am a little concerned that you're comparing Iowa to Nebraska. Isn't one of the main reasons that Iowa has so many wineries is because they have almost twice our population? I mean, they actually have people that can go to them?

JOHN SIEBERT: Yeah, that's part of it. If you look at the list of states, I mean sure, population definitely makes a difference. But--

BLOOD: I mean they have more than 3.1 million and we're at 1.9.

JOHN SIEBERT: Sure, if you wanted to get in-- compare-- it's hard to-- you could look at states like Virginia and all those states in the country and try to get at numbers, and that becomes a tricky game. I'm just looking at Midwest states, you know, Missouri, Colorado, Illinois, Iowa, Wisconsin, Minnesota, all those states. Even-- even Oklahoma has-- has more wineries, and-- and-- and not all of them have more acres of grapes, so I--

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BLOOD: No, but I'm-- but I'm saying if you have people to go to your wineries--

JOHN SIEBERT: Absolutely, absolutely. The population definitely makes a difference.

BLOOD: Right.

JOHN SIEBERT: But again, if you look at, you know, the population of Missouri versus, you know, Wisconsin or Colorado or Illinois, if you get into comparing the state by state, it gets tricky. But if you look at the-- just the general idea that Midwest states can have 100-plus wineries, that-- that it's not impossible, and then you begin to look at how those states become known for their wine-- you know, Missouri, for example, is one of the biggest wine states in the country, not just in the Midwest. I think it's in the top ten. And they've got there because they've been very supportive of their industry and given them different licensing options and given them different ways to make more wine. And then-- and then from there, they grew.

BLOOD: And they have the people to go.

JOHN SIEBERT: Sure, sure.

BLOOD: All right. Yeah. Again, I don't--

JOHN SIEBERT: I know, I know.

BLOOD: --I don't disagree with that. I just want to make sure we're comparing apples to apples.

JOHN SIEBERT: Sure.

BLOOD: And I-- and I looked up a bunch of the populations and it seems like the lower the population, the fewer wineries, which only makes sense.

JOHN SIEBERT: Sure, sure.

BLOOD: Thank you.

BRIESE: Thank you, Senator Blood. Anyone else? Senator Lowe.

LOWE: Thank you, Chairman. And thank you for coming to testify today.

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JOHN SIEBERT: Thank you.

LOWE: I see you just have nine acres--

JOHN SIEBERT: Yeah.

LOWE: --for your winery. And you're able to survive on nine acres of--
of grapes for your winery?

JOHN SIEBERT: We're trying to.

LOWE: OK.

JOHN SIEBERT: It's-- four of our acres were planted in the last two or
three years, so that will take a few years.

LOWE: So you're growing?

JOHN SIEBERT: Correct, yeah.

LOWE: You're growing. How many gallons can you get off an acre of
grapes?

JOHN SIEBERT: Generally, you're supposed to get about two tons per
acre. That's a rough estimate.

LOWE: OK. Yeah.

JOHN SIEBERT: You know, you could get up to ten tons, but generally
two tons per acre. You get about 150 gallons per ton. So per acre, you
should get about 300 gallons, which would be about 1,500 bottles of
wine. Our goal with 9 acres is-- is to get 2 tons an acre, so about 18
tons. But just to give you an example, you know, in 2013, our first
year, we harvest-- we got 20 tons from other growers that we worked
with in the state. And the following year, working with those same
exact growers, we were down to ten tons just because of the-- some got
hit by frost. Some got hit by hail. And you know, it's just kind of--
just-- just what you get. You know, you're at the mercy of Nebraska's
nature, which as we can tell today is-- is not always the most
friendly so.

LOWE: Thank you.

JOHN SIEBERT: You're welcome.

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BRIESE: Thank you, Senator Lowe. Anyone else? Seeing no other questions, thank you for your testimony.

JOHN SIEBERT: Thank you. Appreciate it.

BRIESE: Any other proponents?

TIM MURMAN: Sorry, I was going to-- supposed to go left or right so.

BLOOD: It's all right. We all look alike. We all look alike.

BRIESE: Good afternoon and welcome.

TIM MURMAN: Thank you, Chairman Briese and the rest of the General Affairs Committee. My name is Tim Murman, T-i-m M-u-r-m-a-n, and I'm with Glacial Till Vineyard and Winery. We're just southeast of town. We're in between Bennet and Palmyra. And then we also have a tasting room in Ashland, Nebraska, as well. So we've been around since 2008, commercially making wine, 2003 is when we first planted our vines so. Thank you for allowing me to give you my testimony here today so. Glacial Till Vineyard and Winery supports all language being put forth in LB584 to enhance the chances for success and growth of Nebraska farm wineries. And lowering the percentage of Nebraska grapes that a winery can use to allowing a winery to expand up to five locations will help all wineries produce more wines to grow our market share and industry. Allowing added locations will also increase tourism and exposure to our Nebraska wine brands. Allowing the use of more appropriate liquor license-- licenses for winery business models will increase the winery sales and profitability. No other craft beverage manufacturers in the state currently have these restrictions on their licenses. I would like to bring more focus and attention with my time to two issues and-- very important to our business model and the growth of our winery and cider business. That is the issuance of special designated-- special designated licenses or SDLs and specifically the number that is required to conduct-- conduct our business, and second, allowing a Nebraska farm winery to hold additional liquor licenses like a Class C retail liquor license. First GTV, or Glacial Till, is a season vendor at our-- at four farmers markets in Lincoln and Omaha. Our presence at the farmers market helps promote the Nebraska wine and grape industry, allow consumers and tourists to sample Glacial Till wines and ciders, and purchase these products. Selling our wine and cider at the farmers market require we have an SDL for every single day of the season. During the course of one farmer market season, Glacial Till has to complete the required

