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**BRIESE:** Welcome to the General Affairs Committee. My name is Tom Briese. I'm the senator for District 41 and I'm the Chairman of the committee and will be conducting today's hearing. We're here today for the purpose of conducting four bill hearings this morning. For the safety of our committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing requirements, seating in the hearing room is limited. We ask that you only enter the hearing room when it is necessary for you to attend the bill hearing in progress. The bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify which bill is currently being heard. The committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that everyone utilize the identified entrance and exit doors to the hearing room: entrance on that side, exit on that side, please. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist committee members and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair between testifiers. Public hearings for which attendance reaches seating capacity or near capacity, the entrance door will be monitored by a Sergeant-at-Arms who will allow people to enter the hearing room based on seating availability. Persons wanting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability of an overflow hearing room for hearings which attract several testifiers and observers. For hearings with a large attendance, we request only testifiers enter the hearing room. We ask that you please limit or eliminate handouts. If you wish to testify in person on any of the matters before us, we ask that you fill out one of the green sheets of paper which are located by the entrance. If you do testify, we ask that 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 to open on their bills, then we will hear the proponents, opponents, and neutral testimony. Following the testimonies, 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 will be afforded four minutes to testify.

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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. We have two pages today. I'd like to have them stand and introduce themselves.

**JONATHAN LASKA:** Hello. I'm Jonathan Laska.

**EVAN TILLMAN:** I'm Evan Tillman.

**BRIESE:** Thank you, guys. I'd like to introduce my committee clerk, Alex DeGarmo, at the end here, and committee legal counsel Laurie Holman to my right. And now I'd like the senators, beginning on the right end, to introduce themselves.

**J. CAVANAUGH:** John Cavanaugh, District 9, midtown Omaha.

**ARCH:** John Arch, District 14, Sarpy County.

**LOWE:** I'm the last John, John Lowe, from District 37.

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

**BRIESE:** Thank you. Senator Wayne, Senator Brewer, and Senator Groene are not here yet. Most of them will be coming here at some point. With that, I would like to open the hearing on LB511. That would be Senator Lindstrom. Welcome, Senator Lindstrom.

**LINDSTROM:** Good morning. Chairman Briese, members of the committee, my name is Brett Lindstrom, B-r-e-t-t L-i-n-d-s-t-r-o-m, representing District 18 in northwest Omaha, here to introduce LB511, a bill to change provisions relating to the cigarette tax stamps, LB511 would allow for new and innovative technologies to allow for an easier and more efficient collection of excise taxes of cigarettes, to combat cigarette tax evasion and counterfeit stamps, and to bring Nebraska to the forefront of technological advancement in cigarette tax collection. LB511 originated last year initially as an interim study.

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LR347 was referred to this very committee. A report was issued by this committee in November of 2020 that examined the efficiency of the current heat-applied tax stamps to examine the potential of modern technologies, such as barcoding, holograms, and/or quick-response codes to identify barriers in federal, state, and local laws by utilizing such-- such technologies, and to examine other states that have adopted these new-- new technologies. I've provided each of you a copy of the LR-- of LR347 for your review. The legal counsel provided some exceptional information, which I believe the committee would find beneficial from reading. LB511 would simply allow for these new technologies as-- as an alternative to the heat-applied stamp. Currently, four states in the union utilize an advanced technology for their tax stamps on individual packs of cigarettes. In 2005, California was the first state to require a counterfeit-proof tax stamp. After the adoption of this method, the state saw a 34-- 30-- excuse me, 37 reduction in cigarette tax evasion and collected an additional \$110 million in revenue without ever raising tobacco tax. Massachusetts, Michigan, and New Jersey have also adopted these new technologies. I would like to also add that there are many other potential applications for this barcoding system could assist with, as prescription-- excuse me, prescription drug and opioid tracking. There will be additional testimony after my opening. I'd be happy to answer any questions. Thank you.

**BRIESE:** Thank you, Senator Lindstrom. Any questions for the senator? Seeing none, thank you again.

**LINDSTROM:** Thank you.

**BRIESE:** I assume you'll be here for closing?

**LINDSTROM:** I will be here for close, yes.

**BRIESE:** Very good. Thank you. First proponent testifier. Good morning and welcome.

**MONTE BROWN:** Good morning. My name is Monte Brown, M-o-n-t-e B-r-o-w-n. I-- I've owned a wholesale company in the state for 28 years and since 3 years ago, I opened a software company for tracking inventory authentication of products. We've developed a technology-- well, first let me follow up with Senator Lindstrom. The four states that have taken on holograms have had problems with counterfeits

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already. The counterfeiters are very quick to counterfeit holograms. So we've designed a system with-- in partnership with Oak Ridge National Labs, and it's authentication of the product. And in the handout, if I could-- if we jump to page 5, I just would like to point out that we-- we take the identifier on the product from the manufacturer. And we-- we put identifiers on that. A machine learning algorithm identifies each pack of cigarettes, and what it does is creates a database and the database is managed by the state. But what it does is gives an identity to each pack, and now we're able to track the pack through the system. So when it comes in from the manufacturer to the wholesale, it's identified right there, and then from the wholesaler it is sent to retail, and at that point it is scanned again, and now we know where every pack went-- excuse me-- now we can put identifiers. We know that the retailer had that pack. What we're presenting today is authentication in wholesale because over the years we've seen-- we call them [INAUDIBLE] black market counterfeiters in the system. There's a lot of that going on. Cigarettes are probably the easiest thing to counterfeit and sell on the street. So what this does is gives the state the ability to see if it came from Philip Morris, it goes to the wholesaler, then it goes to the retailer. What I'm not proposing is what you also can do, is it's a sales tax division product too. So if it's scanned at retail, you know that it's-- it's where it went as well. I'm not proposing that today, but there is a step here that can be taken afterwards to help with sales tax collection. What it does is identifies every pack at retail, and so the retailers are obligated to report those packs as well. We've done-- we've done over 20 million tests on these images. We have a 98 percent success rate. In the wholesale business what happens is that stamp flakes off and gets-- goes out to retail, sits in the sun or sits on-- on the-- on the carton rack, and it flakes off. And the state of Nebraska had some trouble with the Master Settlement Agreement that we weren't doing enough to combat counterfeiting and we lost-- some of our money went into escrow. Since then, they've released it. But part of our obligation with the Master Settlement Agreement is to combat counterfeiting and to identify black-market product. This system, what I'm present-- presenting to you, is a new technology. It's not a hologram. It's not QR code. It's taking the identifier from the manufacturer and creates an identity. Now we do not have cannabis in the state, but this system will work on other tobacco products, cannabis, liquor, anything taxable, because you take the identifier from the manufacturer. So any questions?

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**BRIESE:** OK. Thank-- thank you for that. Any questions for the  
testifier? Senator Brandt.

**BRANDT:** Thank you for coming today. And you said you were a wholesaler  
before you got into this business?

**MONTE BROWN:** Yes.

**BRANDT:** Can you describe for the committee, as a wholesaler, what  
happens today--

**MONTE BROWN:** What happens today--

**BRANDT:** --with a pack of cigarettes.

**MONTE BROWN:** A counterfeit?

**BRANDT:** Well, legitimate.

**MONTE BROWN:** Legitimate pack of cigarettes comes into wholesale and  
sits on the shelf until it's sold, and then a tax stamp is  
heat-applied to it and then it goes to retail. There's no identifier  
on our current stamp. We can't track it. We just-- we haven't done  
that. If you're a counterfeiter, you're going to drive to Texas or  
Pennsylvania where the tax is either no tax or it's like 8 percent.  
You can buy cigarettes there and bring them into Nebraska and sell  
them at retail with no Nebraska stamp on it, and that happens a lot,  
especially with other tobacco products.

**BRANDT:** But if they're-- if-- if they're a counterfeiter, they are  
putting a Nebraska stamp on it, right?

**MONTE BROWN:** Well, yes, you can put a--

**BRANDT:** I mean--

**MONTE BROWN:** There's counterfeit stamps as well, yes.

**BRANDT:** Is what-- that's-- that's the problem here is that--

**MONTE BROWN:** That's the problem, yes.

**BRANDT:** --is-- and I believe some of the-- the tribes maybe don't have  
cigarette taxes and it happens there, too, does it not?

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**MONTE BROWN:** It happens there. And if you're a retailer that's not abiding by the rules, you can order 30 cartons of cigarettes off the Internet, they come into your store and you sell them. You-- you don't have to put a stamp on it.

**BRANDT:** So how the system is supposed to work is you have a manufacturer, they make the cigarettes-- and I'm just talking cigarettes. Maybe this applies to cigars and maybe it applies to some other tobacco products. But they manufacture and then we have 50 states that have 50 different laws regarding tobacco. They ship them to that wholesaler in that state and then that wholesaler is responsible to apply the tax stamp.

**MONTE BROWN:** That is correct.

**BRANDT:** And then-- and then you as a wholesaler get an order from a convenience store, whatever, and then you deliver-- or through your distributor, but anyway, then it goes to the final user and the wholesaler then is responsible to remit that tax to the state or is the retailer?

**MONTE BROWN:** OK. The wholesaler has to buy the stamp from the Department of Revenue. They buy them 30,000 at a time on a roll and then they apply-- they pay for it up-front.

**BRANDT:** OK.

**MONTE BROWN:** And so what-- this identifier is able to be scanned by a smartphone so that the auditors would take a smartphone to the retailer, scan it, and they can identify it.

**BRANDT:** So the technology now that we're talking about eliminates that stamp.

**MONTE BROWN:** It does.

**BRANDT:** And that's where our savings is at.

**MONTE BROWN:** Yes. And the re-- and the auditing system. You have an audit system that's done by smartphone through the system.

**BRANDT:** And that is hack proof?

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**MONTE BROWN:** It is.

**BRANDT:** OK. Thank you.

**MONTE BROWN:** Yes. Yep.

**BRIESE:** Thank you, Senator Brandt. Anyone else? And so we're-- so we're clear here, you suggest that a hologram could be subject to counterfeiting, has been in other states.

**MONTE BROWN:** Yes. Yes.

**BRIESE:** And what you're proposing-- you know, the-- the bill speak towards hologram, barcode, or a quick response code. What you're speaking towards is a barcode, correct?

**MONTE BROWN:** The identifier from the manufacturer, whatever they put on that, that's their-- that's their identifier . That number on there is-- that D-209 is from Philip Morris. That's their information. We take that, we take a picture of it, and then we use our algorithm to identify it.

**BRIESE:** OK. OK. OK, very good. Thank you for your testimony.

**MONTE BROWN:** Thank you.

**BRIESE:** Next proponent testifier. Proponent testifier? Seeing none, next opponent testifier. Good morning and welcome.

**ANSLEY FELLERS:** Good morning. Thank you, Chairman Briese and members of the General Affairs Committee. My name is Ansley Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association, a couple of our members, including Farner-Bocken Company and AMCON distributing in Omaha, as well as a couple-- we have members with locations in places like Kearney and Papillion and Norfolk. And I'm here also on behalf of the Nebraska Retail Federation. We're testifying in opposition to LB511, Senator Lindstrom's bill to include in the definition of cigarette tax stamp hologram, barcode, or quick response codes. While we appreciate Senator Lindstrom taking a forward-thinking approach, our wholesalers, distributors, and other licensed stamping agents are con-- are concerned we did not have an opportunity to more thoroughly vet this proposal as part of an interim study and that passing such a bill may

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put the state out over its skis given the technology side, it has not yet been proven for this purpose or affordable. To our knowledge, this was brought on behalf of one company in Omaha developing technology which could be used for this purpose, as well as several other purposes, but one company looking to provide the technology, and perhaps eventually control pricing and availability, is cause for concern. To be clear, our members are not afraid of efforts to enhance enforcement of existing stamping requirements. The industry has been and will continue to be responsive to concerns about Master Settlement Agreement enforcement, revenue collection, and more rigorously controlling contraband product. A couple years ago, stamping distributors, with assistance from our association, proposed a variety of standards and recommendations to the-- to assist the Department of Revenue in meeting all of its obligations. We do not believe LB511 will enhance the integrity of the system or assist the industry in complying with the law and, therefore, ask you do not advance the bill from committee at this time. With that, I'm happy to answer questions.

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

**J. CAVANAUGH:** Thank you, Chairman, and thank you, Ms. Fellers, for being here. Just so I'm clear, this bill wouldn't mandate that we use any of this technology; it would just make it an option. Who would get to decide whether it gets implemented then?

**ANSLEY FELLERS:** Right, that's--

**J. CAVANAUGH:** You may have [INAUDIBLE]

**ANSLEY FELLERS:** No, that's-- no, that's all right. I think-- I don't know if the Department of Revenue is here or not. I think for our industry that that's true and that's correct, and we appreciate that it's not mandatory. But I think to some extent, even those-- the decision-- the question you just had is an outstanding one for us and that's why I think we'd like a little more input before something like this moved forward.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Anyone else? You heard Senator Lindstrom's opening regarding the California experience and how

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utilizing some different method reduced the amount of tax evasion. Do  
you think we have a problem here? Is something like this necessary?

**ANSLEY FELLERS:** So from our perspective, some of the things that we  
heard this morning, I think, are-- I don't think it's wrong to say  
that the system isn't perfect. I do think there are ways for the  
Department of Revenue to track sales. They do regular inspections.  
You're only-- part of the problem here is if you're doing something  
illegal, changing the technology or changing the methods won't prevent  
people from doing something illegal. So you're only supposed to be  
selling products that are registered with the Department of Revenue.  
You're only supposed to be selling products that are stamped according  
to the Department of Revenue's regulation. I know some of the-- the  
products, the paper used in stamps and things like that, those flaking  
off, they're meant to flake off, so retailers have a little bit of a  
hard time keeping some of those things on certain products. But the  
industry has been really-- and I'm happy to share with the committee  
some of the recommendations we had for the department to make that--  
for instance, the stamps, that's one thing I can think of that was a  
recommendation, the paper a little thicker, so that by the time the  
stamp-- the product gets to the retailer, it's not flaking off and  
they don't have to be seized. But, yeah, anytime the Department of  
Revenue enters a retailer and sees that they're selling a product that  
is not registered with the department or is not stamped properly, it's  
removed, and I don't think-- I think currently we're collecting more  
than 90 percent of the revenue we're supposed to be collecting from  
cigarette-- from cigarette sales.

**BRIESE:** But there is room for improvement?

**ANSLEY FELLERS:** Sure.

**BRIESE:** And some of these methods that have been described to us so  
far could help us improve on our collection processes?

**ANSLEY FELLERS:** I don't know.

**BRIESE:** OK.

**ANSLEY FELLERS:** Ostensibly.

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

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**ANSLEY FELLERS:** Thank you.

**BRIESE:** Any other opponents? Seeing none, anyone wishing to testify in  
the neutral capacity? Good morning and welcome.

**DANIEL MUELLEMAN:** Morning. Chairman Briese, members of the committee.  
My name is Daniel Muelleman. That's D-a-n-i-e-l M-u-e-l-l-e-m-a-n. I'm  
an assistant attorney general with the Nebraska Attorney General's  
Office and my main job is tobacco enforcement. I work closely with  
Department of Revenue and in conjunction with other members of the  
industry in making sure that our tobacco taxes are all taken in in a  
legal manner and sufficient manner so that we can maintain compliance  
with our obligations under the Master Settlement Agreement and other  
state statutes, so that we can keep the money coming in for the Health  
Care Cash Fund. With regards to this bill, we're testifying in a  
neutral capacity because we have some concerns with regard to  
different types of enforcement mechanisms under state law and under  
federal law. But we're generally in support of finding innovative ways  
to improve enforcement technology and reduce costs both for industry  
and for state government, and we think that there could be something  
here. Just as an up-front disclaimer, the-- the stamp tax systems that  
were described by Senator Lindstrom in the four other states, the--  
and by Mr. Brown, the-- the hologram stamp technology, that is not  
what our current understanding of the focus of this bill is. We  
understand that that hologram technology requires purchase of hundreds  
of thousands of dollars' worth of machines for local wholesalers, and  
it changes the system around. And it really doesn't make sense for a  
market like Nebraska, where businesses' focus in Nebraska are  
servicing multistate districts, and so changing one part of that  
district really doesn't do anybody any favors. But the-- the system  
that's being described by Mr. Brown, it could have potential, but  
the-- the concerns are really that we need to make sure that under  
state law, we're still able to, as a-- as a state government, track  
that tobacco taxes and the cigarette taxes because if we lose count of  
that type of information, that's when we start triggering the downward  
adjustments to the MSA payments, and that's a-- that's a real concern,  
so we need more clarity on what this system is that's really being  
proposed before-- before we can really start supporting it. The other  
problem is that the-- the bill, as written right now, would create  
some material inconsistencies with other parts of the cigarette tax  
code and that doesn't really service wholesaler ability to comply with  
the law because, you know, they-- they'd be trying to work under this

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part but in violation of other parts, and I can elaborate more on that if necessary. But the-- the base part of that is that the-- the bill needs improvement. And the final part is the federal statutes. That's the Prevent All Cigarette Trafficking Act and the Contraband Cigarette Trafficking Act. Those statutes require and rely on a sufficient state stamp tax program, and the-- the general understanding of a cigarette stamp is something that is heat-applied wax paper that's-- that's placed on the package. And if-- if we look into new types of code technology that's printed onto the packaging, while it may be beneficial, it could bring us outside of that stamp definition, so we need to be more careful and talk to federal regulators. That's about it. I'm here for any questions.