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paperwork for over 100 SDLs. As is recommended in LB584, the promotional SDL would save both Glacial Till and the Nebraska Liquor Control Commission considerable time and expense if we were allowed to apply just once for an SDL, for a seasonal SDL for the farmers market. Secondly, as-- like Mike was stating, we've invested considerable amounts of money into our winery and tasting room facilities that allows us to host both public and private events. In 2018, we conducted over 80 private events at our winery location alone, and most of these events we were required to get an SDL. We do a lot of weddings, and a lot of people want a full-service bar in addition to our wines and ciders. And like Mike said, it's not a-- you know, our focus is pushing our wines and ciders as opposed to other products. But it does make it nice for us to, you know, make those available to customers when they are wanting-- wanting it. It is very common in other states that wineries have other adult beverages available for consumption as well, yet in Nebraska we cannot serve any other product than our own without having to get an SDL. In the summer-- in the summers we partner with Nebraska craft brewers as well to provide beer options to people who come out to our winery on Friday nights to enjoy the live music. And again, for each of these events we would get an SDL. During the wedding season we host over 10,000 people not only here in Nebraska, but from across the country. And most of these renters request that we have a full-service bar. Currently, the only way we can meet these customer demands is by getting an SDL for every event that we host. Again, the time and expense for both Glacial Till and the-- the Nebraska Liquor Commission is-- is great and this can all be eliminated by allowing Glacial Till and other Nebraska wineries to apply for and receive a Class C liquor license. One final note regarding the SDLs is that it takes a minimum of about two weeks, sometimes longer, to apply and receive these SDLs. And so therefore, say if you had, you know, an event coming up and you wanted to come out this weekend and have beer or liquor hosted, we would not be able to do-- to do that event just due to the time constraint by applying and receiving those licenses. So that's all I've got right now, so thank you for allowing me to testify. And if you have any questions, I'd be happy to answer them.

BRIESE: Thank you for your testimony. Any questions? Seeing none, thank you again.

TIM MURMAN: Thank you.

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BRIESE: Any other testimony in support of LB584? Good afternoon and welcome.

RICHARD HILSKE: Thank you, Chairman Briese and members of the General Affairs Committee. My name is Richard Hilske, R-i-c-h-a-r-d H-i-l-s-k-e. My wife and I own Cellar 426 Winery in Ashland. I come in support of LB584 as we feel it is imperative in helping further the Nebraska wine industry. We've been open seven years now, and there are two areas of the bill in particular-- in particular that will allow our winery to continue to grow and survive in a state not traditionally known for wine or tourism. First off is the ability to hold additional licenses. Every week I answer phone calls asking if we have beer. They say their husband or others in their group don't drink wine. And when I tell them I can't serve beer, they are surprised, and I can tell they will be going elsewhere. As with any business, you have to be able to give the customer what they want. Right now we are at a major disadvantage against other businesses where consumers can go for a nice time out, have a small gathering, or showcase like music as these places can provide everything the customers want. No other business is told they can't add to their portfolio. I mean, you go to Menards, they sell beds. Hy-Vee is selling clothes, and the Furniture Mart is now selling lawn mowers. These businesses have the ability to expand their portfolio, selling what the customers want, which is very important in any economy. Wineries need to have these same opportunities. And as others have mentioned, I've been to many other states that have wineries, and most all of them allow, you know, at least beer to be sold at that winery. The other part of the bill that will help our winery greatly is lowering the requirement of Nebraska grapes from 75 to 60 percent. Since we opened, we have expanded our production each year. It has been harder and harder to have enough grapes to produce the wine to meet and continue that growth. The last couple of years we have had to level off a bit on the growth due to the lack of grapes. For Nebraska, we are a mid-sized winery that would like to get larger, hire more workers, and help the-- to expand the Nebraska economy, but can't as the limited number of quality grapes available stops us from making more product. Please know that if Nebraska grapes were available when we needed them and at the quality we need them to be at to make our award winning wine, Nebraska grapes would always be our first choice. But that is not the reality. Each year I put my plans together in June for the upcoming harvest. When I look back each year, I'm lucky to hit 60 to 65 percent of what we really needed. Imagine having a business where you can't get the raw materials you need. Since opening we have lost four different growers

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who decided to stop growing grapes. In 2017 our larger-- our largest grower, which was providing us between 8 and 12 tons of grapes, decided midsummer that year, after getting hit by spray drift for the second time, that they were done. They grew two varietals that are hard to find in Nebraska, and as a result, we couldn't produce two of our best-selling wines that year. I can tell you countless stories where I was promised three tons of grapes from a grower, and when the harvest day hits, they say, sorry, we only have one ton for you or none at all for whatever the reason. Last fall I had three vineyards lined up to provide Frontenac grapes, and they all fell through, leaving us with nothing for that varietal. Yes, there is a potential to get waivers, but it's tough running your business relying on the hope you can get a waiver. For a newer winery, it's especially tough as the quality growers are already locked up by some of the more-- longer-- wineries that have been here for a lot longer. This change allows us more flexibility and the ability to further grow the Nebraska wine industry by allowing us to source the grapes we need to satisfy our customers' demands, grow our winery, and help add more to the Nebraska economy through additional jobs, sales tax, and more. In conclusion, I'm a lifelong Nebraskan, born, raised, and have never left here. I was a member of the interim study group that the Legislature put together to craft this bill. So I ask for your support of LB584 so the Nebraska wine industry can take the next step and help to continue to grow the Nebraska economy, enhance tourism, and enhance the Nebraska lifestyle. Thank you.

BRIESE: Thank you. Any questions? A couple of testifiers have mentioned spray drift.

RICHARD HILSKE: Um-hum.

BRIESE: Is that Dicamba?

RICHARD HILSKE: It's Dicamba. It can be several other products, but Dicamba for sure is the-- is the worst culprit. And that can drift several miles.

BRIESE: And the problem has just arose mostly in the last few years?

RICHARD HILSKE: It's become more and more prevalent, yeah, in the last couple of years. And you know, last-- this past year was-- was a little better, but it's just kind of hit and miss because it all

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depends on-- on our bud break. And when-- if the spray occurs around that bud break, then it can be devastating for us.

BRIESE: OK. Thank you.

RICHARD HILSKE: You bet.

BRIESE: Any other proponent testimony? Good afternoon and welcome.

LES MEYER: Thank you. Good afternoon, Senator Briese, members of the General Affairs Committee. My name is Les Meyer, L-e-s, last name, M-e-y-e-r, and I want to thank you for allowing me to speak today in favor of LB584. Today, I represent the Nebraska Wine and Grape Growers Association. I also want to thank Senator Hilgers for his tireless effort on this bill. This bill is the work product of several people that gave of their time and their talents in an interim study over the last summer and fall. The interim study was put together and led by Senator Hilgers. The study group was challenged to look at two key topics. The first and the issue of concern from either the farm winery industry or the Liquor Control Commission, how does Nebraska compare to our neighboring states? And two, with an industry almost 30-years-old, the original Farm Winery Act was adopted in 1985, and still holding less than 3 percent of the market of wine purchased in Nebraska, what are the key hurdles that if overcome would help the Nebraska wine industry grow and prosper? The changes you can see in the bill and that have been discussed today deal with both of those charges and in every case, if adopted, would still put Nebraska either on par with or still slightly behind every bordering state. I'm proud to get to represent this association and this industry today. It's made up of hardworking Nebraskans that represent a very unique industry. First, they're all farmers that work to produce a crop, and they're all manufacturers that produce their own product. And then they have to figure out how to make their own market. They put in long hours and love what they do. This bill will just make it easier to see success. You may hear that these changes are not necessary and that it should not be a burden to purchase 75 percent of your grapes in state. I'm one of those wineries, and when I can find both the quantity and the quality of grapes I need in Nebraska, I'll always buy them in Nebraska. There are times though that the variety I'm needing is not available. And with the current limits, it's impossible to make the quantity of wine of the varieties my customers ask for and my business plan calls for. You may hear that a winery doesn't need to be able to apply for an additional license even though his property has become a prime spot to offer weddings or other events, and the current statute

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limits what he can do. Why would any of us not want to see a Nebraska business make a go of it? You may hear that no winery's even close to the 30,000 limit on gallons. Why would we ask for that increase? Who would not want for several Nebraska wineries in the future to grow to that limit, except maybe a competition, who would probably prefer that we pull back a little bit? I can tell you that our industry has a goal of someday reaching a whopping 6 percent of the market. What would be so wrong with that? You may hear that a farm winery should not be allowed to expand his operation beyond the current one additional location. If there is a demand for additional locations of a winery, why would someone else care? Currently, this would just align Nebraska wineries with the language used by the craft brewers. The final issue is just dealing with the issue of special designated licenses. I know this is a challenge today for the Liquor Control Commission. This language is a simple cleanup with a promise that we will work to set up an interim study to help the Liquor Control Commission in setting rules and standards for all SDLs over the next summer. I, again, thank you for your time and just state one more time, this bill would just help an industry by changing the rules or cleaning up the language. And we would so much appreciate your support, and I'd be glad to take any questions you might have of me.

BRIESE: Thank you. Any questions? Earlier testifiers referred to other states. You referred to it here. Every change here in the bill, does it mirror generally what's done in other states?

LES MEYER: You know, we-- we at least took a list of things that were of concerns of both the wineries and of the Liquor Control Commission, who were both present on the interim study. And in every case, we didn't-- we either barely met the standards of every state that we touch the borders of, or we still fell short. But it's a step in the right direction.

BRIESE: OK. Thank you. Seeing no other questions, thank you for your testimony.

LES MEYER: Thank you.

BRIESE: Any other proponent testimony? Seeing none, any opponent testimony? Good afternoon and welcome.

JUSTIN BRADY: Chairman Briese and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association in

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opposition to LB584. I want to start with by saying the liquor wholesalers are not opposed to the farm wineries, as you-- they were trying to paint us as. I will take a step back and show you the broad laws and court rulings that we all are operating under as-- as operating in the liquor industry. There is a court case that happened in 19-- in 2005 called Granholm that pretty much kind of set the stage for the next, well now, 13 years for the liquor industry. And it was a case out of Michigan, and it went to the U.S. Supreme Court. And it dealt with whether or not in-state farm wineries could have a benefit over out-of-state wine producers. And the Supreme Court ruled that if there's a compelling state interest, you can do it. And then if not, you have to treat them equally. And then looking at that court case, in that case they struck down the law of Michigan. In other cases, where they've dealt with that-- what the court relied on was the Dormant Commerce-- Commerce Clause, the court is split. Sometimes they strike down the law. Sometimes they say you out-of-state person who is discriminated against, you can do what the in-state person does. And that's-- that's the fear that the wholesalers operate under. And I'll give you an example. The largest wine producer in the U.S. controls about 25 percent of the market. If the Supreme Court-- if someone were to challenge it and the Supreme Court were to say the out-of-state producers get the same rights as the in-state, that means 25 percent of the market bypasses the wholesalers that have invested in Nebraska. They too are invested in Nebraska. They've spent millions of dollars. They employ hundreds of employees across the state. So I see it with the farm wineries is we need to figure out how to be on the same team, as opposed to trying to keep fighting each other under this guidance of the Supreme Court that has said you can't discriminate unless there is a compelling state interest. With that, I would look at some of the provisions of the bill. I guess I'd start with the 75 to 60. I guess I'd ask you what's the compelling state interest to lower it? As you heard, one, the federal requirements are, it has to be 75 percent to be labeled as a Nebraska wine. If we're lowering it, they'll have to change their labels. Obviously, that's a business decision if they want to make that. But I guess that I would argue there's not the compelling state interest in having that lowered. I would also point out that there are two provisions in current law that allow farm wineries to go to the Commission and waive. So if there is the natural disasters or if they're unable to get the grapes they need, they can go get that waiver. So it's not just a flat out prohibition, if you don't hit the 75, you're out of business. We have tried to work and say OK, what happens if? Now maybe there's something more needs to be added, but I think that's more so than saying let's lower the