**BRIESE:** OK, thank-- thank you for that. Any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman, and thank you, Mr.-- is it Muelleman?

**DANIEL MUELLEMAN:** Muelleman, yeah.

**J. CAVANAUGH:** Thank you, Mr. Muelleman, for being here. First-- I guess first question is-- I asked Ms. Fellers earlier about who-- since this would be mandatory, do you know whose decision it would be whether to implement the program or how that decision would be made?

**DANIEL MUELLEMAN:** Under the current form of the bill? Yeah, under-- under the current form of LB511 there really is no mandate to change, but there could be a mandate to change to a different technology by the Legislature. But right now, the Nebraska Department of Revenue is under contract for the current tax stamps for a little while longer. I don't remember exactly. But if they elected to use a different type of technology, that would be the provision.

**J. CAVANAUGH:** So this bill would just allow them to look at this type of technology as an option the next time they go to bid that out.

**DANIEL MUELLEMAN:** I think it's the intention of the bill, but it doesn't necessarily set up or fund any sort of research and development for Department of Revenue right now.

**J. CAVANAUGH:** What sort of research and development would be required?

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**DANIEL MUELLEMAN:** Well, I-- when we're talking a multidollar, multiyear-- multimillion-dollar and multiyear contract for the Department of Revenue to enter into, I think they would want a lot more information on the technology prior to-- to signing the contract. And so that's what I'm talking more about with-- with research and development and technology.

**J. CAVANAUGH:** So I guess just so I'm clear, what you're saying is that this bill would allow them to pursue this option, but they wouldn't realistically pursue it because there are other constraints then.

**DANIEL MUELLEMAN:** Yeah, I don't want to speak for Department of Revenue, but essentially, yes.

**J. CAVANAUGH:** You see roadblocks to them pursuing it--

**DANIEL MUELLEMAN:** Yes.

**J. CAVANAUGH:** --whether they would do it or not.

**DANIEL MUELLEMAN:** Yes.

**J. CAVANAUGH:** But I guess to my original question, it would basically be an administrative decision then that they would get to decide how to do it.

**DANIEL MUELLEMAN:** It could be under this particular format.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Anyone else? Senator Lowe.

**LOWE:** Thank you, Chair, and thank you, Mr. Muelleman, for being here. What are the other states doing around us? Because we have distributors here that distribute into other states. So is-- is our taxing stamp similar to those in other states or are they using different technologies?

**DANIEL MUELLEMAN:** Yeah, our tax stamp is generally similar to a lot of other states'. As referenced in prior testimony from others today, Nebraska had a little bit of a research and negotiation process a couple summers ago about the particularities of the Nebraska stamp, and adjustments were made to try to make it more consistent with the--

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the stamp patterns of other states to improve stamp adhesion and consistency at the retail level. And so our stamps are-- are fairly similar to some of the other states' and we run into the same problems that the other states do. But in terms of tax level, we're one of the lower tax stamps or one of the lower tax-- cigarette tax prices to the surrounding states, and so we don't see a lot of cigarette tax from-- from our neighboring states or nearby states flooding into Nebraska.

**LOWE:** It was said that you collect 90-- about 90 percent of-- of what's owed in Nebraska. Is there room for improvement on that?

**DANIEL MUELLEMAN:** Yeah, I think there is room for improvement, and this type of technology could bring that type of improvement if it plays out the way that it-- that it's theorized. And not only would it improve general tax collection, both for excise and possibly sales tax, but it would also reduce administrative cost for state agencies as well as local businesses over the long term, because it would-- it would bring a lot more products under a more efficient tax technology collection system.

**LOWE:** All right. Thank you.

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

**BRANDT:** Thank you, Chairman Briese. Thank you, Mr. Muelleman, for appearing today. Under our existing law, obviously, we're talking about cigarettes. This also applies to smokeless tobacco and cigars and products of that nature.

**DANIEL MUELLEMAN:** This-- this technology could. Yes.

**BRANDT:** OK, but those are tax stamp items also or--

**DANIEL MUELLEMAN:** Cigars and smokeless tobacco and pipe tobacco and all that, those do not have tax stamps. Because of the packaging and the way it adheres to it, it's just not practical for current tax stamp technology.

**BRANDT:** And part of the purpose of the tax stamp is to verify that was a Nebraska tax and it wasn't a counterfeit brought in from another state or-- or somewhere else. How do you avoid that problem with those products?

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**DANIEL MUELLEMAN:** I think that's an excellent question. And how we avoid it is-- is that general wholesale moves the product at a lower cost and lower tax and at a lower volume to cigarettes, so I think that there's less consumer incentive for tax dodging for a lot of that product, but it-- it doesn't mean that it doesn't happen.

**BRANDT:** OK, thank you.

**BRIESE:** Thank you. Senator Brandt. Anyone else? Seeing no other questions, thank you for being here today and thank you for your testimony.

**DANIEL MUELLEMAN:** Thank you.

**BRIESE:** Any other neutral testimony? Seeing none, Senator Lindstrom, you're welcome to close.

**LINDSTROM:** Thank you, Chairman Briese and members of the committee. Excellent questions-- I think we got a better idea of-- of kind of what's going on. And I'll just back up a little bit how I got involved in some of this stuff. My first year down here, and that's even a longer story, but I was the chair of the Tribal Relations Committee, and I learned quickly what the MSA was and dealing with the manufacturers on the big four tobacco and then obviously with the Winnebago Tribe manufacturing their own, I went pretty in-depth on that and there was always discussion on are we collecting the taxes, are manufacturers paying into those particular places that there need to-- need to be in. Senator Briese and myself sit on the Revenue Committee and we often talk about collecting revenue, and the excise tax on tobacco comes up pretty often. And the state of Nebraska, we-- 64 cents per pack. And we've seen different bills that would raise that from a-- you know, up to \$1.00, \$1.50. And I think Missouri is the only state around us that has a lower excise tax on that. So when I-- when I toured Mr. Brown's facility, it was pretty fascinating to look at the possibilities of what that technology could lead into. And again, it's not-- the technology exists. I don't think they're the only one out there, so it isn't-- not bringing a bill just specifically for one company, but just the idea of how we could approach this. And what they were able to look at, and-- and not only collecting the 100 percent or close to 100 percent in taxes without raising the tax intrigued me, but it was more the next step on what that technology offers with regards to opioids, one of those issues

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that I've worked on since I've been down here as well, and then with the potential of either medicinal cannabis or cannabis in the future is most-- is likely. So I think the applications of this are-- are long term. Is the bill perfect? No, there's definitely room for improvement. And-- and part of it, when we put in the--in the statute the "or," I didn't-- I wanted to make sure that we weren't mandating anything, that it wasn't onerous on the people that would adopt the technology, because it is-- it's relatively new. Again, I stated that four other states are doing some type of version-- if we need to change some language in there. I did find it a little bit interesting about the vetting process that one-- the opponent talked about. I mean, we dropped this LR back in July, so it isn't as if we just brought this bill in the last couple of weeks and nobody knew about it. But again, I think there is room. I appreciate what the AG' Office has said. We've-- we've been in contact with Daniel in the AG's Office during this course of time, and we are more than willing to work with the committee and all the parties involved just to-- to get the bill in-- in the proper order and to move forward, because I do think the technology is warranted. And going back to Senator Brandt's comments on smokeless tobacco, cigarette-- cigars and those products, that obviously there's probably room to-- to-- to use those products, and we're not collecting probably 100 percent of the taxes on that. That's probably a little bit easier to get around. So if this technology can be built into the can or the cigarette or cigar box, if it's Swisher Sweets or whatever people are smoking these days, but I-- I just think the technology is something that, one, it's relatively unique. It's a Nebraska company. Others do it. But when we talk about collecting the taxes at 100 percent and not having this black market out there, I think that there's an opportunity here for Nebraska to take that up and pursue that. So I'll stop there. I'll be happy to answer any questions. And again, I appreciate the committee's time and hopefully your willingness to work on getting this bill a little bit better. Thank you.

**BRIESE:** Thank you, Senator Lindstrom. Any questions for the senator? Seeing none thank you--

**LINDSTROM:** Thank you.

**BRIESE:** --thank you for coming to see us today and bring this to us.

**LINDSTROM:** Always good to see you.

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**BRIESE:** Yeah, likewise. And we have no letters for the record on LB511, and that'll close the hearing on LB511. And here shortly, we'll open the hearing on LB72. Senator Geist--

**GEIST:** Yes, thank you.

**BRIESE:** Good morning and welcome.

**GEIST:** Thank you, Jonathan. Always appreciate him. I think you're the best, attentive to details page there is. All right. Thank you, Chairman Briese. And good morning, members of the General Affairs Committee. For the record, my name is Suzanne Geist, S-u-z-a-n-n-e G-e-i-s-t. I represent the 25th District, which is the east side of Lincoln and Lancaster County. I have introduced LB72 to allow Class C and Class I liquor license to sell a mixed drink or cocktail to a person 21 years of age or older for consumption off the premises of the establishment. During the pandemic, I met with local bar and restaurant owners in my district because their businesses were greatly affected by all of the directed health measures. After listening to local owners, I found that some of them were able to keep their businesses afloat because the Governor had signed an Executive Order to allow mixed drinks or cocktails to go. Most of these businesses are going to take years to recover from the pandemic, and I thought if there was something we could do or I could do that would help these businesses recover and stay open, then we should try. LB72 was drafted the way it is in order to not lose \$6 million dollars of federal highway funding, and this is really important. And you're also going to hear probably a little pushback on the bill because of the way it's drafted, but this is an explanation for you. It was drafted to mirror the wine-to-go statute because we knew that following the wording from that statute would keep us from losing highway funding. This is the reason the bill mentions that the mixed drink or cocktail needs to be in a sealed container and put in the farthest-back compartment of the vehicle. After the bill was drafted, I learned that farm wineries had also been affected by the pandemic. I have an amendment that would add the availability for farm wineries to sell wine slushies and sangrias to go. The farm wineries would only be allowed to use their own wine and not any other types of alcohol to the drinks. I have emailed a copy of the amendment to you. Dean Hart, who is-- who was co-owner of a-- of Dino's, which is a restaurant that's in my district, will be testifying in favor of the bill behind me, and there will also be

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several others testifying. Thank you for your time and attention and  
I'd be happy to take any questions.

**BRIESE:** Thank you. Any questions for the senator? Seeing none, thank  
you for that.

**GEIST:** Sure.

**BRIESE:** You'll be here for closing?

**GEIST:** I will stick around for closing.

**BRIESE:** Thank you.

**GEIST:** Thank you.

**BRIESE:** First proponent testifier. Good morning and welcome.

**ZOE OLSON:** Good morning. Good morning, Chairman Briese and members of  
the General Affairs Committee. My name is Zoe Olson, Z-o-e O-l-s-o-n,  
and I am the executive director of the Nebraska Restaurant  
Association. I want to thank Senator Geist for bringing LB72 forward  
into Hobie Rupe and his staff at the Nebraska Liquor Control  
Commission for the open and thoughtful discussions we had while  
working on this leg-- legislation. The Nebraska Restaurant Association  
is a nonprofit trade association representing restaurants and sports  
bars across Nebraska. Our members are licensed food and beverage  
establishments throughout the state, plus businesses that provide  
goods and services that support our industry, an industry that's  
essential to the economy of this state, providing jobs in the majority  
of our communities, contributing to the tax rolls, the largest  
collector and remitter of occupation taxes in communities, and an  
industry comprised of community leaders who contribute to many  
charitable efforts. Today, I am speaking in support of LB72 on behalf  
of the Nebraska Restaurant Association, the Nebraska Licensed Beverage  
Association, the Nebraska Retail Federation, and the Nebraska Grocery  
Industry Association. The CPVOD-19 pandemic has severely impacted  
this-- every part of this nation in this past year and our industry  
has been particularly hard hit. Many restaurants have been forced to  
close. On March 19, 2020, the first Nebraska DHM precluding indoor  
dining was-- was issued and our members scrambled for ways to  
maintain-- maintain operations in some form, would it be delivery,  
carry-out, or curbside pickup, and to keep staff employed and to

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continue serving in our communities. This was more challenging for those establishments in particular that were not top of mind for these types of services. They were primarily an indoor dining experience. At the request of our members, I asked Governor Ricketts to permit the sale of premade cocktails and other alcoholic beverages to accompany carry-out meals in order to bring in some much-needed revenue and help us keep our businesses from failing at this most difficult time in the industry. I provided information on what states were doing, other states were doing, and after much discussion, Governor Ricketts signed Executive Order 20-09 on March 26, 2020, providing critical relief to restaurants and bars across the state by allowing carry-out sales of premade cocktails and other alcoholic beverages so long as the containers were sealed and not partially consumed. Indoor dining has not returned to pre-COVID levels, and our restaurants and sports bars are still struggling to remain in operation with significantly reduced revenues. We are hopeful that once vaccinations have been widely distributed, consumer confidence will be evidenced by people returning to a more normal existence with each other in community. LB72 would make the relief more permanent by codifying the Executive Order 20-09 changes to the Nebraska Liquor Control Act and placing reasonable restrictions on the sealing and transporting of alcoholic beverages. We believe Nebraska consumers have been responsible when exercising their right to enjoy a cocktail or alcoholic beverage to go with their favorite takeout meal in the privacy of their homes these past nearly 11 months. The Nebraska Restaurant Association, the Nebraska Licensed Beverage Association, the Nebraska Retail Federation, and the Nebraska Grocery Industry Association ask the General Affairs Committee to advance LB72. We look forward to continue working with the Nebraska Liquor Control Commission to implement the important provisions of this bill, and we thank you for your time. And I'd be happy to take any questions.

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

**ARCH:** Thank you, Senator Briese. So how are restaurants right now complying with the requirement that they be sealed?

**ZOE OLSON:** In the executive order it needs to be in a sealed cup.

**ARCH:** Is that simply a lid?

**ZOE OLSON:** A lid.

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**ARCH:** OK, so--

**ZOE OLSON:** And we did-- and we did discuss that, what would it be, and at first it was like-- the-- the Governor's Office said, well, would we have come up with special things and he--

**ARCH:** Right.

**ZOE OLSON:** And I said, well, you know, if you get coffee to go, it's a lid. This bill would take that father and would-- would make it-- I think we've discussed tamper-evident tape that would go over the lid, sealing it, and also over any straw hole. I, for one, had some heated discussions with some of my members and said, do not send a straw out with-- do not-- do not do that, so-- because, you know, if you're thirsty and you're driving down the road, you know, we don't want that. We absolutely do not want that, and we appreciate that in this bill the alcohol would be placed in the-- behind the driver in the seat if a trunk were not available; otherwise, it would be in the trunk, so--

**ARCH:** So that-- yeah, that was my other question is the furthest compartment, right? Senator Geist testified to that.

**ZOE OLSON:** The furthest compartment.

**ARCH:** So that's the trunk?

**ZOE OLSON:** That's the trunk.

**ARCH:** It would be an unspillable container.

**ZOE OLSON:** Sure, and I'm pretty sure that during this pandemic, probably everybody has been figuring out different ways to do things. And this has been very popular, and so I'm pretty sure there are people that have been figuring out how to get those cocktails home without spilling them. I myself, when I go carry-out, I always ask for a-- and-- and not just alcohol, but any soft drink, I ask for a carrier and they work great.

**ARCH:** OK. Thank you.

**ZOE OLSON:** Um-hum.

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**BRIESE:** Thank you, Senator Arch. Senator Cavanaugh, I think is--

**J. CAVANAUGH:** Thank you, Chairman, and thank you, Ms. Olson, for being here. I kind of wanted-- to Senator Arch's questions, so this is mirroring a bit the wine take-out, that requirement for the trunk. Is that the responsibility of the restaurant then to put it in the trunk?

**ZOE OLSON:** Well, I think it's a twofold. If someone were saying to-go and they were doing curbside pickup, then, yes, they would put it in there, but it's-- invariably it's up to the driver to make sure that they're, just like when you're driving, you're not having an open container with you and drinking, and the responsibility is twofold. You would want to put it in the trunk, but also the driver would want to make sure that it was where it was supposed to be.

**J. CAVANAUGH:** So the restaurant would be-- I guess I haven't done any take-out because I haven't gone anywhere in the last year and a half but--

**ZOE OLSON:** We'll get you some.

**J. CAVANAUGH:** So some people obviously carry it out curbside. Some people go inside and pick it up. So if you carry it out curbside, it's the responsibility of the restaurant. If I go inside and pick it up, is their responsibility only to inform me that I have to put it in the trunk or-- I-- I--

**ZOE OLSON:** We would-- we would absolutely be informing you. We're pretty good at telling you what you must do. We are the-- the-- we're the-- we want people to be healthy. We want them to come back. And so we really do look out for people and making sure that they understand what their roles and responsibilities are.

**J. CAVANAUGH:** Well, and I guess that was going to be my follow-up, is who's liable if somebody doesn't follow this? So if I get pulled over with it in the front seat and I say, oh, I just left X restaurant, is liquor enforcement going to come and say to that restaurant somebody if somebody doesn't--

**ZOE OLSON:** I don't believe it's in the bill that way, no. I would say that would be the responsibility of the-- of the driver of the vehicle, just like any other-- if there's an automobile infraction that you're doing a traffic infraction, they're not going to go to

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the-- pay-- to the-- the passenger. They're going to go to the driver.  
You're-- you're operating a motor vehicle, and so there is  
responsibility there.

**J. CAVANAUGH:** So it would fall under like the open container statute,  
probably, then?

**ZOE OLSON:** Um-hum, um-hum.

**J. CAVANAUGH:** You might not be the right person for that question, but  
I'm just--

**ZOE OLSON:** No, but-- but--

**J. CAVANAUGH:** I'm just thinking out loud.

**ZOE OLSON:** But we-- we don't-- we absolutely don't want to do this.  
And there was also-- there's been some questions about, well, will  
this increase drunk driving? Obviously, the pandemic is not a great  
time to know what's increased what, other than COVID and frustration.  
But we have had a pretty good test over these 11 months. And I have  
spoken to many groups, most of them virtually, about what the Nebraska  
Restaurant Association is, some in person. And, you know, I've made  
that remark that we just haven't seen a significant increase in DUIs  
or anything. And there's always one person in the room that says,  
well, yeah, you probably aren't going to get wasted on \$9 cocktails.  
That's true. This is an experience so when you order that favorite  
Mexican meal, you can have a margarita to go with it. And it's just--  
it's that experience that you would have gotten at the restaurant had  
you dined in the restaurant, and many people are not. And so it just  
complements that.

**J. CAVANAUGH:** Thank you.

**ZOE OLSON:** Um-hum.

**BRIESE:** Thank you, Senator Cavanaugh. Senator Lowe.

**LOWE:** Thank you, and thank you, Ms. Olson, for being here. I have two  
questions.

**ZOE OLSON:** Sure.

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**LOWE:** Say I drive a pickup--

**ZOE OLSON:** Um-hum.

**LOWE:** --just a two-door pickup--

**ZOE OLSON:** Um-hum.

**LOWE:** --doesn't have the area in the back. The liquor would go in the  
back end of the pickup then?

**ZOE OLSON:** I'm not sure on that, but I-- I have driven pickups and  
your seat falls forward, correct?

**LOWE:** Yes.

**ZOE OLSON:** You can get behind the-- you could put that behind there  
and I think you'd have a heck of a time getting it out of the seat  
behind you while you're driving.

**LOWE:** All right.

**ZOE OLSON:** I would have. I mean, that's where I put all my-- yeah.

**LOWE:** OK, might be a better question for somebody that might follow  
you.

**ZOE OLSON:** I think that might be a better question for Senator Geist.

**LOWE:** And the second question, the wine slushy or the frozen  
margarita, how's that going to get home without being melted?

**ZOE OLSON:** That's a really good question.

**LOWE:** OK.

**ZOE OLSON:** And I'm not in the--

**LOWE:** Just curious.

**ZOE OLSON:** I'm not in the wine business and I--

**LOWE:** I haven't done that yet.

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**ZOE OLSON:** I don't do my wine slushy. I just do-- you know.

**LOWE:** All right. Thank you.

**ZOE OLSON:** Uh-huh.

**BRIESE:** Thank you, Senator Lowe. Anyone else? In general, how has your membership weathered the pandemic? I mean, have many went out of business or--

**ZOE OLSON:** Oh, we've-- we've-- we expect that about 31 percent of restaurants overall will go out of business in Nebraska, which is a little bit lower than the national average. But it seems we're dying a death of a thousand cuts. And so there's no one thing that's going to make us whole or make us wonderful and make us back to normal, so we find all the things we can put together to keep the bandaids on. And, you know, parts of our industry are doing great, honestly. If you talk to somebody from Runza, Linda Dennis will say we are blessed, but they were top of mind if-- you know, drive-thru restaurants, that's where you thought you were going to just grab something, so others have had to work harder.

**BRIESE:** Sure.

**ZOE OLSON:** And then there's been additional costs for things like this and extra PPE and extra sanitizing and just extra training for our staff so that they're safe, as well, so it's difficult. We're still down about-- revenues are about-- down about 30 percent on average, between 20 and 35, so we say 30 overall. During indoor dining, we had revenues that were down 94 percent--

**BRIESE:** OK.

**ZOE OLSON:** --and that was just really difficult.

**BRIESE:** You mentioned the possibility of 31 percent closing their doors. How does that compare to a nonpandemic year? I assume there's an average percentage that--

**ZOE OLSON:** About 6.

**BRIESE:** About 6.

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**ZOE OLSON:** Yeah.

**BRIESE:** OK. Very good. Thank you for your-- any other questions?  
Seeing no others, thank you for your testimony.

**ZOE OLSON:** Thank you so much.

**BRIESE:** Next proponent testifier. Good morning and welcome.

**DEAN HART:** Good morning, Chairman, members of the committee. Thank you for listening to me today. I-- my name is Dean Hart, D-e-a-n H-a-r-t, and I own a local family-run business here in Lincoln, a restaurant. So we've been there for 14 years and I'm going to testify in support of the amendment or the statute change to allow cocktails for takeout. Obviously, being impacted by the pandemic and when they decided to amend or to relax the restrictions on cocktails to be able to take home with you, and most of it is all curbside, you know, it's all for takeout product only, you know, didn't quite know what the response was going to be when we first got that ability to do that. And it really has surprised me how popular it has been. So I would say kind of what Ms. Olson was saying. Our business is probably somewhere between 40 and 50 percent down from where it should be this time of year and probably half of that is made up of takeout. So in-house and takeout is probably half, so we have seen a significant lift in those additional sales. Now it's not going to right our ship; it just kind of slows the-- the bleed, as it were, from-- from what we're experiencing. What we don't know at this point is how long before people return to prepandemic-type of levels. That's an unknown. I think it's going to take some time. But I think allowing this to be-- the statute to be amended, I think, you know, we had to learn a little bit because there wasn't great, crystal-clear instructions on-- we just were allowed to do this with a sealed container and which we do not have-- our containers are sealed. There is no-- couldn't put a straw in one of them. So what we also started doing is putting a tamper-resistant seal on it (1) so it was harder to open; (2) so that when you did give it to your customer, the chances of it spilling, the lid coming off and spilling, went way down. So it kind of served two purp-- two purposes. But that's been pretty effective because obviously the intent is to drink it when you get home. So, you know, the big thing, too, is, is that I looked at this and I thought about this, even when the Governor relaxed that requirement and allowed that to happen, is are we putting people more in harm's way? And I would

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say if someone sits in a restaurant for a couple of hours and has, oh, three, four drinks and then goes home, I don't know that they're-- I think their exposure is less on the sealed container that you're presumably going to drive straight home. Our customers live within a three- to five-mile radius of our building. That's where the vast, vast majority of our customers-- they're not driving great distances. So I don't believe it'll be hard, I don't think it'll be a significant change, and I think it'd be easy-- fairly easy to manage. So thank you.

**BRIESE:** Very good. Thank you for your testimony. Any questions?  
Senator Lowe.

**LOWE:** Thank you, Mr. Chairman. Thank you, Mr. Hart. The first question is, what business do you own?

**DEAN HART:** It's called Dino's, and it's a family restaurant at 84th and Van Dorn here in Lincoln, so we kind of are just a, oh, kind of family and friends restaurant, so about a 200-person capacity.

**LOWE:** OK, and how's this pandemic hurt your business?

**DEAN HART:** Like I mentioned, you know, I could go on. But the bottom line is we're averaging about-- we're down about 40 percent. That number was higher. It's a little better now, but we're still averaging about 40 percent where we should be, comparatively speaking, to this time last year before it really hit hard, but that's kind of been consistent throughout the fall and here into the first couple of months of 2021. So those curbside pickup orders have been a really significant help to us. Otherwise, I do believe we'd be in much, much more dire straits than we are. You know, obviously, we're managing the best we can. Staffing has been impacted quite a bit. And so we're just kind of trying to ride out the storm, so.

**LOWE:** In-- in a normal year, if you were down 10 percent, would that be a critical year?

**DEAN HART:** Absolutely. You know, the-- the margin that we operate on as an industry are pretty slim. So when you see any type of decrease in revenue, it's going to-- you're going to feel an impact. And 10 percent would certainly be alarming to us; 40 percent is, you know, catastrophic. I will say that the assistance that we've received have

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made a big difference and the PPP money we received has kind of shored us up. You know, for me, it's-- this is not my only job, but it is for a lot of people who work for me, especially our management team, so preserving those jobs and keeping those people employed, it does mean a lot to me.

**LOWE:** Thank you for being in business.

**DEAN HART:** Thank you.

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

**BRANDT:** Thank you, Chairman Briese. Thank you, Mr. Hart, for testifying today. My question is, because the takeout is new to Nebraska, can you as a proprietor legally advertise and say we're running a special on Margaritas this week or Jack and Coke or-- or something like that? Can you promote the takeout? Is that legal in this state?

**DEAN HART:** You know, I'll be honest with you, Senator, we have been promoting our cocktails to go. You know, it's done in conjunction with food.

**BRANDT:** Sure.

**DEAN HART:** And so it's not just-- we're a Class C license holder, so we've always been able to sell unopened off sale. Right? But obviously moving that to cocktails in a sealed container just kind of takes it to another level. But as far as advertising, there was no restrictions that we were aware of. So we were-- we have advertised those cocktails on social media sites, things like that, so.

**BRANDT:** OK.

**DEAN HART:** And that's proven to be pretty popular. It's-- it's been [INAUDIBLE]

**BRANDT:** All right. Thank you.

**BRIESE:** Thank you. Senator Brandt. Any other questions? Senator Cavanaugh.

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**J. CAVANAUGH:** Thank you, Chairman. Thank you, Mr. Hart, for being here. You might not know the-- the answer to this question, but just your reference to the Class C license holder made me wonder, and maybe somebody later will know, what are the types? So this is-- affects Class Cs and Class Is.

**DEAN HART:** You know, I'll speak to what our class is and allows us for in-house service, but also for takeout or carry-out, the--

**J. CAVANAUGH:** Package sale?

**DEAN HART:** --package-- has to be packaged, right.

**J. CAVANAUGH:** Do you know whether this would affect drive-thru windows and restaurants of that nature?

**DEAN HART:** You know, I don't know the answer to that.

**J. CAVANAUGH:** And I guess a Class C is a restaurant that can sell package. Do you have any idea what a Class I is?

**DEAN HART:** I do not.

**J. CAVANAUGH:** I'll ask somebody else. Thanks.

**DEAN HART:** You know, I-- I just kind of know what we do and [INAUDIBLE] so--

**J. CAVANAUGH:** That's fair. I kind of don't want to put you on the spot.

**DEAN HART:** Not a problem.

**BRANDT:** Thank you, Senator Cavanaugh. Anyone else? Seeing no other questions, thank you for your testimony today, Mr. Hart.

**DEAN HART:** Thank you for your time today.

**BRIESE:** Next proponent testifier. Good morning and welcome.

**VANESSA SILKE:** Good morning. Chairman Briese and members of the General Affairs Committee, my name is Vanessa Silke; that's V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and also registered lobbyist for the Nebraska Craft Brewers Guild. I echo everything that the prior

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testifiers have said, and I'm here to make just a couple of very quick, easy points, and I'm happy to answer any questions you have. Number one, I thank Senator Geist and Mary in her office for reaching out. As many of you know who have served on this committee, alcohol, especially at the retail and local level for producers like my members at the Nebraska Craft Brewers Guild, is highly regulated, and when we think we're switching one thing and it's an easy fix, might be knocking over some dominoes in other areas, which is what they took great pains to explain to me with the highway transportation funding issues. And so if we could have it any other way, we would want a lot less words in this bill, but we understand and we support the bill as written because of that effort that Senator Geist made to make sure that we don't lose funding while we also support local businesses. With that, the only other clarification that I want to make was the last testifier talked about Class C licenses and you can sell on- and off-sale in the original package. And this bill facilitates mixed drinks and things that were not originally bottled or canned. And the bill after this, LB578, is going to deal with canned original package, as that term is defined in the Liquor Control Act. So that's the only other thing I wanted to pregame and otherwise, the last point was that there's an amendment to add Y licenses, to add the farm wineries. The guild absolutely supports this. We support anything that enables the growth of local businesses throughout Nebraska, particularly with alcohol. So with that, I'm happy to answer any questions that you might have.

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

**VANESSA SILKE:** Great, thank you.

**BRIESE:** Next proponent testifier. Good morning and welcome.

**RICHARD HILSKE:** Good morning. My name is Richard Hilske, R-i-c-h-a-r-d H-i-l-s-k-e. Thank you, Chairman Briese and members of the General Affairs Committee. My wife and I own Cellar 426 Winery in Ashland. I come today to support, of course, LB72 and appreciate Senator Geist's adding the farm wineries to this bill. When DHS restrictions forced us to shut the winery tasting room down to customers late last March, we were very concerned where our business would be headed. We turned to drive up sales of our wine bottles, then the Governor made his emergency order allowing takeout drinks, and this really helped us

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survive the early stages of this devastating pandemic. We have served sangria on a regular basis to drink at the winery since we opened nine years ago, and it is very popular, so we decided to take advantage of the emergency order and quickly found suitable, conforming containers to sell on a drive-up basis. We even went the extra step and we made sure we taped down the lids so they couldn't-- couldn't be opened or, to our-- to the best of our ability, couldn't be open while they were in their hands. During the time from late March to early May, while we were limited to drive-up/drive-thru sales only, we sold over 1,700 containers of the sangria to go. Between wine bottle sales and the sangria sales, we were overwhelmed at how our wonderful customer supported us and kept us in business. We opened back up the tasting room to in-house seating in mid-May and continue to sell the to-go drinks as allowed. After enjoying time at the winery, customers would purchase some to enjoy at home either later that day, the next day, you know, a couple of days down the road, or we would have customers that would just come and get just the sangria. Well, we're not doing nearly as many as we did during our drive-up days. We still do a fair amount and it is a nice addition to the bottom line and provides additional sales tax revenue to the state as well. So it's kind of a win-win for everybody. With the state always looking for additional tax revenue, I think it would be a grave error not to make this emergency order a permanent part of the laws of the state, and I ask you guys to support LB72. Thank you.

**BRIESE:** Thank you. Any questions? Seeing none, thanks again for your testimony. Next proponent testifier.

**JOE KOHOUT:** Good morning, Vice Chairman Lowe--

**LOWE:** Go ahead.

**JOE KOHOUT:** --and members of the General Affairs Committee. My name is Joe Kohout, J-o-e K-o-h-o-u-t, and I'm testifying today on behalf of the Associated Beverage Distributors of Nebraska, or ABDN, a trade association of the 17 family-owned beer distributorships that employ hundreds of family, friends, and neighbors across the state, in order to provide choice and variety to retailers and consumers when it comes to beer and other beverage choices. When I testify later, I will leave that off of my testimony on all the other bills, so just so we're all on the same page. Thank you for the opportunity to visit with you today about the views of our members and their employees on LB72. We

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appear in support of LB72 and thank Senator Geist for bringing forth legislation that would implement one of the most popular concepts that came out of the emergency actions by the Governor during the pandemic. As you can imagine, our association was in very close communication with the Governor's Office and the Liquor Control Commission on the variety of issues that were ultimately found in this and other executive orders issued last spring. This one, in particular, saw many, many positive comments from patrons of licensed retailers. However, we did hear the occasional comment about containers being used that were not appropriate, like soup cans. Similarly, we did hear concerns about safety and welfare of the public, specifically through not drinking while driving. We believe that Senator Geist's bill strikes the right balance, solving those two concerns. On behalf of our members, the Associated Beverage Distributors of Nebraska, we ask that the committee advance this measure. I will try to answer any questions you might have.