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threshold. Also, with respect to the 30,000 to 50,000 gallon as I read it, currently-- current law says, no farm winery shall manufacturer wine in excess of fifty thousand gallons per year. What the 30,000 number that they're offering to change here is, our law says once you hit 30,000, you have to quit doing self-distribution above that and use a wholesaler. The law they're asking to change is that self-distribution piece. They're saying let's go from 30 to 50 before we have to self-dis-- before we have to stop using self-distribution. It doesn't increase their total capacity. Their total capacity, as said already in current law, is at 50,000 gallons. So that-- that piece, again, I would say, would give them special treatment that you aren't giving an out-of-state wine producer. The last one, as far as the retail establishments, again, I understand promoting. I've been out to SchillingBridge. It's a great place. I meet my parents there quite often. It doesn't mean, though, that at the end of the day that the court would not come in and say you're allowing a manufacturer of wine in your state to operate four retail-- fully-licensed retail establishments. Why shouldn't we allow an out-of-state producer do it-- to do it and bypass the whole system that the state's been set up on? So it's not that we're against farm wineries. It's not against-- that we're against these businesses growing. It's that we're living under one of the most highly-regulated products in the country. As the one gentleman talked about, you know, he goes to Nebraska Furniture Mart, and they have lawn mowers, or he goes to Hy-Vee, and they have clothes. None of those consumer products show up in the U.S. Constitution twice, but alcohol does. And so it is a different beast than saying what do other retailers do and that we have to, I think, be mindful of that. And that's, I guess, where I would stop and see if there are any questions.

BRIESE: Thank you for your testimony. Any questions? Senator Moser.

MOSER: Do some of the wineries that make their own wine also sell bottled wine that they buy through distributors?

JUSTIN BRADY: You know, I guess I-- there may be. I also know they're allowed to self-distribute some, so if they want to take it to the grocery store, they can do that. They don't have to. I mean they may. I just-- I don't know off the top of my head, Senator, whether or not that's-- if they're actually using them.

MOSER: I was just curious.

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JUSTIN BRADY: They haven't hit-- as far as I know, none of them have hit the 30,000 threshold to then require-- that state law would require that then they use the wholesalers. But--

MOSER: The alcohol they buy they would have-- are they-- like distilled alcohol, they would have to buy from a distributor, right?

JUSTIN BRADY: Correct. Yes. And I--

MOSER: And-- and the same distributors can sell beer, wine, and alcohol, or are distributors limited in what type of alcohol they sell?

JUSTIN BRADY: For the most part, it's divided into two camps. You have the-- we-- we sell liquor and wine, and-- spirits and wine. And you-- then you will have the beer wholesalers. There's a little bit of crossover. I think one of our distributors has Guinness, but other than that, I mean-- and a couple craft beers. But other than that, they pretty much stay in their own camps. The one other thing I'd ask, Senator, as-- as far as the SDL promotional piece, I understand that, I understand what they're saying, come in and say we don't need to be licensed all summer long for farm wineries or if we're going to do a festivals or events over multiple days. I mean, that piece does, I think, make sense, and it's a system that we have for anybody out there. It's not-- I mean, as I read it, an out-of-state wine producer could come in if they could qualify with-- under the requirements to get an SDL. And there you aren't getting that discrimination between in-state and out-of-state companies.

MOSER: Thank you.

JUSTIN BRADY: Um-hum.

BRIESE: Thank you, Senator Moser. Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Justin, for coming to testify today. Do you think that as an industry develops in the state of Nebraska and matures and these people invest in these wineries, and we-- all of our tourism, I've never seen a picture of Nebraska tourism without a winery in it, don't you think that's unique to the state of Nebraska, you know, as opposed to the out-of-state ones that don't have wineries here?

JUSTIN BRADY: I would say there are some unique things. And I would say because of that, the Legislature and the Governor over the years

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has given farm wineries a significant tax break compared to out-of-state producers. They've allowed them to self-distribute, which they don't let other ones do. And they've allowed them to have at least one sampling location. I mean, so there are some things. I just know eventually that gap gets so wide that someone comes in and says it's too far and we want that too. And that's our fear. It's not the fear of whether or not they open up a location, it's--

BRANDT: But if your industry would work with them to show that this is unique to the state of Nebraska and why we want to attract people to Nebraska to sample these wines, I mean, wouldn't that be a better option than living in fear that somebody is just going to come in here and take that away?

JUSTIN BRADY: I think it would. We just have-- need to sit down and talk. And I'll give you an example, and Mr. Schilling would know better the year than I, but I remember it was himself, myself, Hobie Rupe from the Liquor Commission, there were a couple of other people, when they were trying to open up SchillingBridge and tried to figure out, OK, how can it be done? And it was Hobie that said OK, if we do it this way, you can do it. If we do it this way, it raises the concern on this three-tiered system. And so we did sit down and figure it out. Now I-- I-- no, I was partici-- sat in the meeting, but I mean-- but I do think those conversations can happen.

BRANDT: Then I guess a couple points of clarification. One of the previous testifiers said that even if you went down to 60 percent, that bottle had to have at least 75 percent of Nebraska grapes in it to be called a Nebraska wine, whereas you-- you testified otherwise. And then the other-- other thing is on the 60 percent. As a farmer, I can tell you, there is no greater fear than a vineyard anywhere close to you when you spray. And it doesn't take much to ding a grape. So, I mean, that's-- that's why that's in there. And I believe these guys when they say that's what the main issue is.