**LOWE:** Are there any questions? Senator Brandt.

**BRANDT:** Thank you, Vice Chairman Lowe. Thank you, Mr. Kohout, for appearing. And I know you represent a large part of the industry. Do you know offhand, are their sales up or down with the pandemic?

**JOE KOHOUT:** I think-- and-- and I-- I know Mr. Rupe is going to testify behind me. I'd have to go and-- you know, that's a-- that's a question that deals with individual members and I-- we-- we don't really talk about that when we-- when we're discussing issues. So I would leave it to Mr. Rupe to talk about what they've seen as far as additional revenues, but by way of tax, because that's where you would usually see it.

**BRANDT:** Sure. OK, thank you.

**LOWE:** All right. Thank you, Senator Brandt. Are there any other questions?

**JOE KOHOUT:** Thank you very much.

**LOWE:** Thank you.

**HOBERT RUPE:** [INAUDIBLE] That way, I can try to answer any questions [INAUDIBLE]

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**TIM HRUZA:** Senator Lowe, members of the General Affairs Committee, my name is Tim Hruza, last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska Wineries and Grape Growers Association in support of LB72, and specifically in support of the amendment that Senator Geist has offered here this morning. Farm wineries in Nebraska are licensed differently than other license holders. We have a wine license, which is what you see referenced in the amendment, that allows us to sell our wine products that are made here in Nebraska. And one thing that came up after reviewing the bill was that the initial version draft did not include some of the things that you've heard that our wineries were able to do in the wake of the Governor's order and in response to the COVID-19 pandemic, including the sales of sangria and, as referenced as well, wine slushies. So we appreciate Senator Geist's responsiveness to our request. It is a unique situation. It is something that really has helped our members deal with their bottom line. An extra couple hundred dollars, even in sangrias sold or more than that, can go a long way toward meeting payroll obligations at a time when sales-- sales are down, as you've heard every testifier before me say. So with that, I thank Senator Geist for her responsiveness to our requests. I know Hobie Rupe with the Liquor Control Commission has been involved also and he'll testify behind me, but I thank him for his responsiveness and support of the concept and the bill and the way that it's crafted. With that, I'm happy to answer any questions that you might have and ask you to advance LB72 to General File.

**BRIESE:** Thank you. Any questions? Seeing none, thank you for your testimony. Next proponent testifier. Good morning and welcome.

**BUD SYNHORST:** Good morning. My name is Bud Synhorst, B-u-d S-y-n-h-o-r-s-t. I'm the president and CEO of the Lincoln Independent Business Association, representing over 1,000 businesses, primarily located here in Lincoln and Lancaster County. And significant part of our mission is to communicate the concerns of the business community to elected and appointed officials at all levels of government. Chairman Briese and members of the General Affairs Committee, thank you for the opportunity to be here today in support of LB72. Over the past year, local businesses have been devastated by the loss of revenue due to circumstances beyond their control. In our lifetimes, we have not seen so many government -mandated business closures where the government tells business how they can and cannot run their business, and in many cases only in certain sectors of business. For

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instance, bars and restaurants were forced to close while big-box retail outlets were flourishing. During the pandemic, the hospitality industry was likely the industry hit the hardest. Imagine yourself as the owner of a full-service restaurant and being told you cannot be open unless you offer curbside-- curbside takeout. Those restaurants did the best they could under those circumstances. Then bars were added into the fold for even further restrictions, where-- when bars that served food were allowed to open and bars not serving food were not-- couldn't be open. All the circumstances were not ones that business owners caused by their actions. These were government circumstances that pushed-- that were pushed upon them. In response to the closures, Governor Ricketts signed an executive order allowing the sale of alcoholic beverages by restaurants and bars in a to-go capacity. This allowance for bars and restaurants was helpful for their business to do what they could to keep their businesses open during this pandemic. LB72 provides statutory implementation of this program and provides safeguards of the transportation of the purchased alcohol, similar to the provisions in statute passed by the Legislature for purchased bottles of wine to be allowed to be taken to go. We encourage you to pass this bill on to General File, to the full Legislature, and thank you for your time.

**BRIESE:** Thank you. Any questions? Seeing none, thank you for your testimony. Any further proponent testimony? Good morning and welcome.

**KRISTI BROWN:** Good morning. Thank you, Mr. Chairman. Chairman Briese, members of the committee, thank you for allowing me to appear before you today. My name is Kristi Brown; that's K-r-i-s-t-i, last name Brown, B-r-o-w-n. I'm here representing the Distilled Spirits Council of the United States. We typically refer to the-- our organization as DSCUS. DSCUS is a national trade organization representing producers and marketers of distilled spirits and importers of wine sold in the U.S. You've already heard quite a bit about LB72 this morning, but what I really wanted to convey from our organization is how important this type of legislation has been across the country to provide a lifeline to restaurants. I tried to include in your handout a map that actually shows the 33 states that currently allow cocktails to go, two of which have already made this type of legislation permanent. Iowa was actually the first in the nation, and recently Ohio followed suit. We actually have bills active in 22 states right now. Kansas actually just extended their cocktails-to-go provision until the end of March because there is a permanent bill in the works right now. And they

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wanted to ensure that there was additional time so that there wasn't a gap in that opportunity. And I appreciate the questions that have been asked so far today regarding how the alcohol is actually transported when the consumer takes it home, and I think that Senator Geist has done an outstanding job of-- of balancing the needs to ensure that you meet all of the requirements, both federally and I think what your constituents expect of you, while still leaving enough leeway for individual restaurants to determine what would be the best course and-- and way that they choose to package the cocktail to go. We've seen all kinds of packaging that are highly effective across the country. There's more and more available online to restaurants to be able to order. But because of the way that this particular legislation has been drafted, you have allowed your restaurants as much leeway as possible while also-- also ensuring safety. I'm happy to answer any questions you might have. And if I can't answer them now, I'll be sure to get back to you as quickly as possible.

**BRIESE:** Thank you. Have any questions? When did Iowa and Ohio do this?

**KRISTI BROWN:** Iowa actually did it before the end of last year and Ohio was just in the last month.

**BRIESE:** OK, any data out there on highway safety-- on highway safety impact relative to these changes?

**KRISTI BROWN:** Not as of yet. We do track that on a monthly basis and we have not seen any increase--

**BRIESE:** OK.

**KRISTI BROWN:** --and we've not heard any anecdotal stories, because often you can't provide data at first but you might be able to share a story or two. At this time, we have not heard of any examples of this being a problem, and the restaurants have gotten quite creative in how they like to provide containers that are safe and tamper evident. One in the D.C. area started referring to them as "Fauci Pouchies," so there's been a lot of creativity while still ensuring the safety for the public.

**BRIESE:** OK, very good. Thank you. Senator Lowe.

**LOWE:** Could you explain what kind of containers they're putting them in that might be--

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**KRISTI BROWN:** Um-hum, sure. As you all mentioned today, there's actually been several examples of where you used tamper-- tamper-evident tape over existing cups, often Styrofoam, so that if anybody breaks that seal, it's obvious. You also see that, especially post 9/11, in a lot of the things that they put on airplanes when-- with service carts. There are also pouches that in Kansas you actually have to have a pouch that is partially see-through so you can see what's actually in it. But once it's sealed, it can't be opened and then resealed. It's just open. So there are some that are more like an industrial strength Ziploc bag, in a sense. There are some that are sealed more in a-- just a regular container that's taped shut, but then they use the heat sealant across the top and that you often see when people take a bottle of unfinished wine home.

**LOWE:** OK.

**KRISTI BROWN:** So pe-- they are using a myriad of-- of products. And one of the reasons I compliment Senator Geist on her wording is because what this does is it allows restaurants to approach it in a safe manner while still doing it economically. They're already struggling enough as it is and being able to utilize, but then also augment, the products that they already have on hand to be able to do this is-- is really helpful.

**LOWE:** Thank you.

**KRISTI BROWN:** Um-hum.

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

**KRISTI BROWN:** Thank you.

**BRIESE:** Next proponent testifier. Good morning and welcome.

**NICOLE FOX:** Good morning. Chairman Briese, members of the General Affairs Committee, I'm Nicole Fox, N-i-c-o-l-e F-o-x, director of government relations for the Platte Institute, here to testify in support of LB72. And as already mentioned, the hospitality industry has been extremely hardly hit with the COVID pandemic, with overall restaurant sales being down on an average of 30 to 50 percent. I don't think there's anybody in this room that probably hasn't heard of their favorite restaurant or bar establishment having to go out of business.

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And I'm sure many of you, like myself, have had conversations with current owners about some of the measures they've had to take because they're concerned about their businesses staying afloat, whether it's laying off employees or cutting hours or trying to limit their menu selections just to decrease their inventory, being able to sell pantry staples. The list can go on and on. And in response, like many states, Nebraska implemented measures to allow the sale of to-go cocktails to help restaurant and bar owners generate additional revenue. And I know in my neck of the woods, a lot of the restaurants and bars got very creative. As Kristi mentioned, we had a restaurant doing things similar to the "Fauci Pouchy." They were-- they called them adult juice pouches. Some of them were selling them in decorated mason jars. Some of them, you know, acknowledged that-- that families maybe wanted to be able to order things to go or in-- in quart-size containers versus individual. A lot of people got very innovative. They were on social media advertising new, innovative drinks, just, again, to-- to try and mitigate some of these effects and increase their sales. And also, as Kristi mentioned, Iowa, our neighbor, was the first state to take some of these temporary measures and make them permanent, and they were followed by Ohio. And she also mentioned that there are several other states, over 20 states in the country, that are doing what Senator Geist is doing here in Nebraska, and that is trying to make the sale of to-go cocktails permanent. I do understand and I do appreciate Senators [SIC] Geist being very cautious as far as the wording of her bill to make sure that the state of Nebraska does not lose highway funding. I don't know if it's a possibility, but we do offer a couple of suggestions: one, just making sure that the packaging requirements aren't too onerous and cutting into revenues; and then secondly, I don't know, just from a practicality standpoint, should there be a passenger in the vehicle, if they would be able to-- to hold on to the beverage, just because, again, concerns with spillage and things like that, nothing is foolproof. But anyway, thank you, Senator Geist, for introducing this bill to permanently allow to-go cocktails in efforts to mitigate COVID-19 side effects of the pandemic. This is a very pro-small business bill, and as we know, small businesses are the backbone of this state, in addition to agriculture. So with that, I'm happy to take any questions.

**BRIESE:** Thank you. Any questions? Seeing none, thank you for your testimony. Next proponent testifier. Good morning and welcome.

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**HOBERT RUPE:** Good morning, Chairman Briese, members of the General Affairs Committee. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission, and I'm appearing here in support of Senator Geist's bill. I really want to thank her and Mary for working with us on this bill. And I can give you guys a brief little history of how we got here and why the bill is drafted as it is, and maybe make one or two small suggestions, and then be happy to answer any questions. To say that regulating the alcohol industry during a pandemic has been interesting is an understatement. In March, when this was starting to come down, the Governor's Office reached out to us. They said that they were looking at modifying not only this statute, but other statutes. And the key thing you have to remember on executive orders, they can basically waive statutes. They can't create law. So they were working with us and his order came down. The Governor's order came down on March 20-- 26. That same day or the next day we issued what we called an industry advisory that we worked with-- in conjunction with his office, trying to get what his goals were to regulate it. Later on, we actually had to do an updated advisory in September, and that was one reason why this is drafted now. As many other states did this over the summer and early fall, NHTSA started reaching out to state departments of transportation to seeing if these actions were place-- placing certain amounts of highway funding in jeopardy because it was basically getting rid of our open container statute. In fact, although Iowa, as you heard, was one of the first states to do it legislatively, the Iowa ABD, Alcohol Beverage Division, over there is currently doing rulemaking to sort of satisfying NHTSA, because they sort of went a little too far originally. I've been speaking to my counterparts in Iowa regarding this. So the one suggestion we would have as a commission, as an amendment, although the statute clearly says the-- the commission can approve the containers, we probably want to put a general catch on that we may make rules and regulations to en-- to put forward in case something-- other red flags get raised. I was-- the Department Transportation of Nebraska reached out to me in September going through this. One reason why we clarified our industry advisory, to satisfy them in September. The key thing about it is the intention was that these were supposed to-go cocktails to be taken home and enjoyed in the privacy of your own home, not to be an open container to be consumed on the highway. So if we were to perhaps do that generally there, just to make sure it's clear and unambiguous, that if something does come up, we can make sure that the intention goes forward without

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having to wait for the Legislature to come back into session. The other clear thing it says is that the packaging approved by the commission-- I appreciate Senator Geist's office on this. This is an ever-evolving-- how they're doing it. And so I think the key thing would be for us to have the commission, as sort of the nuts-and-bolts agency to enforce-- to interpret and enforce your will, would be for us to have a public hearing, once this bill becomes passed, to go through what's out there, what's being used, and to make sure that what's approved is both safe and cost-effective for the licensees. And so with that, that's-- normally, we-- we testify in a neutral capacity on most bills, but we really supported this because this-- we were very, very interested in how this came out safely. To their credit, the industry, we've got-- received very few complaints. Most times we haven't gotten complaints, but we've had licensees call us and say, do you think this is a good idea? And generally we say, yes, like, for instance, most marketing is allowed under our statutes. The one I remember saying no to pretty emphatically was the place as the-- they wanted to do drive-thru JELL-O shots where you would go hit all the different places in the town and try the JELL-O shots. And my response is, are they taking them home to drink it? Oh, no, they're going to drink them in our parking lot. I go, if-- no, that's not a good idea. That's not what we're-- that's not what we're looking for here. And so with that, I can see I'm almost out of time. I'm sure there are some other questions if you want-- I-- I can answer any questions, especially how-- numberwise, how we're looking after, you know, coming up on one year into the pandemic as an industry. So I'd be happy to answer any questions.

**BRIESE:** Thank you for that. Any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. As to that kind of the-- the regulatory rule change you suggested, could you clarify what exactly you were getting at? I was looking at the statute here and it says, "as approved by the commission," and you like that language, but you want additional language?

**HOBERT RUPE:** I think we should probably have some additional average, just some-- a general catchall. Oftentimes you'll put, "The commission may adopt the rules and regulations to-- to enforcement the statute. In case something comes up that's beyond just the packaging that might come up from NHTSA to-- to be able to address those, I'm-- I don't

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think it's going to happen, but I'd rather make sure that we have  
that-- that particular screwdriver in in the toolbox, if necessary.

**J. CAVANAUGH:** OK. Can I ask one more?

**BRIESE:** Sure.

**J. CAVANAUGH:** On, I guess, unrelated question, but I-- you're the guy  
to ask this question to. So this applies to Class Cs, Class Is, and  
now Class Ys with the--

**HOBERT RUPE:** Yes.

**J. CAVANAUGH:** Could you-- I guess my concern I'll drill down to is  
there are establishments in my district that acquired a liquor license  
of some sort the-- whichever one of these and it goes through a  
process where you go to the city council and people come and make  
public comment, and they make those comments based off of how exactly  
that distribution is going to happen, right? So they'll come in and  
say, we don't want-- one example is like people don't want gas  
stations selling shooters, right?

**HOBERT RUPE:** Yes.

**J. CAVANAUGH:** And they-- that is a negotiation that then comes down to  
when we issue a liquor license, kind of with that negotiating process.

**HOBERT RUPE:** Yeah.

**J. CAVANAUGH:** Is this going to take-- I guess, is this going to create  
an expanded class of liquor license that people who have made certain  
concessions are going to lose those concessions as a result of that?

**HOBERT RUPE:** I don't believe so. Traditionally, there are five types  
of retail licenses. The Class A is beer on sale only. That is probably  
the least utilized of the retail licenses. Very rarely do you see  
anymore. Usually what you'll see is maybe a pizza parlor where they'll  
have keg beer or can beer where they open it. B, which is beer-only  
off-sale, that's-- oftentimes, convenience stores have those. And the  
reason they're not in this bill is because right now they do a  
cocktail, the mixed cocktail. They can only sell in the original  
package currently. Class D-- I'll skip over C for a minute. Class D is  
beer, wine, spirits off-sale only. Those, they're traditional liquor

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stores, which don't have a service area involved. They can't sell premade cocktails because they can't sell it on premise. So now that leaves us with the Is, which are-- is what's called the restaurant license traditionally. It's beer, wine, and spirits on premise only. This bill sort of makes a carry-out exception for them that normally they wouldn't have, much like they already have for the-- what we call the wine doggy-bag statute, where they can take a cocktail made with their meal with them to go. And so that bill covers Is. C is sort of the super license, beer, wine, spirits, on and off sale. And so with this, it will allow them to take an open container. This statute just deals with the ability to take what we'd normally consider an open container off the premise, a premade cocktail in the-- is what-- how it's generally done. It could be like a margarita; it could be the wine slushie. The reason the Ys weren't in there originally was we didn't think it was a problem because Ys have off-sale rights and on-sale rights already, but just to clarify, put the Y, because I didn't realize they were doing-- you know, normally they can take their own-- their own wine bottles home. We didn't know they were making the slushies. So we're in support of that amendment as well. It was just in the original drafting, we were unaware that they were doing-- utilizing that. So going back, we're-- circular-- circling back around, that really won't affect any of those conditions because those are specific conditions on the license. Generally, when those happen, there'll be negotiations between the local governing body and the licensee, and they'll ask for certain conditions primarily based upon geography, economic impact, you know, I mean, where they don't want the-- the shooters to be taken outside, you know, and so those were our individual conditions, so they-- they should not impact that all, this legislation.

**J. CAVANAUGH:** So to clarify, the individual conditions, so the shooter example would be--

**HOBERT RUPE:** Um-hum.

**J. CAVANAUGH:** --sorry-- would-- it would be like a gas station or a liquor store.

**HOBERT RUPE:** Yeah.

**J. CAVANAUGH:** They can't sell shooters, so they can still sell liquor but not shooters?

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**HOBERT RUPE:** Yeah, what'll-- what'll happen is, is oftentimes-- and where we see it oftentimes is actually in your district, sometimes, in parts of Omaha, where they've got a problem generally with a transient or homeless population will go in and util-- and get the shooters because they're dollar, you know, they'll panhandle and get a dollar, go in and get it, and then they're leaving them out there. And so what'll happen is the city will-- will couch its approval of the license based upon a limitation of nothing-- no-- nothing smaller than a certain size, so often it'll be, you know-- you know, bottle size, the half-bottle size will be what the limitation is.

**J. CAVANAUGH:** So that's kind of my follow-up question. So will my city council be able to negotiate liquor licenses for establishments in city of Omaha that will still be a Class C but will not be able to do the carry-out?

**HOBERT RUPE:** They can ask. Any conditions have-- are up to the commission to put on it, and so if--

**J. CAVANAUGH:** But they could negotiate that and so both sides  
[INAUDIBLE]

**HOBERT RUPE:** They could negotiate. If both parties agree, generally, we'll just rubber stamp it.

**J. CAVANAUGH:** OK.

**HOBERT RUPE:** But if there's a disagreement, then the commission has to make that determination.

**J. CAVANAUGH:** Thank you. That's helpful.

**HOBERT RUPE:** Yep.

**BRIESE:** Thank you, Senator Cavanaugh. Anyone else? Senator Lowe.

**HOBERT RUPE:** Senator Lowe.

**LOWE:** Senator Brandt asked about the question-- about-- a question, about the numbers.

**HOBERT RUPE:** Yeah.

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**LOWE:** How are-- how are the businesses doing?

**HOBERT RUPE:** The pandemic has been a tale of two types of license. Your on-premise accounts, restaurants and bars, have been hammered. There's no ands, ifs or buts around it. We'll probably get a better look at that at the end of April when the renewal system comes in, about how many we've lost. We lost probably, at least overall, about 1.4 percent of permanent licenses went down. We had a 50 percent decrease in the number of SDLs over the years-- over the year, so those-- which are all mostly on-premise locations. Conversely, we've had an almost 6 percent increase in total revenue for last year, last calendar year. So what's happened is the off-premise chains, you know, primarily grocery stores, liquor stores, convenience stores, have not only covered the real loss that we've seen from bars and restaurants, but it actually increased it. And I think that's one of the reasons why the in-- the restaurant industry is very cur-- very concerned. Over the last year, the anecdotal evidence is that people have changed their drinking habits. They're drinking at home. They're buying. They're going home. We've seen an increase in the off-sale chain. We've seen an increase in the direct shipping, Sls. We've seen an increase in the amount of home delivery and using our delivery role. All that evidence prove-- shows that Nebraskans drank more based on just taxes and revenue. And remember, we charge the same amount for a gallon of \$20 wine as opposed to \$200 wine. The excise tax is the same, 90-- 95 cents a gallon. But we-- we saw 5.9 percent increase in gen-- in revenue collected by the commission for in 2020. So parts of the industry are having their best years ever; other parts are fighting. It's-- it's really a tale of two-- of two sides of the industry.

**LOWE:** And we heard a testimony where customers-- or businesses are getting trying new-- new things--

**HOBERT RUPE:** Yeah.

**LOWE:** --and they would sell mason jars--

**HOBERT RUPE:** Yep.

**LOWE:** --with drinks, and so they could seal up the top. But then they also said quarts, and I would assume that would have to be a

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multiple-liquor drink. It couldn't be like a double or triple, could  
it?

**HOBERT RUPE:** Yeah, exactly. What we did in our industry advisory, we  
factor-- we went back. You sort of look at what's statutory out there  
which are similar to-- as an-- as an agency to try and say, what--  
what would be the smart way to put it at? And the growlers-to-go  
containers are limited to 64 ounces, so our industry advisory limits  
the containers to a 64-ounce container. But the idea is that you--  
you-- I get that if you're buying the four-person to-go meal from your  
favorite Mexican restaurant and they're giving you a huge thing of  
Margarita's to go with the four or five meals you're buying. But so  
the since that exists in statute, that's where-- that's the limitation  
we used, was 64 ounces, because it sort of mirrored what we already  
had in the statute.

**LOWE:** OK. Thank you.

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

**BRANDT:** Thank you, Chairman Briese. Thank you, Mr. Rupe, for appearing  
today. Delivery--

**HOBERT RUPE:** Yes.

**BRANDT:** --could an enterprising bar not only do the mixed alcohol, but  
could they offer to deliver it to the person's house? And/or we have  
DoorDash, could DoorDash come pick up my margarita from the restaurant  
and deliver it to my house?

**HOBERT RUPE:** I believe so. We already have a delivery rule which  
allows for employees to deliver product which the-- which the-- which  
case-- say-- say a bottle of wine. If this statute were to be amended  
to allow to-go delivery, I don't see why-- since that would fall then  
under the per-- number of what they can-- they can serve, I don't see  
why a delivery couldn't-- under our existing rule, a-- a delivery  
service is acting as an agent, basically, instead of the licensee. And  
so if the licensee can do it, probably the-- you know, with certain  
restrictions, of course, have to be 21 and all that kind of stuff. So  
I-- I believe that they probably-- potentially could do a delivery on  
that one.

**BRANDT:** Is the language in the bill sufficient to cover that?

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**HOBERT RUPE:** I think so, because it allows a restaurant to sell that product under their license, they can sell their product under the license, and the delivery rule is just having a third party or employee act as an agent for them. I believe it's sufficient.

**BRANDT:** OK, thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Arch.

**ARCH:** Very interesting question. Does the-- does the delivery driver have to check ID?

**HOBERT RUPE:** Yes.

**ARCH:** OK. Thank you.

**BRIESE:** Thank you Senator Arch. Any other questions? I see the--

**HOBERT RUPE:** And just so you know, Senator Arch, it has to be prepaid, so they can't get there and pay for it there, so they usually have to prepay through a credit card or other transaction before it's delivered.

**BRIESE:** Thank you. I see the bill requires packaging in a tamper-evident container. To me, that's a necessary requirement. Is it manageable?

**HOBERT RUPE:** I believe so. We really have gotten zero complaints on the wine doggy-bag rule, and it's been in effect for probably about 15 years, and it has similar requirements. The key thing, this is going to be a little bit more interesting and one reason why we're glad that the-- the rule there that we approve, because we'll probably have the experts come in and say, here's what the industry is using, here is the most effect-- cost-effective, but it also meets NHTSA standards. You know, I really anticipate there to be, you know, the seal over the top that if you crack it open, it's going to be obvious it's been opened, that you can't turn it back in, because the idea really is, is to maintain health, safety, and welfare, and not have people drinking and driving on the highways. This is designed for you to order, take home, and enjoy there with you and your family.

**BRIESE:** But that's something you can flesh out in the rule-making process--

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**HOBERT RUPE:** I believe so, yes. Yes, we can.

**BRIESE:** --referenced earlier.

**HOBERT RUPE:** Yep.

**BRIESE:** OK. Any other questions? Seeing none thank you--

**HOBERT RUPE:** Thank you very much.

**\*PAIGE GADE:** Dear Chairperson Briese, and members of the General Affairs Committee, My name is Paige Gade. I am testifying on behalf of the Lincoln Young Professionals Group in support of LB72, Over the course of the last year, bars and restaurants and people alike have seen their normal activities disrupted by the COVID-19 pandemic, In response to the COVID-19 pandemic, the waiver of the state law prohibiting the sale of alcohol not in its original packaging has provided unique economic opportunities for bars and restaurants and has also provided people in the State of Nebraska with unique ways to connect with each other in a safe and socially-distanced way, Lincoln Young Professionals Group would like to see this continue after the state of emergency caused by the pandemic has ended, Lincoln Young Professionals Group (YPG) is dedicated to empowering young professionals with educational, leadership and networking opportunities. Lincoln YPG is the largest young professional group in the state and one of the largest in the country with over 2000 members. We strive to connect young professionals with the community in which they live and with fellow young professionals. We believe the economic vitality of our community and the state is imperative to keeping young professionals in the state and therefore we support legislation that enhances the competitiveness of the State of Nebraska. We also believe that the ability of a community to offer an energetic and dynamic environment with opportunities for entertainment and recreation are equally important as starting salary and benefits packages to attract and retain young professionals to the State of Nebraska. Therefore, we also support legislation that enhances entertainment and recreation opportunities in Lincoln and in Nebraska. LB72 both enhances the competitiveness of the State of Nebraska by promoting economic vitality and provides opportunities for entertainment and recreation, A major facet of the programming that the Lincoln Young Professionals Group offers is networking opportunities for young professionals. As our members transitioned to

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working from home in the Spring of 2020 in response to the COVID\*19 pandemic, we were able to continue providing virtual networking events, including at-home happy hours with cocktail kits. We received feedback from our members that these at-home happy hours were crucial to maintaining their happiness while working from home and craving human connection. We also appreciated the opportunity to provide support to local bars and restaurants who were forced to close, and later open at a reduced capacity. Outside of the formal programming that we have offered, our members have appreciated the ability to participate in innovative virtual events offered by local bars and restaurants that the waiver of the state law prohibiting the sale of alcoholic liquor not in its original package has made possible. The ability of bars and restaurants to expand their offers to take-out cocktails and events like at-home wine tastings has allowed the citizens of the State of Nebraska to safely enjoy these offerings in the comfort of their own home, without having to drive after. Lincoln YPG believes that the ability of bars and restaurants to sell alcoholic liquor not in its original package will contribute to the economic vitality of the State of Nebraska and will help attract and retain young professionals to our focal communities. LB72 contains specific provisions regarding the transport of the repackaged alcoholic liquor that maintains the status quo with regard to the health and safety of the community. We appreciate that safety of the community was also considered in the creation of this bill. We understand that many opponents believe this bill unsafe, but we appreciate that many precautions were considered when drafting this bill and believe them to be adequate. The Lincoln Young Professionals Group supports LB72 because we strongly believe that the ability to sell alcoholic liquor not in its original package provides economic opportunities for bars and restaurants in pursuit of economic vitality and provides young professionals with unique and safe opportunities for engagement with each other and the local economy. We ask for your support in advancing LB72 to General File. Thank you.

**\*JUSTIN BRADY:** Chairman Briese and members of the General Affairs Committee. My Name is Justin Brady, I am testifying as the registered lobbyist for the Nebraska Liquor Wholesalers in Support of LB72 and would ask that this testimony and Support be made part of the committee statement. LB72 came out of the pandemic and the Governor's executive order to help bars and restaurants survive. We believe for most licensees in Nebraska they did drinks to go in a very

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responsible and reasonable manner. We believe the citizens of Nebraska demonstrated that they could also be responsible with this change. This bill adds some needed guidelines and protections that go beyond the executive order and should give the Liquor Commission and law enforcement the tools they need to regulate this new law. We would ask that you give these bars and restaurants across Nebraska the ability to do to-go drinks beyond the pandemic. If you have any questions, please do not hesitate to reach out to me. We respectfully ask for this committee to advance LB72. Thank you.

**\*CHRIS WAGNER:** Good morning, Chairman Briese and members of the committee, My name is Chris Wagner, and I am here representing Project Extra Mile, a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. I regret that due to my medical history, I cannot be here in person today, but if any of you have questions about the research provided in my testimony on this or subsequent bills, please reach out via e-mail at and I will be happy to provide you a copy of the study or set up a Zoom call to discuss. We are here today in opposition of LB72 because this bill will increase alcohol availability in our state, leading to more health and safety problems in our communities. While it is understandable that exceptions were made during the pandemic to help struggling businesses, these temporary measures should be eliminated when the governor lifts the state of emergency. There is no sunset clause included in Executive Order (EO) 20-09, which is the basis of LB72. As a result, the Governor can determine when this temporary waiver is no longer necessary, and there is little reason to believe that he would rescind it prematurely given the Omaha reporting indicating that he views this EO as the most popular directive he's ever approved. Limiting the availability of alcohol has been identified as one of the most effective ways to prevent excessive alcohol use, according to the Community Preventive Services Task Force, Allowing Class C and I liquor licenses to permanently sell cocktails-to-go not only expands off-premises alcohol sales in the state's but also adds additional challenges to enforcement of the state's open container law. The alcohol landscape in Nebraska will continue to worsen if we do not act now to address excessive alcohol use. According to the Centers for Disease Control and Prevention, our state ranks as the fifth-worst binge drinking state in the country (21% of adults 18 and older have binged at least once in the last 30

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days) and has the second-worst rate of self-reported drunk driving at 955 DUIs per 1,000 population. Cocktails to-go is not going to solve these problems, it's going to make them worse. The Nebraska Department of Health and Human Services estimated that 703 Nebraskans died in 2015 alone due to alcohol-related causes and the national death toll associated with alcohol continues to climb. Research shows that annual alcohol-related deaths in the U.S. increased from 88,000 to over 95,000 over the last five years. Unfortunately, the pandemic has compounded these issues. In October 2020, the National Highway Traffic Safety Administration released two reports on traffic crashes during the pandemic. The first report included a synthesis of traffic safety data covering the months of April to June, which found that the motor vehicle fatality rate had increased. A second research report summarized the presence of alcohol and other drugs in road users who were seriously or fatally injured in crashes, reporting increased prevalence of these substances among the study population.

**BRIESE:** --for your testimony today. Any other proponent testifiers? Before we move on, I want to note that we have submitted written testimony in support of the proposal from Paige Gade from the Lincoln Professionals Group; Robert Hilske from Cedar 426 Winery; and Justin Brady from Nebraska Liquor Wholesalers. Any opposition testimony? We do have submitted written testimony in opposition to the proposal from Chris Wagner of Project Extra Mile. Any neutral testimony? Seeing none, Senator Geist, welcome to close.

**GEIST:** Thank you. I'll make this short, because I know these get long. I'll just start with not being a huge fan of the government-mandated closing of private business. I'll just put that on the record. I did take this very seriously because I think that what one of the things that's our responsibility as legislators is to help protect private business in our districts. And that's the intention of this bill, and I think you've heard that loud and clear. And I did have-- some of the questions that were asked, I think they've been adequately answered. I do want to direct you to Dino's Restaurant online cocktail menu. The degree of which they were successful, I think, is the beauty of their menu. It's-- it's something to behold. So you really should, if you're interested in that, take a-- take a look. Also, I want to say that I'm happy to work with the commission to help clarify some language that

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makes them more comfortable about the issues that-- that Mr. Rupe brought up. And with that, I-- I will close and offer to answer any questions, additionally, you may have.

**BRIESE:** Thank you, Senator Geist. Any questions for the senator? Seeing none, thank you again--

**GEIST:** Great. Thank you.

**BRIESE:** --for seeing us today. We have two letters of support, two letters of opposition to LB72. And with that, we'll close the hearing on LB72 and we will open the hearing on LB578, Senator Vargas. Good morning and welcome.