JUSTIN BRADY: And I believe it too, Senator. And so maybe we need to have-- instead of-- the current law says you either have to go ask the Commission on a certain waiver, or there's a specific waiver for natural disaster. Maybe there does need to be some language in there for the drift.

BRANDT: OK. Thank you.

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JUSTIN BRADY: Yeah.

BRIESE: Thank you, Senator Brandt. Anyone else? Seeing no further questions, thank you for your testimony.

JUSTIN BRADY: Thank you.

BRIESE: Good afternoon and welcome.

JOE KOHOUT: Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Joe Kohout, K-o-h-o-u-t, registered lobbyist appearing today on behalf of our client, the Associated Beverage Distributors of Nebraska, or ABDN. ABDN is a trade association of the 17 family-owned beer distributors that employ hundreds of Nebraskans throughout the state. Specifically, I appear before you today in opposition to LB584. Thank you for your time. As the committee knows, our current three-tier regulatory system is designed to prevent the vertical integration of the socially sensitive alcohol industry. Specifically, under the three-tier system, each tier is restricted to its service function. Manufacturers or distillers, wineries, and brewers make the alcohol and sell to distributors. Distributors distribute and sell to retailers, whether it's Billy's here in Lincoln, the Casey's in Albion, or Mel's corner bar in Scribner. Retailers alone have the right to sell to customers. Through this regulatory system of checks and balances, global manufacturing conglomerates cannot monopolize the industry by acquiring distribution and retail outlets. The system has provided substantial benefits to the citizens of both Nebraska and the United States through the encouragement of local ownership of both local distributorships and local retailers. Primarily because of this regulatory system, the industry remains one of the last bastions of locally owned businesses in the state. Local distributors and retailers are rooted in the communities in which they sell. As a result, they encounter their consumers daily with commun-- with-- within the community, and accordingly, sell their product responsibly. These stable businesses also are the mainstay of their host communities, employing hundreds of Nebraskans. In addition, because distributors and retailers are not owned by suppliers, they offer consumers unprecedented choice and variety from thousands of suppliers. Contrast that, for existent-- for instance, with the soft drink industry, with-- which lack the-- such regulations and is dominated by Coke and Pepsi. Finally, these distributors serve as buffer between suppliers and retailers. Retailers are insulated from the pressure to overpromote and oversell which can inevitably result from supplier ownership. In recent years,

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a handful of distillers, wineries, and brewers have been provided with exemptions from three-tiered and tied-house laws. No other industry members have been provided with these exceptions. These exemptions confer a substantial competitive advantage to these suppliers that is not available to the thousands of family-owned distributors and retailers that have invested heavily in the current regulatory system. We have sold alcohol responsibly for decades and have been economic pillars and a mainstay of philanthropic support in our communities. As we saw these developing, ABDN's membership understood the logic of initially supporting these competitive advantages to truly new market entrants in an effort to foster new businesses. As evidenced by LB584, however, established suppliers are now looking to further unfairly tip the advan-- competitive field in their favor. To further-- confer further regulatory exemptions and substantial competitive advantages to just a handful of industry members to the detriment of thousands of other industry members who have played by the rules for decades is unnecessary, unwise, and unfair. It is not the job of the Legislature to pick winners and losers. That is the province of the marketplace. Under current law, a farm winery may only sell to the public at the winery, wines that it has produced. This exception was created in-- in order to allow the farm winery to sell its wine to consumers visiting the premise and otherwise market its products. This privilege is really an incident of its manufacturing license. LB584, however, seeks to totally collapse the three-tier system and transform a farm winery into literally the most powerful license in the state by providing it with the right to sell beer as well as wine, continue self-distribution. Such a further exemption is unnecessary, unwise, and unfair. It also exposes the state to a constitutional challenge, as mentioned by Mr. Brady, on the basis that the law discriminates against out-of-state wineries which are prohibited from owning retail outlets, while permitting Nebraska farm wineries to do so. LB584 goes further, however, in order for Nebraska retailers to serve alcohol off-premise, it must either hold a caterer's license or obtain an SDL. There are certain requirements that must be met in order to meet and obtain such licenses. LB584 purports to create a new license called promotional special designated license. The proposed bill would significantly alter the current regulatory system in Nebraska and have a detrimental impact on distributors, retailers, and Nebraska consumers. It provides exemptions and exceptions, and we would appreciate the committee not advancing LB584. I will try to answer any questions that you might have.

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BRIESE: Senator Brandt.

BRANDT: Thank you, Chairman Briese. And thank you, Joe, for coming today.

JOE KOHOUT: Um-hum.

BRANDT: You talked a lot about these locally owned distributors.

JOE KOHOUT: Um-hum.

BRANDT: Do you think all the wineries in the state are locally owned?

JOE KOHOUT: I do. And I don't mean to indicate that they are not.

BRANDT: OK. So then these locally owned distributors, if that winery has a Class C license like SchillingBridge down in Pawnee City, and they can-- they could sell products from your distributors.

JOE KOHOUT: They could.

BRANDT: OK. Thank you.

JOE KOHOUT: Um-hum. I think the concern, Senator Brandt, to follow-up on your question, is where Senator Lowe went earlier when he asked the question about self-distribution. Recall that this is literally they have-- they will have a presence on all three tiers within the-- within the alcohol industry in Nebraska. And as such, they would hold the most powerful license under our statutes.

BRANDT: But what percent of the industry do they represent right now?

JOE KOHOUT: Well, again, I-- you would still be subject to application. An individual could apply for a farmer's-- farm winery license and meet the standards that the Commission promulgates and-- and obtain one if they wanted to.