**VARGAS:** Got a really happening committee here. Good afternoon, Chair Briese and members of the General Affairs Committee. For the record, my name is Tony Vargas, Senator Tony Vargas, T-o-n-y V-a-r-g-a-s, and I represent District 7 in the communities of downtown and south Omaha here in our Nebraska Legislature. Now LB578, I think, it's fairly straightforward. It establishes a new definition for ready-to-drink cocktails and sets the tax applicable to these unique products. Now, in the last few years, the market for canned cocktails has emerged as a growing segment of the alcohol beverages market. Currently, under Nebraska law, any product in an original package containing spirits, which are defined under the Liquor Control Act as hard liquor, has an excise tax rate of \$3.75 per gallon, in addition to local retail sales tax rates. This means that a ready-to-drink cocktail, which may only contain one or two shots of spirits with the remainder being juice, soda, or other liquid, is taxed as if the entire original package were filled with only spirits. This only means that the current tax rate prices-- this also means that the current tax rate prices many of these products out of the market entirely. Now I introduced LB578 after conferring with the Nebraska Liquor Control Commission, Zac Triemert from Brickway Distillery, and Brewery and representatives of wholesalers who have experience an insight into the sales of this particular type of product. Now, in light of the feedback, we have a cleanup amendment, which is what you have in front of you, AM146, which simply clarifies the language in Sections 3 and 4 of the bill to ensure that only the new tax rate of 31 cents per gallon, in addition to local applicable retail taxes, applies to products, to ready-to-drink cocktails. Now this bill does not eliminate regulatory controls of the production of alcohol beverages that protect public

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health and safety. It does not limit the rights of local taxing jurisdictions to impose tax on retail sales. And given the current exorbitant tax rate applicable to this type of product, I'm confident that LB578 will generate significantly more revenue from the sales of these products. I believe strongly that the tax rate of 31 cents per gallon is appropriate, given Iowa and other states' tax rates for these similar products and the reality that many of these products in the market have similar alcohol, by volume, to beer and hard seltzer. I also believe that the fiscal note on this bill is not entirely accurate. Currently, the commission does not separately track excise tax revenue attributable to the sales of various types of spirits, which include handles of vodka, tequila, rum, bourbon and ready-to-drink cocktails, which would make any sort of estimate for a fiscal note difficult. Additionally, because these products are currently priced out of the market, it is difficult to estimate future revenues. I believe someone from the Liquor Control Commission is here to testify their position and can explain more about this. Now others are here to testify in support of the bill and are ready to answer your questions that you may have from a legal or regulatory and business standpoint. I also understand the director of the commission is here and will explain the agency's position, including minor tweaks to the amendment. The last thing I want to note is that LB578 applies only to mixed drinks containing spirits in an original package. These are not to-go drinks mixed on site at a restaurant or bar and delivered or carried out in a temporary container, which is what we were discussing with Senator Geist's bill, which I also do support. I ask that you vote LB578 out of committee with a finalized amendment and I commit to working with the commission to address any other concerns you may have. The last thing I'll say here is just that we often look at different industries in where are they currently at and also industries and where they could be. This is an untapped industry. Ready-to-drink cocktail market-- market report shows that across the== this market we're looking at about a \$1.63 billion market by 2027. This is something that is untapped and being able to have the ability for small growing businesses in our state to be able to get into this emerging market is a positive for Nebraska, it's a positive for our communities, and so I think that that is one of the-- the opportunities here, and this regulatory challenge of not taxing it at a sort of competitive market rate with how other states are doing it, is a barrier to being able to expand in this sector. So with that, I thank you and happy to answer any questions I can answer.

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**BRIESE:** Thank you, Senator Vargas. Any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thank you, Senator Vargas, for bringing this bill. I guess I just don't know what we're talking about. Is this like those Bud Light seltzer-type-- they're not Bud Light, but whatever-- that-- I'm thinking that because there was a commercial last night, but one of those hard seltzers or something that you buy at the grocery store or-- I know you have a gentleman from Brickway here. Is it something that's being sold at local distilleries?

**VARGAS:** So the answer is yes. The best one I can sort of think of right now, because it's-- you know, like Moscow Mule in a can. And, yeah, Brickway will be here to talk about products that they have and be able to talk about sort of the-- the opportunity that exists with this, but that's the product we're kind of talking about.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Anyone else? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you, Senator Vargas, for bringing this bill. So you're talking about products that already come from the manufacturer, not something that's mixed in the bar and sold there?

**VARGAS:** We're talking about products that are created and made by a business here in Nebraska, but not something that's made at the bar. So to answer your question, this would be something creative. There's a distillery. They're making this in their, you know, in their business. This is not something that's being made in the front bar and like the ready-to-go cocktail drinks that we talked about in the previous bill.

**BRANDT:** OK, thank you.

**BRIESE:** Thank you, Senator Brandt. Anyone else? Seeing no other questions, thank you, Senator.

**VARGAS:** Thank you.

**BRIESE:** You'll be here to close?

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**VARGAS:** Yeah.

**BRIESE:** Very good. Thank you. First proponent testifier. Good morning  
and welcome.

**ZAC TRIEMERT:** Morning, Chairman Briese and members of the General  
Affairs Committee. My name is Zac Triemert; that's Z-a-c  
T-r-i-e-m-e-r-t. I am president and head distiller at Brickway Brewery  
and Distillery in Omaha, Nebraska. I'm here today to speak in support  
of LB578, which would carve out a currently small segment of distilled  
spirits that are packaged as low-alcohol canned cocktails and that are  
similar to the alcohol concentration in beer and hard seltzers. LB578  
is a bill that would help this industry segment grow in Nebraska,  
increasing the excise taxes, sales taxes, jobs, tourism, and  
agriculture. And when I say grow, I literally mean change the  
landscape of what we're able to do. Due to the tax cost, there are  
currently zero canned cocktails produced and sold by Nebraska  
distilleries. I'd like to change that. Tax on beer is \$0.31 per gallon  
and \$3.75 on distilled spirits in Nebraska. That makes spirits taxed  
more than ten times more than beer. The average beer is 5 percent  
alcohol. The average bottle of spirits is 40 percent alcohol, which is  
about eight times more alcohol in a bottle of spirits, so distilled  
spirits are taxed more than beer already. As both a brewer and a  
distiller, I'd like to briefly-- on the production cost and the  
difference. Beer is produced through fermentation and then beer is  
then filtered and packaged. Spirits are produced through fermentation  
as well. That's where the alcohol comes from. Then a second step  
called distillation is required, and what that does is it concentrates  
the alcohol that was produced through fermentation. So spirits are  
more expensive to make due to time, energy, labor, and equipment cost.  
Canned cocktails, also known as RTDs, ready-to-drink, are a fairly new  
emerging segment in the distilled spirits industry. I saw the finan--  
fiscal note that the Liquor Commission put together and, like Senator  
Vargas said, it's really hard to track and I believe that it is not  
nearly as high as what that statement has. If I were to guess, and I  
talked to distributors and other RTD manufacturers that are in big  
companies, and it's really a fraction of the total distilled spirits  
currently in the state of Nebraska. In this bill, we're asking for  
canned cocktails for up to 12.5 percent alcohol to be taxed the same  
as beer and hard seltzers, and this tracks with the excise tax rates  
in Iowa at \$0.19 per gallon and South Dakota at \$0.27 per gallon.  
Canned cocktails will really be the same model as beer. As a brewer. I

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produce some beers that are, you know, 12 to 17 percent alcohol range. But the bulk of my sales are beers produced in the 5 to 6 percent alcohol range. And so with canned cocktails I would-- this would be similar. I may do something promotional and fun and have a canned cocktail that's in the 10 to 12 percent alcohol range, but literally 99 percent of what I will produce will be in that 5 to 6 percent range, and that's really for two simple reasons. One, it drastically reduces the production cost, and the actual end consumer will be able to enjoy more. Typically, a six-pack of beer or hard seltzer is about \$8.99 on the shelf. Canned cocktails are either sold individually or in four packs at \$12.99 or higher. And as long as the canned cocktail tax rates are higher than hard seltzers, it'll never grow to be a significant part of the market share. And speaking on behalf of Brickway, if the tax is reduced but not reduced to the same as beer-- I think the Liquor Commission is suggesting \$0.95 per gallon-- we'll never compete with hard seltzers. Hard seltzers are light, low in carbs, low in gluten, things that consumers are looking for, and that's why they like the canned cocktails as well.

**BRIESE:** I'm going to have to shut you off here with a red light, but if you have anything further, you'd like to finish up on quickly, that would be great.

**ZAC TRIEMERT:** Just in closing, I'd love to see this \$0.31 per gallon, so the distilleries, as making these canned cocktails, can compete with beer and hard seltzers. And thank you for your time and happy to ask-- answer any questions.

**BRIESE:** Very good. Thank you. Any questions? Senator Brandt.

**BRANDT:** Thank you for testifying. So let's talk about the \$0.95. Is that per gallon of canned seltzer or per gallon of alcohol in the canned seltzer?

**ZAC TRIEMERT:** That is per gallon of liquid in the can, so it's--

**BRANDT:** Ok. So these are generally 12-ounce cans and--

**ZAC TRIEMERT:** Yes, generally 12 ounce cans.

**BRANDT:** And you get 12 cans to the gallon?

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**ZAC TRIEMERT:** They're pretty close. It's 2.25 gallons per case. That's  
a 24-can case.

**BRANDT:** Well, I'm just trying to figure out on a per-can basis. If it  
was \$0.95, it would be less than \$0.10 a can on their proposal versus  
the \$0.30 would be about \$0.03 a can. I mean, you'd be looking about  
\$0.06 or \$0.07 cents' difference and the retailer can market whatever  
he wants to market. Do you think that's really a killer for the  
industry--

**ZAC TRIEMERT:** I--

**BRANDT:** --that \$0.06 or \$0.07?

**ZAC TRIEMERT:** I really do, because if you take that \$0.06 extra per  
can, multiply that by 24, and then have it flow through the whole  
chain, so we're a manufacturer, we sell it to the wholesaler, so-- and  
then they mark it up again, sell it to the retailer, and then they  
mark it up again and sell it to the consumer. So that \$0.06 a can  
times 24 and going through that chain turns into real dollars, so  
we're talking probably several dollars more per six pack because of  
that tax rate.

**BRANDT:** But that tax is paid at each step or that tax is just paid one  
time?

**ZAC TRIEMERT:** The actual tax is paid by me, the manufacturer, one  
time.

**BRANDT:** OK.

**ZAC TRIEMERT:** But then I have to pass that on to the wholesaler and  
then to the retailer and then to the consumer.

**BRANDT:** OK, thank you.

**ZAC TRIEMERT:** Yeah.

**BRIESE:** Thank you, Senator Brandt. Any other questions? Senator  
Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thank you for being here. So I  
guess I'm-- I'm reading this fiscal note and I guess I don't really

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understand it, but maybe that's a question for somebody else. But you're saying this is an industry that doesn't exactly exist here because of the tax structure.

**ZAC TRIEMERT:** There's no Nebraska distilleries doing it. There are distillers from outside the state that are shipping it in. So an example, Boulevard Brewing Company has a brand called Fling, which is an alcohol-based canned cocktail that they sell to Nebraska wholesalers and it's very expensive. And I talked to them before this hearing. They said they're just-- they're selling almost none. It barely hits their P&L.

**J. CAVANAUGH:** Do you know of other people in the national industry who are foregoing coming into the Nebraska market because of this tax structure?

**ZAC TRIEMERT:** I don't know any offhand.

**J. CAVANAUGH:** Do you know other people in Nebraska who are considering entering the business, other distillers, if the-- this were to go through?

**ZAC TRIEMERT:** Yes. I think one is going to testify right after me. And I would say this would open it up for all of the Nebraska distilleries though. Over the last 10 years we've gone-- 15 years, I guess, that we've gone from no distilleries down to I think there are 10 between operating and implanting distilleries in Nebraska.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Senator Lowe.

**LOWE:** Thank you, and thank you, Mr. Triemert, for being here. How are the other states doing to their surroundings?

**ZAC TRIEMERT:** I think they're doing quite well. Both Iowa and South Dakota have made their changes in the last year, so it's hard to see the true data. But I've talked to the distributors and they're growing quite quickly.

**LOWE:** Kansas, Wyoming, Colorado?

**ZAC TRIEMERT:** I am unfamiliar with Kansas and Colorado.

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**LOWE:** OK. All right. Thank you.

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

**ZAC TRIEMERT:** Thank you.

**BRIESE:** Next proponent testifier. Good morning and welcome.

**CODY SCHMICK:** Morning. Thank you, Chairman Briese and members of the  
General Affairs Committee. My name is Cody Schmick, C-o-d-y  
S-c-h-m-i-c-k, and I'm one of the owners of Sideshow Spirits  
Distillery here in Lincoln, Nebraska, and our capital's first legal  
distillery ever. I am here before you today to urge you to pass LB578  
as it is written and help Nebraska grow this industry that is still  
relatively small in our state but is huge across the country. Current  
tax is so high that nearly no Nebraska distillers, and-- and I am  
going to say no Nebraska distillers are doing this canned cocktail  
thing right now. This is a huge market that Nebraska is currently  
missing out on and a tax revenue the state is not currently receiving.  
Current sales of ready-to-drink cocktails are a fraction of spirit  
sales but something we-- we could definitely grow here in Nebraska. In  
Nebraska, there are very few products in this category because we are  
being-- getting taxed such a high rate, it doesn't make sense to  
produce them here. By my estimate-- estimations, it's about \$8.50 of  
tax per case as it sits now, a number that is nearly impossible to  
cash flow, hence the reason no Nebraska distillers are growing in this  
category. These craft cocktails can also help with a big problem that  
the LCC, I'm sure, has struggled with over the years, is over-pouring.  
Canned cocktails would bring more consistency in the bar and  
restaurant industry if they sell them, you know, just through the cans  
in their-- in their restaurants and bars. We need to align the way we  
tax RTDs, ready-to-drinks, with hard seltzers and beer and grow this  
market in our state, the same way states around us are growing. Keep  
in mind, Nebraska has the 16th highest alcohol tax in the country. We  
are coming off a year that was extremely hard for small businesses in  
Nebraska and across the country. Why wouldn't we do something every--  
do everything we can collectively to grow local business and locally  
owned product? In closing, I urge you to support LB578 to help this  
industry grow and flourish in the state of Nebraska. With that, I'm  
open to any questions.

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

**J. CAVANAUGH:** Thank you, Chairman Briese, and thank you, Mr.-- is it  
Schmick?

**CODY SCHMICK:** Schmick, yep.

**J. CAVANAUGH:** When so many were-- and this made me think of it, but if  
you were to get this cocktail at a bar and they just open it and pour  
it--

**CODY SCHMICK:** Sure.

**J. CAVANAUGH:** --it would be charged at that tax rate. If I were to  
just have a cocktail made right in front of me at the bar, what's the  
tax rate that we apply to that?

**CODY SCHMICK:** You know, there-- there-- it's-- we're paying the \$3.75  
a gallon for liquor. So like, if they're making it with our booze,  
we're paying that and then they're just paying whatever that-- that  
city, state, and if there's an entertainment tax or whatever, right  
there at the bar. I-- it varies for-- for different markets.

**J. CAVANAUGH:** But as a matter of volume, they're only-- the tax that  
we're talking about here today is only assessed on the alcohol portion  
of that Moscow Mule, as the example Senator Vargas used.

**CODY SCHMICK:** Yes, correct, yep, so you're not getting taxed at that  
point for the-- the ginger beer and the lime and everything else,  
whereas in a canned cocktail we're getting-- we would be getting taxed  
as it currently sits for all the-- the ingredients in that can.

**J. CAVANAUGH:** OK, thank you.

**CODY SCHMICK:** Yep.

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

**CODY SCHMICK:** Thanks.

**BRIESE:** Next proponent. Good morning and welcome.

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**VANESSA SILKE:** Good morning again. Chairman Brieese, members of the General Affairs Committee, my name is Vanessa Silke. That's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm a practicing attorney and also the registered lobbyist for Brickway Distillery. And I'm here obviously in support of LB578 and the cleanup amendment that we have that was circulated by Senator Vargas to the committee. I understand from talking to Mr. Rupe of the commission that there might be a couple more tweaks on that cleanup language just to confirm that the tax rate that we propose of \$0.31 per gallon with a limit of 12.5 ABV only applies-- that is the only excise tax-- and that we still preserve all of the local taxing jurisdictions' authority to apply retail or occupation tax or entertainment district taxes to these products. We don't want it to stack on top of the \$3.75 a gallon. You've heard me here before on behalf of a number of other breweries and distilleries in the state of Nebraska in recent years. I can tell you from personal experience that just five years ago we had maybe a dozen or so craft beer licensees and now we have over 60 in the state, and they drive tax revenue and local-- local tax revenue for restaurants, for hotels, for tourism, and for a number of other things, and we see that same opportunity with distilleries and we're right here sitting at barely 10. This is one way for them to get their products out and to develop a marketplace that we know will generate tax revenue and it's sensible regulation. Senator Cavanaugh, your example of, you know, opening a canned Moscow Mule and how is it taxed and what does it charge-- what is the price versus what is one poured right in front of you, it's just nonsensical that we wouldn't have a lower tax. And I echo the concerns just from a regulatory perspective of setting that tax rate in a competitive way for similar types of products. Twelve-point-five percent is high by comparison to most of the market. But in our effort to work with the Liquor Control Commission, with other distilleries, and certainly with wholesalers and other industry members in developing this bill, what we understood from distributor experience in states like South Dakota is that there are a handful of products in the market that are a bit above 12 percent ABV. And so they're actually going back to raise that ABV limit on their statutory scheme just to make sure that they're accounting for the marketplace. But we anticipate that the-- the bulk of products that are sold by distilleries that fall within this definition would be much below the 12.5 ABV. The last note that I'll make, I'll echo the-- echo the fiscal note, and part of this is a plug for the Liquor Control Commission. I know from a funding perspective they'd like to upgrade

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their computer system because right now there is no way for them to distinguish between spirits that are a handle of tequila or vodka versus a four-pack of ready-to-drink cocktails that might be in the marketplace right now. And so for that reason, I disagree with the 20 percent of the market that's-- that's listed in the fiscal note. I think for purposes of how the fiscal note is developed, that's-- should be a much lower number. And in any event, when we lower this tax rate, it's going to increase tax revenues to the state of Nebraska because we'll increase sales and we'll support local distilleries. So with that, I am happy to answer any legal or regulatory questions or anything else that you might have.