BRANDT: Right. But do you see-- don't you see the uniqueness of this industry as more of a tourist-- somewhat of as a tourist draw or-- organic to the state of Nebraska? Do you see the advantages to the state of an industry like that as opposed to a Budweiser dealership or distributorship?

JOE KOHOUT: I do see the value of it, but I think that that value, you could make the same argument about-- about the outlet mall in Gretna. You could make the same argument about the Henry Doorly Zoo. You could

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make the-- you could make the same argument about a number of locations in Nebraska where individuals spend their time and energy and treasure.

BRANDT: Yeah, but we're-- we're discussing the licensing is-- is-- is the issue.

JOE KOHOUT: But I-- but I don't think we can take it in an isolation, Senator.

BRANDT: OK. Thank you.

BRIESE: Thank you, Senator Brandt. Senator Moser.

MOSER: Are there advantages in the tax that wineries pay versus what taxes get paid when retailers buy alcohol through a distributor or beer through a distributor?

JOE KOHOUT: It's my understanding-- and-- and Senator, that will be a better question for Mr. Rupe because I want to be clear. I know that in the past the Commission has raised the concern of the tax rate that is remitted by a farm winery versus what the rate is paid by any other wine. But I would-- I don't have that number written down, and so I would defer to Mr. Rupe, who I think is going to follow in testimony.

BRIESE: Thank you, Senator Moser. Anyone else? Thank you for your testimony.

JOE KOHOUT: Thank you.

BRIESE: Any other opposition testimony? Good afternoon and welcome.

CHRIS WAGNER: Good afternoon again, Chairman Briese and members of the committee. My name is Chris, C-h-r-i-s, Wagner, W-a-g-n-e-r, I am the executive director of Project Extra Mile. Our-- I want to express really our concerns are the public health and safety side of things. And really what this boils down to is, one, the-- the winery being able to sell any-- any kind of alcohol, not just their own products. We know that the research says you increase the ease of access, the availability of alcohol, you're going to see an increase in excessive drinking, and you're going to see an increase in the harms. So when we're doing this, we're increasing the availability of alcohol in their winery location. Now my understanding is that in the one outlet they're-- they're currently able to have, it's only their own products. But our concern with this, in increasing the one outlet to

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four, is that, and I would reference the SchillingBridge testimony, is that they're-- they're really looking at targeting those population centers, those areas that already have an adequate or possibly a disproportionate number of outlets, and thereby increasing now a density and the harms that come with it. Now Senator Brandt noted that they do represent a lower percentage of industry output in Nebraska, and I would just caution that, you know, while right now we can-- we may see them as, you know, unique and possibly a novelty. But if we continue to, you know, roll back slowly the policies that we have in place to protect against the harms of alcohol excess-- you know, excessive consumption, then we'll begin to see more harms come to our state. And that industry will continue-- they will catch up with the big guys as well. And I'm not here to speak against their business model per se, I'm just saying this is what the research says. You increase access and the number of outlets in areas that already had enough, and you're going to see an increase in harms. I would also note that we are-- we have steadily declined in our state health rankings. I know years back, the UNMC, basically the dean of the College of Public Health says we really want to be the number one healthiest state in the country. And we-- at that time, we were ten. But we've seen, at least in the reports that we have, the last nine, excessive drinking is always been identified as one of the top challenges of Nebraska in achieving a healthier state. And you know-- and so when we talk about extending hours and days of sale in our state, when we talk about allowing-- the Legislature allowing the consumption of alcohol back in our state parks, these are the type of things that while they come to you and they look innocuous, possibly not that big of a deal, as we steadily chip away at that protective policy structure that we have, it's-- there's a reason why we're the fifth-worst binge-drinking state in the country. And we have been in the top ten for years. So I will-- I will conclude my comments with that and answer any questions you may have.

BRIESE: Thank you. Any questions? Seeing none, thank you for your testimony.

CHRIS WAGNER: Thank you.

BRIESE: Any other opposition testimony? Seeing none, any neutral testimony? Good afternoon and welcome.

HOBERT RUPE: Good afternoon. Thank you, Chairman. I guess I get back cleanup again. My name is Hobert Rupe, Executive Director of the Nebraska Liquor Control Commission. I will try to address the issues

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that we have with LB584 first, and then I'll try to answer some of the other questions that came out because, you know, once you start looking in the weeds trying to figure out what's going on, it gets a little confusing. First off on LB584, the Commission was involved somewhat with the interim study. Two of our main issues that-- concerns that we had did not make it to the bill. That's one reason why we're testifying neutral. The first of those, Senator Moser did bring up that we've always said our concern is there is a beneficial tax break to Nebraska farm wineries compared to other state-- other wine. You heard Mr. Kohout worry about lawsuits. I'm far more worried about a lawsuit over that than anything else. Currently, as you're-- you may or may not know, we tax at a gallon level. We don't tax based upon the value of the wine. A-- a gallon of really bad wine is taxed the same as a real-- gallon of really good wine. That's sales tax. So we tax-- and so wine that would come into the state, would come into a-- let's say it's coming in from-- I'll just use Chateau Ste. Michelle in-- in Washington. It's shipped-- they have a license. They ship it to a licensed wine wholesaler, one of Justin's clients. It sits there. The tax attached is not due until it's sold to a wholesaler, but that's taxed at 95 cents a gallon. Farm winery is taxed at 6 cents a gallon, far lower. The reason for that, I guess if you were to ask me to justify it, is there is a 75-25 requirement that's not required for that Washington wine coming in. The 75-25, by the way, is calculated on their total production, so they would-- probably could do some bottles that actually have probably less than 75 now. But their total production to be a farm winery in Nebraska, to get that beneficial tax rate, and to actually be the only license to have all three tiers represented. They are a limited manufacturer because there's a cap, they're a limited wholesaler because they can only wholesale their own product, and right now they're a limited re-- retailer by only being able to retail their own product. I don't know-- so the 60-40-- has drift been a problem? Yes. We've been doing a lot of waivers because wind is involved, so we think it falls underneath weather. And Senator, I want to give you credit for being a good farmer for not wanting to do it. Generally, it's not the farmers who are screwing up other farmers. It's the railroads and the counties who are slightly less responsive to their vineyard neighbors, and especially the railroad will spray whenever. They don't care if it's 20-mile-an-hour wind because they're the railroad. So we have been doing a lot of waivers for that already. The other issue is-- one thing I would ask-- the promotional license, we would ask you table that. I think there's broad acceptance amongst the industry that we need a true interim study coming between this year and next year to

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look at special designated licenses as a whole. The original structure was set up in the '80s. It needs to be relooked at, although Senator Lowe did a one little fix. Right now we're continuing to put little Band-Aids on a system that I think needs a complete redo and reoverhaul. And so I'd be leery about doing such a major change such as this, and then if we're going to have-- have-- have something brought forward-- or that this committee would have something brought forward next year to address the overall issue. So I think-- I'm not saying it's a bad idea, but I think it could-- it could be-- could probably be tabled until next year. It's one reason why we're neutral. The other issue that we-- that the Commission addressed that didn't get dealt with are the direct shipping licenses, the S1 direct-- direct shipping license. And the reason why that can't-- goes into the farm winery is those license fees go to the farm winery board. Nebraska has the second highest S1 license in the nation, only behind New Jersey. And because of that, I think that we're having a lot more illegal shipments into licenses-- into the state because it's easier, because small-- small out-of-state wineries won't get the direct shipping license. So on the bill I guess-- you know, and of course I would take questions. I guess overall-- feel I might be going over a little bit long-- long. The issue of course is the farm winery bill was passed first and it gave all three rights. The craft brewery bill came afterwards and only gave two rights. Basically gave you manufacturer, and you get-- gave you wholesale and retail rights. You couldn't wholesale yourself. You had to go through the chain. And because of that, they were able to get additional retail licenses. Now we're issuing a lot of SDLs to otherwise licensed locations, wineries, because they would do a wine-- and they would want a winery-- or they would want beer or they may want spirits. The AG's Opinion prohibits us. The act is permissive, not restrictive. If it doesn't say you can, generally you can't. And when your lawyer says you can't give those licenses, you generally follow the lawyer if you want him to defend you in a lawsuit. So on that issue there, that would have deal with some of those issues is on the retails. Now it doesn't-- the issue of course always then becomes, you know, that they would be the only-- still be the only licensee which would have license-- have rights at all three levels. So I see I'm into the red. I'd be happy to answer any questions and especially on however broadly they go. Thank you.

BRIESE: Thank you for your testimony. Any questions? Senator Moser.

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MOSER: When we were talking about licenses for each location, doesn't each location of most alcohol require a separate license?

HOBERT RUPE: Every single license must be licensed separately because each individual license has a defined description. It must meet the fire codes, the codes-- the zoning codes, everything is in that case.

MOSER: And local control.

HOBERT RUPE: Local control is a huge issue. The main reason why the farm wine-- the craft breweries got-- had to get their-- their satellite licenses, and they must be held under the same ownership interest, was because that way it allows them to take product from the primary brewery-- brewer to their restaurant license that might not be there because normally all that would have to go through a wholesale system, the wholesale tier system. The main difference is breweries pay the tax themselves, whereas like when Budweiser is shipped into Nebraska, one of Joe's clients pays the tax at that time. And so because the tax is already paid, it was going from a wholly owned-- wholly owned-- within the wholly owned chain, they're allowed to take it to their locations. So that was one reason why it was different. In this case here, wineries can already self-distribute. They have full distribution rights. Not sure they would need the other locations, but they would need the other locations because they are limited right now by having one winery, the wine, and then they have one tasting room. They're trying to increase the number of tasting rooms primarily.

MOSER: So if they were going to take their wine to say a farmers market,--

HOBERT RUPE: Um-hum.

MOSER: --they would have to have a license in that town to sell that?

HOBERT RUPE: No. What-- generally what they'll do is most of your wines have-- have got what's called a catering endorsement, which allows them to have an unlimited amount of special designated licenses. They would then have to apply for an SDL at that location for that event.

MOSER: Through the local-- local government agency, whatever that is.

HOBERT RUPE: Control-- yes-- local-- well, remember SDLs are the one license that must be approved by both the local governing body and by the state. So they would make an application to the local governing

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body for an SDL and then make the application for the state license. They're issued the one-day event license for that.

MOSER: And if they're going to have every Saturday for 6 months of the year, they'd have to get 26 special designated licenses?

HOBERT RUPE: That is exactly true, and that's one reason I hoped-- the big discussion point on the interim study I want-- I want to bring up about perhaps being able to collapse the number of applications over multiple days that aren't contiguous.

MOSER: What's the cost for a special designated license?

HOBERT RUPE: Forty dollars, except for a caterer who can get-- yes, it's-- it's minimal. It's not much. Forty bucks I believe for that-- is an application for an SDL.

MOSER: Thank you.

BRIESE: Anyone else? Question, we've heard all this talk about lawsuits, potential lawsuits, and 30 years ago our Legislature deemed that they should try to promote this fledgling industry in Nebraska and help to grow our state. And now 30 years later we have an industry that represents maybe 3 percent of its industry--

HOBERT RUPE: Very small.

BRIESE: --that's possibly operating on some grounds here that maybe aren't cost-- constitutionally sound. Can you handicap the-- any increase in probability of a lawsuit post this bill versus where we're at now? What does-- what does this bill do to the probability of a lawsuit headed their way?

HOBERT RUPE: I will say the following, any time you start chipping away and making exceptions, you raise that possibility.

BRIESE: But we've already chipped away.