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

**BRANDT:** Thank you, Chairman Briese. Thank you, Ms. Silke, for appearing today. So a product is 13 percent. It's going to be taxed at \$3.75, right?

**VANESSA SILKE:** It'll fall outside of this definition and if it contains spirits. If it's a wine, if it falls within the definition of wine or beer, which are separately defined within the Liquor Control Act, those-- this tax rate will not apply. It's only if they're defined as spirits and they exceed the 12.5 percent ABV cap on canned or original packaging.

**BRANDT:** So I think I-- I can visualize your problem. So today, if you have a product of spirits in it at 5 percent, it's taxed at the \$3.75 and it's--

**VANESSA SILKE:** For the whole thing.

**BRANDT:** --and it's diluted with a high percentage of another liquid or something in it.

**VANESSA SILKE:** Yes.

**BRANDT:** OK, thank you.

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

**VANESSA SILKE:** Thank you.

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**BRIESE:** Next proponent. Good morning and welcome.

**JUSTIN BRADY:** Morning, 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 in support of LB578. To me, LB578 really does two things. One, it is creating a definition of these ready to go drinks. And two, it is setting then what is the tax, what should the tax rate be on that. And for a little bit of history, for some of you, we went through this same thing a few years ago with flavored malt beverage. The-- a lot of it is the seltzers or the Mike's Hard Lemonades or-- so they are similar product, but it's made from beer. And so as the industries have evolved over the years, the-- we've come, or the industry has come, to the Legislature to say we need a definition because it is not specifically beer, it is not specifically spirits, and it's not specifically a wine. And what you have here is that similar case where you have these ready-to-drink cocktails that, no, it is not just a bottle of vodka, it is a little bit of vodka with ginger beer and lime and-- or could be, I suppose, a strawberry margarita, you know, that's already in a ready-to-make-- ready-made container as well. So one, I think you have the definition. I think given part of that is the confusion or-- and as they said, even the Liquor Commission said, it's an estimate in their opinion of what this makes-- they don't know what this makes up in the market because we don't have a definition for people to actually report it differently. It is just reported as spirits and, therefore, they have to guess. And they're-- you know, they-- you know, I reached out to our-- the two wholesalers that we represent. One of them said that about 4.3 and the other one said 4.5 percent of their market share is what are these ready-to-drink cocktails. The fiscal note estimates it at 20 percent. So, again, it just shows you, at least what the two-- two of the larger wholesalers, what their market share is. I did have them also pull, just out of curiosity, the Nielsen ratings on it, or estimates, and of the 104 million barrels, I suppose, I think is what they track it at, this is at 4.6 six million. So at the Nielsen national rating, it's at 4.4 percent. Yes, it's a market that I think can grow, but I also think the fiscal note is just a reflection of we don't have a definition to help the Liquor Commission define this. When it comes to the tax rate, yeah, absolutely, my clients would love it if you moved the tax to zero, but that's not realistic and they are realistic on that and look at it and say, you know, let's get the definition, let's look at what

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tax makes sense from the policy standpoint, whether that's trying to work with the commission and the industry to say what would that tax be at revenue neutral to the state? And then you all can make that decision: Do you want to change that to affect the competitive market? But with that, I'll finish and see if there are any questions.

**BRIESE:** Thank you for your testimony. Any questions. Senator Lowe.

**LOWE:** Thank you. And thank you, Mr. Brady, for being here. Do you know what the fiscal note was when we did malt liquor? Was there a big difference?

**JUSTIN BRADY:** It was-- there-- there was a difference because at the time it was being taxed as a spirit and there-- then when it was moved-- but I don't remember what that-- Hobie's got a lot better history trap than I do. He'll probably remember.

**LOWE:** All right. Thank you.

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

**JUSTIN BRADY:** Thank you.

**BRIESE:** Next proponent testifier. Welcome and good morning.

**KRISTI BROWN:** Thank you. Good morning again, Senator. Members of the committee, thank you for allowing me to appear again before you. I'm here as-- sorry. My name is Kristi Brown, K-r-i-s-t-i B-r-o-w-n. I'm here representing DSCUS, the Distilled Spirits Council of the United States, and I'm here today to speak in favor of LB578. As the other proponents have mentioned in detail, this is a huge opportunity for folks that are not only located in this state to expand their small businesses. It's also an opportunity as revenue for the state. What we do know as a national organization is that ready-to-drink cocktails are the fastest-growing segment right now, and you have a golden opportunity to take advantage of the fact that we anticipate over the next couple of years that this will continue to be one of the fastest portions of our industry. So I don't want to take away from what you heard from your craft distillers, because I think that from the state's perspective, that's one of the most important things you can consider with this bill, is the impact that it'll have on the businesses that already exist within the state, the small-- small

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business owners that have taken a risk to do something that they're passionate about and then have managed to survive for the last year in this very difficult environment, and the fact that you also have additional folks who are interested in starting similar small businesses and getting into this industry. It creates jobs. Right now our organiz-- our organization estimates that there's about 9,000 jobs, whether directly or indirectly, that are impacted in Nebraska by the distilled spirits industry, and we anticipate that would obviously grow if there is more opportunity for them to do so. So I'm happy to answer any questions if you have them.

**BRIESE:** Thank you for that. Any questions? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you, Ms. Brown, for testifying. In your experience in other states when-- when they're at this lower rate, what percent of the business goes to the large producers bringing product in versus the local distilleries?

**KRISTI BROWN:** I do think, just because of distribution, that you do see a significant amount going to the larger producers. But with that said, there has been what I'll term a renaissance in the growth of craft distillers, craft breweries, farm wineries, and I think that your laws that you've changed in recent years have been a reflection of that. People are interested in buying local and using products that are created locally. And so even though I do think that there is going to be more growth on the larger end as far as producers go and the nationally recognized brands. DSCUS as an organization, we represent the large producers and the large manufacturers, but we also represent small distillers, and that's actually one of the largest and fastest-growing parts of our own membership. And so I can't give you the exact per-- percentage because it is a new and growing market. But I do anticipate, just because of a distribution opportunity, that you'll see it on the larger side. But it also creates huge opportunity for the small business owners.

**BRANDT:** All right. Thank you.

**KRISTI BROWN:** Um-hum.

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

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General Affairs Committee February 8, 2021

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**KRISTI BROWN:** Thank you.

**BRIESE:** Good morning and welcome.

**JOE KOHOUT:** Good morning, Chairman Briese and members of the General Affairs Committee. Let me say, just having come from the Business and Labor Committee, your page is doing an excellent job cleaning the chair, because I didn't want to break the rules down there, so. Good morning, 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 the Associated Beverage Distributors of Nebraska, Nebraska's beer distributors. Thank you for the opportunity to express our views of our members and our employees on LB578. We appear in support of LB578 and thank Senator Vargas for bringing forth legislation that would update the Nebraska Liquor Control Act to provide for clarity on the issue of ready-to-drink cocktails. These beverages are distributed and marketed by our members in a manner similar to what we do for our fermented products, most notably beer and flavored malt beverages. Both of these products are taxed by the state at the same level: \$0.31 per gallon. These products generally are sold in six-packs, not dissimilar to beer, and by the public are viewed as very similar to the other product. But when doing so, the public also notices the price differential between these products and beer. These products, which in many cases have an ABV in line with some higher ABV beers, have to be taxed at the state-assigned rate of \$3.75 per gallon. What five-- LB578 does is place them on the same level as fermented products, and not penalize those who choose one of these products over another. But let me be clear. Our association knew when this bill went in-- went in that there would be a fiscal note. We were not surprised. We also understand that the state is not flush with revenues. To that end, we are open to those conversations that lowers the tax burden on Nebraskans, on these products, below the \$3.75 rate, but it's higher than the 31 percent--the \$0.31 per gallon rate. We believe that the commission's suggestion you will hear from Mr. Rupe is worthy of your consideration. On behalf of our client, we ask that you advance this bill. Senator Lowe, let me-- let me-- as somebody who lived flavored malt beverages a few years ago, let me-- let me tell you what I recollect from those conversations, if-- if-- if I can. And Mr. Rupe, I'm sure, will have much better because he was a named defendant but-- [LAUGH] he'll have a better view of the world. What I recollect is that the Liquor Control Commission, because there were efforts at the legislative level to stop that bill that taxed it

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at that \$0.31 per-- per gallon rate, the commission engaged its rulemaking authority and declared it to be a flavored malt beverage, declared it to be fundamentally a beer. And that was then litigated up to the Nebraska Supreme Court, who ultimately said that it was an ultra vires violation by the commission and then had to come back to the Legislature. But during that time, during the pendency of that, it was taxed as a beer, so there was no fiscal-- there was no fiscal impact when it came to that. Hope that helps give you kind of some of that perspective on that.

**BRIESE:** Ok. Thank you-- thank you for that. Any questions? Seeing none--

**JOE KOHOUT:** Thank you.

**\*CHRIS WAGNER:** Good morning, Chairman Briese and members of the committee. My name is Chris Wanger, and I am the Executive Director of Project Extra Mile, a network of community partnerships across the state working to prevent excessive alcohol consumption and its tragic consequences. We are here in opposition to LB578. This bill proposes decreasing the tax rate on a product that is rising in popularity, especially among young adults and underage youth, both of whom are among the age groups reporting the most binge drinking. Countless scientific studies have shown that cheaper alcohol leads to increased excessive consumption (underage, binge, and heaving drinking, as well as drinking by pregnant women) and the associated harms. While the goal of this bill may be to encourage local production of ready-to-drink (RTD) cocktails, this will affect the retail price of all of these drinks, not just those made in Nebraska. This will lead to more alcohol sales and more profits for the industry, but also more excessive drinking and more problems for our state, not to mention the loss of nearly \$4 million in revenue over the next two fiscal years. LB578 wants to cut the rate of taxation by 92 percent on 20 percent of the spirits sold in our state with no clear indication as to when the state will stop losing money on this provision. On the contrary, public health organizations like the Community Preventive Services task Force and the World Health Organization instead recommend increasing alcohol excise taxes to reduce alcohol-related harms. Higher alcohol taxes reduce binge drinking and have a greater impact on youth since they are much more responsive to price increases than adults. Nebraska currently ranks as the fifth-worst binge drinking state (20.9 percent), but 32.2 percent of 19-25-year-olds in our state

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report binge drinking at least one time in the last 30 days. We urge the committee to give adequate weight to the public health and safety consequences of legislation like LB578. If you do, we believe you will find that indefinitely postponing LB578 is the best course of action for our state. RTD cocktails will still be available in our state, but their cost will more adequately reflect the harms our state experiences from excessive alcohol consumption. Thank you for your consideration.

**BRIESE:** --thank you for your testimony. Next proponent testifier. I would note that-- we don't have any proponent there. OK, opponent testimony? Seeing none, anyone wishing to testify in the neutral capacity? As you're coming up, I will note that we have submitted written testimony by one individual in opposition to LB578, Chris Wagner with Project Extra Mile.

**HOBERT RUPE:** All right.

**BRIESE:** Good morning and welcome again.

**HOBERT RUPE:** Good morning, Chairman Briese, members of the General Affairs Committee. My name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission, and we are testifying neutral in regard to this because we're somewhat of two minds about the proposed bill. First, we agree that the tax rate needs to be examined. We were dealing with the industry. We had not only the class Zs, the-- the local craft distilleries, but we actually have a manufacturer-- in-state manufacturer inquire about the possibility of addressing this because the \$3.75 was two owners of a bill-- of a-- of a tax rate. Just so you know how Nebraska sort of taxes its rate-- and because I was a named defendant, I know exactly how the flavored beverages went-- Nebraska is somewhat unique in that we characterize the alcohol not based upon the alcohol-- the amount of alcohol, but by its source. So if it is made from fermented grains, it is a beer and, therefore, is taxed at \$0.31 a gallon. If it is made from the vinting of fruits-- and actually to include vegetables as well and it-- it would be classified as a wine, which would be \$0.95 a gallon. If it was made through distillation or through any other process that the Supreme Court said, \$3.75 is the tax rate, so \$3.75 is the default tax rate unless specified elsewhere. So in this case here, you're dealing with product which is taxed at \$3.75 a gallon, whether it's six-- whether it's an 80-proof vodka, whether it's a 90-proof whiskey, or some rums

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are even higher, you know, you have a variation there as well. Where it was really affecting it was when you're dealing with these RTDs, which are down somewhere 12.5 percent or lower, where you're paying not only the gallon-- on the gallon, but you're paying for the ginger beer or any other thing you're putting into it. OK. So we support the idea that there needs to be a special classification for these processes. Our issue is we think \$0.31 a gallon is probably too low if you look based upon the serving structure of it and comparable to what other states have done. When we look at this issue, at first we thought about doing just graduating-- doing a graduated tax based upon percentages, and that would have been just a nonstarter on how complex it would have been, especially the tax collection point, which is the wholesale tier. So we looked at what South Dakota did. South Dakota had the same problem and they would be taxing these products at \$3.93. They lowered them to 12 percent. I think they were-- as Ms. Silke said, they were thinking about going to 12.5 because it's products in the marketplace, and they lowered them down to 93 cents, which just conveniently happens to be their wine tax rate. The commission's position is that these probably should be lowered from \$3.75, probably to \$0.95, because then at that point they're going to be comparable to a glass of wine, which is generally in that 9 to 13, 14, you know, that percentage of alcohol. Knowing that there's going to be a whole wide-- you know, as you heard, you can make a beer heavier. The problem is your tax-- your-- your cost inputs in that beer go up. If you make something, a high-alcoholic beer, generally, it's costing more to make it. In this case here, I mean, if you're making something with a neutral-grain spirit, you know, your costs are dependent on how much sweet stuff you're putting into it to balance the flavor profile and the alcohol content. And so we believe that there needs to be addressed-- but the commission's position is that they think \$0.95 makes more sense. If you sort of break it down, at tax point for each serving, a four- to five-ounce glass of wine generally will come in at \$0.04 per serving, per glass, for \$0.95. Spirits are one and a half ounce at 80 proof, comes in about \$0.04 at the current tax rate. Beer-- 12 ounces of beer comes in about 3 cents per serving, makes it \$0.31 a gallon. These products would probably come in somewhere between 2 and 3-- 2 point-- about 2.6 percent, so it's-- potentially these might actually be cheaper than beer, which we don't think would be the intent of this-- of this, you know, so we're not sure where the magic number is. We think it's more than \$0.31. We would propose \$0.95 just because that's similar to what South Dakota did, which is sort of

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who we followed by when we recommended in our letter that we-- this--  
this needs to be-- needs to be changed. So with that, I see I'm into  
the red. I'd be happy to answer any specific questions.

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

**J. CAVANAUGH:** Thank you, Chairman. Thank you, Mr. Rupe, for being here  
again. I love the math, by the way. If we were to adopt your  
recommendation, \$0.95, do you have any idea of what this would come in  
at then?