HOBERT RUPE: We've already chipped away. Now you got to remember, right now our bill-- our existing structure was pre-Granholm. Granholm was the first-- it was the first liquor case the Supreme Court had dealt with in I believe 20-some years. And beforehand it was dealt primarily with marketing issues. The interesting thing about any time a liquor case is brought before the Supreme Court is issues which would be a slam dunk generally under the Dor-- the Dormant Commerce

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Clause are questionable under the Liquor Act because of the Twenty-first Amendment. The Twenty-first Amendment gives the states certain rights to be different and which, let's be honest, puts it in legal conflict with the Dormant Commerce Clause which wants everybody to be the same. And so you have to come out with your rights. Mr. Kohout was absolutely right-- or I'm sorry, Mr. Brady was right in that. And of course, as we well know, when the Supreme Court makes a big opinion, it doesn't really settle anything. It just spawns a whole bunch of other opinions in the lower courts, and they try to interpret, you know, the-- the guidance that was given. There are some individuals, primarily a retired law professor who-- who made his retirement job to go around and file lawsuits where he can get attorney's fees because they're generally filed in federal court under a 1983 action. And you know, you-- and-- and then as they go-- when the courts deal with them, they'll either-- well, it's called level up or level down as Justin described. But that guy doesn't care because he's getting his attorney's fees.

BRIESE: No.

HOBERT RUPE: He's getting paid. Do I-- do I anticipate their-- you never want to say, yeah, we're going to get sued or we're not going to get sued. I mean, anytime you make changes, you're probably increasing it. How much percentage? I would be playing Carnac the Magnificent on that.

BRIESE: But we're already possibly on thin ice, and what's a little more going to hurt?

HOBERT RUPE: As somebody said, you can always get sued whenever. I mean it's whether they're going to win or not is-- is how they go forward.

BRIESE: OK. As far as the Section 4 of the bill, promotional SDLs, should there be any limit on the length available there?

HOBERT RUPE: As I said, our preferred way would be to table that part of the bill until-- because that would be-- that would be part of the, what I would call, the holistic SDL review process that I think needs to have not only this committee's leadership, but have all-- a lot of people involved. You know, the industry, the nonprofits, public health would need to be involved with just the proper way to get those. The number of SDLs has exploded over the last few years, and it's, you know-- and it's one of the things. It needs to be relooked at. Is

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there a better way, a more efficient way that still promotes public health, safety, and welfare? So we personally would ask that it would be tabled. But as you heard from Glacial Till, they're getting I believe, and I could be wrong-- they had to get 170 SDLs over the year last year to cover the-- the farmers markets and the events they were having at their location.

BRIESE: OK.

HOBERT RUPE: So I mean-- and it's like I said, you know, is there a better way to do that than having to go through that process every time?

BRIESE: OK. And then part of the statute-- the old statute-- the old language allows for sampling, and now the new portion of the bill would allow for the sale--

HOBERT RUPE: Yeah.

BRIESE: --in reasonable quantities. Isn't reasonable fairly fluid?

HOBERT RUPE: I agree it's fairly fluid. Most of the time at these events, what you've got is you got a small thing. They're doing sample size. And then what they want to be able to do is the sale, and you can always ask for-- for the right to sell under an SDL, is hey, I'd like to buy a bottle of James Arthur wine to go along with the kale I ordered next door because it's going to make the kale taste better if you can do that. And so, you know, that was that idea. The idea is sort of trying to reflect what's being-- what you're seeing already in that marketplace because as more people like to buy local, almost hyperlocal, those are the kind of things they'd like to be. You know, hey, they'd like to pair the-- you know, the-- the beef they picked up with at the farmers market as what with the wine from one of the vendors.

BRIESE: OK.

HOBERT RUPE: So and they'll say-- take-- they'll take a sample, a little thimble glass, hey, this is pretty good stuff, give me a bottle to go.

BRIESE: And for now drift does qualify as a natural disaster?

HOBERT RUPE: We-- we have taken a pretty expansive view on that one because if drifted-- if-- if that chemical is opposed correctly

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without the right wind conditions, it's not a problem. The-- one of the first things I did when I became director was I had a meeting with the Grape and Winery Board because we were starting to see some of these waivers asked. And I said, OK, what's in-- what is a new-- is a agriculture-- a natural disaster as in agriculture? And so the theory is-- is that if it's-- if it's outside of the control of vineyards using normal agri-- viticultural practices, then-- that's caused by weather that they can't control, then it should probably be a waiver. If I-- if you build in a floodplain and every second year your vineyard is being flooded out, I'm not really sure you're practicing good viticulture practices. You shouldn't get the waiver. The worst one we saw recently, about three years ago, people might remember. We had that really warm late October and the-- and the vines were still full of sugar. They were still producing. They were still big. And you went from 70 degrees to 0 within 72 hours. It looked like somebody took a shotgun to those wine-- to those five-, six-year-old vines and exploded them. And so of course that was something they couldn't control. They can't control what the temperature, you know. For-- but at the same time, drought? Let me see how you tried to mitigate it. Let's see how you tried to irrigate. You can't just say you didn't attempt to irrigate and try to get it because you can do that so.

BRIESE: OK.

HOBERT RUPE: We've tried to use-- we've tried to work with them on what is an acceptable viticultural practice. And if you're doing everything right and UP decides that, you know, 15-mile-an-hour wind they're going to go ahead and spray weed killer along the right of way and it blows over your vineyard, there's nothing you can do about it to stop it.

BRIESE: OK, very good. Thank you. Anyone else? Seeing no other questions, thank you for your testimony.

HOBERT RUPE: Thank you.

BRIESE: Any other neutral testimony? Would you like to waive closing? OK, very good. And we have one letter of support from Mick McDowell. And that will close our hearing on LB584 and close the hearings for today. Thank you.