**HOBERT RUPE:** It'd probably come in slightly over \$0.04, something  
similar, because most of these are going-- the problem that you're  
going to have is you have a wider variance of alcohol content with  
these products than, say, most beer, as you heard Zac say. Most of his  
beers come in at \$0.06 a gallon-- 6 percent ABV. Most wines come in  
10, 11 percent, depending upon what it is. These, you're going to get  
both at both sides of that spectrum, you know, and that's our concern.  
I mean, there's a reason why they're looking at 12.5 percent, because  
there are those products in the marketplace. And so, you know, whereas  
most beer at-- at 12.5 percent beer is quite high cost anyway because  
it costs a lot to make a beer that high in alcohol. It's easier to  
make a 6-percent alcohol beer than a 12-percent alcohol beer. This  
thing here, your-- your-- your amount of your inputs are going to be a  
lot-- there's going to be less variance because it's going to be how  
much distilled spirits versus how much other stuff to make the  
cocktail, and your cocktail-- and so we just think that-- that-- and  
just so you know, I have auditors who do the math for me because I'm a  
lawyer and, therefore, you know, math hurts my head. Going back just  
recently on the-- on the fiscal note, you know, people think we're  
percentage of high. Well, it depends. Are you looking at percentage  
of-- how much gallonage is where we look at versus their sales. We  
reached out to the industry and they're the ones who were telling us  
right around 20 percent, so that's where we came from. But as stated,  
because of the base of our current system, we can't track it  
currently. So I'll put a plug in for hopefully our computer upgrade  
bill, which is being heard tomorrow morning. That would-- that would  
allow us to track it more-- more-- more appropriately and make sure  
that tax is getting paid correctly. So it was our best guess based  
upon the industry we had, based on when we reached out to the  
industry. We know that because we don't have specific hard numbers,

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that it was a guesstimate at best, and so that's what we came with. But that-- my auditor reached out to them and said, how much of this product do you think this is going to encompass, because some existing products might qualify for this, as well, already that we're not thinking of, so.

**BRIESE:** Thank you, Senator Cavanaugh. Any other questions? Senator Brandt.

**BRANDT:** Thank you, Chairman Briese. Thank you, Mr. Rupe. So just to clarify, currently it's a \$3.75 tax. You're proposing a \$0.95 tax. So basically we would drop it 75 percent or would be one-fourth of the current tax.

**HOBERT RUPE:** Exactly right.

**BRANDT:** Thank you.

**BRIESE:** Thank you, Senator Brandt. Senator Lowe.

**LOWE:** Thank you, Chairman. Thank you, Mr. Rupe, again. Do you know about how many RTD products are coming into the state right now?

**HOBERT RUPE:** You know, specifically, no. The best guess we had was when we reached out to the wholesalers, the liquor wholesalers, and that's the number they gave. The beer wholesalers are also bringing these in, and I don't think we-- we factored that number in because most of them also have a whole-- liquor wholesale license, but they predominantly do beer. You know, the-- as I said, the best guess was, you know, given our current-- our current technologies, we just tax on gallons, [INAUDIBLE] reported. You know, we don't break it down further than that. Hopefully with a new stat-- with the new computer system we can go down to brand registration, where other systems-- where other states have it, where we would know-- you know, I can tell you how-- at the end the year after that-- that system is online and passed, I can tell you how much vodka we sold in Nebraska last year. I can tell you how much whiskey we sold, how-- how many RTDs. You've heard from DSCUS. This is a growing market, has been for a while. A lot of-- there's also-- you know, you also have to realize that you may see some of these products that are currently being brought in as a flavored malt beverage might transition over to this, because it might be easier to manufacture, so you might see some cannibalization

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of it. A lot of that will depend on how the federal tax rate looks, but so-- because right now it's-- to be a flavored malt beverage, you have to have the majority, basically 50.0 percent or more of your alcohol has come from the brewing process, and so have our statute follows the feds'. That's how the feds tax as well, because the feds sort of tax these things. You've got to remember alcohol is taxed at the federal level, too, based upon manufacture [INAUDIBLE] excise tax. So this-- you know, this market is so new and so expanding. I can tell you it's growing. I think that what-- and I think we factored that into our fiscal note, that we believe that this market will continue to expand. To what rate is, you know, probably dependent on what tax rate comes in.

**LOWE:** Do you think COVID might have had something to do with that market expanding?

**HOBERT RUPE:** Yes. No offense to a lot of people, they don't know how to make their own drinks. That's why they go to bars in the first place, especially the more complex drinks, you know, like a Moscow Mule, where the cost of buying all the individual components would be-- you know, it'd be better to just buy a can-made Moscow mule. I mean, we're talking-- maybe a rum and Coke, you know, is a rum and coke, but a Moscow Mule takes-- or margaritas require a little more finesse, a little more skill that most people don't know, and more importantly, they probably would heavy pour themselves, so.

**LOWE:** All right. Thank you.

**BRIESE:** Thank you, Senator Lowe. Anyone else? Do you have an estimate of the average alcohol content of these drinks coming into the state or these drinks period or the-- or perhaps the mean?

**HOBERT RUPE:** The information that we've gotten this far is they're-- they're slightly higher than most-- most beer--

**BRIESE:** Slightly higher.

**HOBERT RUPE:** --you know, somewhere probably in that 6 to 9 percent. Some are lower. One of the one of the number-one sellers I believe we looked at was a Jack Daniels and Coke, which was right around 5, so not a lot different. So I-- I think a lot of them-- we would-- there-- I think most of the industry is trying to get what's called a rough

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drink equivalency, and the rough-- rough drink equivalency is a 12-ounce, 6-- a 12-ounce beer at 6 percent, a 5-ounce wine at I think 11.5 percent, a 1.5-ounce spirit shot of 80 proof or a 1-ounce shot of the 100 proof. That's sort of your rough one-drink equivalency, and I think a lot of the manufacturers are trying to shoot for that. They might edge up or down based upon flavor profile costs and anything else they come up with.

**BRIESE:** I think we heard a testifier earlier suggest, or give a couple of very good reasons, I thought, why they would target the 5 to 6 percent range and--

**HOBERT RUPE:** Yep.

**BRIESE:** --you don't have any reason to disagree with that?

**HOBERT RUPE:** I don't have a reason to disagree. A lot of that would also factor in probably with their serving sizes, you know.

**BRIESE:** Sure.

**HOBERT RUPE:** They're going for a traditional 12-percent serving size, they might shoot for a 6 percent. If they're doing an 8 percent, maybe they're going to shoot for a 9, 10 percent alcohol content, depending upon how they're going to market and what they're going to look for.

**BRIESE:** OK. Senator Lowe.

**LOWE:** You'd mentioned that you're going to have a computer update or you're trying to get a computer update. Some of the fiscal notes that are going to follow us today say that you have to do a software update.

**HOBERT RUPE:** Yep.

**LOWE:** Will this help with your--

**HOBERT RUPE:** One hundred percent, that would help. Right now, we are operating under a system which went online when I was a sophomore in college. As you can tell by the gray hair, that was quite a while ago. It's an old C1 system and anytime we need to go in and change the data, we have to go to the ICO-- the OCIO's office. For years we got pretty much a discount because we had a guy who understood it and was

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able to do it relatively cheaply. He, of course, retired, and so now anytime we asked OCIO to change something, that's the numbers we're getting back. For instance, it used to be about \$3,000 or \$4,000 fiscal note. Now they're some-- anywhere from \$9,000 to \$10,000 to do a license type. If we were to get a new system where we could actually manage and correct our own data, those costs would go away. It's one of the problems about when you're dealing with such an ancient legacy system. Anytime you make a change to it, the costs of that are just-- for instance, 20 years ago, to put a new carburetor in a 1987 Ford pickup was less than it would be to put one now because it's getting harder to find the parts, and that's where we're at on our existing computer system.

**LOWE:** All right.

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

**HOBERT RUPE:** Thank you.

**BRIESE:** Anyone else wish-- wishing to testify in the neutral capacity? Good afternoon and welcome.

**KENT ROBERT:** We are afternoon. Good afternoon, Chairman Briese, members of General Affairs Committee. My name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here today to testify neutrally on LB578. And I'll try to be brief because I know we've got one more before this afternoon. I'm here on behalf of Wine Institute, and it's an association of 1,000 California wineries and associated businesses that works nationwide to promote their products. I talked to Senator Vargas about this a couple of times and we support almost all of the bill. The concept is great. The definitions being put in statute I know are helpful to Mr. Rupe and the industry. What we're doing, actually, and I don't think it's intentionally, we're trying to correct a price disparity by creating another one. There are multiple types of ready-to-drink cocktails. Some are spirit based, some are wine based, and they're all different than like the White Claws, which are, you know, a malt beverage-type of a situation. So the best example I can give you is old-- the two old guys on the porch, Bartles and James, came out years ago. That's a wine cooler. There's a lot of those still on the market. There are some new ones that are on the market and more coming out. This would actually create a tax that's,

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for us, our wine-based ones would be three times as high as the new tax for the-- the spirit-based ones. So while Mr. Rupe's suggestion of \$0.95 cents makes us happy, as well, you could also drop our tax the \$0.30 and we wouldn't be opposed to that. [LAUGHTER] I can answer any questions.

**BRIESE:** Thank you for that. Any questions? Seeing no questions, thanks for your testimony.

**KENT ROBERT:** Thank you.

**BRIESE:** Any other neutral testifiers? Seeing none, Senator, would you like to close? I do note that we have one letter of support, one letter in opposition to LB578. Good afternoon and welcome again.

**VARGAS:** Thank you, Chair Briese, members of the committee. I'm going to be brief. I think we heard that there's a rationale, there's-- there's support. We really just have to make sure that there's-- looking at the amendment, that there's some cleanup. And we did also hear about this \$0.95. Here's the one thing I'll tell-- I'll speak to that. Currently, as long as canned cocktails are at a higher tax rate-- let's say it's hard seltzers-- I don't see the opportunity for this to grow as significantly as it could. The market report that I referenced is-- is a-- is a national market report. This is a billion-dollar industry, and the reason why I know it's a billion-dollar industry is because this is my industry, definitely not my-- my area, but our market reports suggests that this is a billion-dollar industry. In the last year, 2019 and '20, in the last year, this product alone across the nation has grown 90 percent. There's a lot of reasons why we can speculate as to why it's grown, but the industry is clearly growing and we have an opportunity to create a market for it in our state. And-- and you heard from two different small businesses that this is a current hindrance to being able to enter. We often talk about tax as being difficult, you know, for-- for operating. This is a hindrance to even truly initiate and grow it. And so I think it's something that we should venture to push forward so that we're creating the market and then seeing how much revenue this can bring in. I'm encouraged by the fact, and I-- I thank the Liquor Commission for providing the testimony that efficiencies, you know, with computer efficiencies will only help to get us to a place where we don't have a system where, you know, Hobie had when he was graduating college. That's-- that's not good for any of us. We

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need to continue to look at ways to vitalize different products, create more jobs, and create some more income tax and sales tax revenue, more utilization of Nebraska agricultural products, and more tourism. This does all those things. We don't often get to check off all those boxes. So with that, I thank you for your time and I hope that we can pass this and get it to the floor in a time where we desperately need to continue to find ways to support small business sectors amidst this pandemic. Thank you.

**BRIESE:** Thank you, Senator Vargas. Any questions for Senator Vargas? Seeing none, thank you again. That closes our hearing on LB578 and I will turn it over to Senator Vice Chairman Lowe.

**LOWE:** Welcome, Senator Briese, to the General Affairs Committee. I'm glad you found us.

**BRIESE:** Yeah.

**LOWE:** And you may begin at any time.

**BRIESE:** OK. Thank you and good afternoon. Vice Chair Lowe and fellow members of the committee. My name is Tom Brise, T-o-m B-r-i-e-s-e, and I'm introducing LB80 on behalf of the Liquor Control Commission. LB80 amends the Liquor Control Act by reducing the fees for the annual manufacture direct-sale shipping license from \$500 to \$250. This bill also reduces the fee for an annual retail direct-sale shipping license by the same amount-- to the same amount. This licensing fee is assessed on out-of-state manufacturers who seek to ship their products into Nebraska for sale at licensed establishments. The Liquor Control Commission received many complaints from small out-of-state manufacturers that our \$500 fee is too high and is keeping them from being able to ship their products to Nebraska. Nebraska's \$500 fee for these two licenses is the second highest in the nation. It appears quite high when looking at our neighboring states. Iowa charges \$20-- \$25; Colorado, \$100; Kansas, \$75; South Dakota, \$100. New Mexico, a state that is similarly situated to Nebraska in population, charges \$50. The Liquor Control Commission believes we will get more compliance and less illegal shipping into Nebraska by lowering these two annual fees to \$250 and could potentially see more licenses issued each year. I would be happy to try to answer any questions. However, I do believe that there are some folks following me that are going to be able to answer some of the questions better than I can. Thank you.

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General Affairs Committee February 8, 2021

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**LOWE:** Thank you, Senator Briese. Is there any questions? Seeing none,  
are you going to stick around for close?

**BRIESE:** I will be here.

**LOWE:** All right.

**BRIESE:** Thank you.

**LOWE:** Glad to hear that. All right, looking for opp-- or proponents.  
I'll screw this up yet.

**HOBERT RUPE:** Good morning Vice Chairman Lowe and members of the  
General Affairs Committee, My name's Hobert Rupe, executive director  
of the Nebraska Liquor Control Commission, appearing in support of the  
pending legis-- the pending bill. These-- S1 licenses is what they're  
called. These allow an out-of-state manufacturer to get a license.  
Nebraska is also one of the rare states which allows an out-of-state  
online retailer to get a license. Those are the retail-direct shipping  
ones. These go-- don't go through the three-tiered system. So in other  
words, if you like, you know, Hobie's hops in a place in Napa Valley  
that you really like the-- the one beer place, hypothetically, that  
decided to buy them directly, they would get a license from us. Right  
now, they would get a \$500 license. When we did our licenses, we were  
one of the first states in the nation to do it, and it sort of made  
sense. As other states have gotten on the direct-to-shipping, our  
license no longer makes sense. Our license fee is \$500, the second  
highest in the nation to New Jersey, not generally a state we want to  
be associated with on taxes and license fees. What this would do--  
would do, would cut in half. And normally a tax-- reducing a license  
fee like this would probably not draw any opposition. You'll hear  
opposition from this today because Nebraska years ago decided to take  
those S1s' license fees and send the-- ship-- send them to the General  
Fund, they go to the Grape and Winery Board, the grape/wine fund. They  
actually-- out-of-state wineries pay for and support a promotional  
for-- fund for Nebraska wineries. Originally that was- I believe it  
had a four-year or five-year sunset clause. Senator Fischer, one of  
the last things she did before she left the Legislature, was to get  
rid of the sunset provision of that. And so you're probably going to  
hear from them because this is a funding stream for them, and I'm  
totally aware that that's a funding stream for the Grape and Winery  
board that we're going to stop doing. How we're really looking at it

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from an enforcement standpoint, I sign cease-and-desist letters every single month to people who are shipping illegally into the state of Nebraska. Every single month I sign C&D letter. Most of them, some of them, get-- could become compliant. But unfortunately, my indication is, is they figured, ah, we'll just ship illegally until they catch us. And where you look at from the commission standpoint, not only do we collect the licensing fee, but we also collect the excise tax fee. And so all those wineries which are shipping illegally, generally, if you're shipping illegally, you're not paying the tax. If you're shipping legally, you'll pay the tax. So we believe that's why there's going to be a positive impact to the tax collections and to the General Fund on this. In a perfect world, we would probably-- we'd probably make it even lower than \$250. But I think that, you know, that's-- we've got to take baby steps when we're looking at this to try to get compliance, because we are extraordinarily high when compared to our neighbors. I can tell you, I get complaints of people who live in Omaha who have P.O. boxes over in Council Bluffs and have their wine delivered there because of the difference in the cost-- because wineries will go to Iowa, which won't come to Nebraska, because of our tax structure, our-- our licensing structure. We were smart. We licensed these entities early on and we thought that we set a marker out there at \$500 that would sort of be where they would follow. That's actually before me, that license fee, before I became director in 2006-- or 2004, I'm sorry. However, as is-- as more and more states have allowed it, and I believe you should have in your packet-- if not, I believe that the-- that Mr. Rogert is going to be delivering you a-- sort of a map which breaks down where the fees are. We're just high and we probably need to address it somehow. And we're looking at it from a-- trying to get people into compliance, because it's going to be easier for me, we believe, to bring-- if we have a fee that's more accessible, people will pay it, and they'll pay the tax as well. So with that, I'd be happy to answer any questions.

**LOWE:** Is there any questions? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chairman Lowe, and thanks again, Mr. Rupe. OK, I just-- instead of doing the math here, and I'm trying to find it, how many licenses are there issued every year?

**HOBERT RUPE:** We issue about 550 S1 licenses, although we did have an increase last year because of COVID. That's one of the areas, the permanent licenses, that went up because people want to ship.

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**J. CAVANAUGH:** Thank you.

**LOWE:** Senator Brandt.

**BRANDT:** And this is an annual fee or a one-time fee?

**HOBERT RUPE:** Annual fee.

**BRANDT:** And an S1 is for-- for all products or just wine products?

**HOBERT RUPE:** All products. We allow any product which would be shipped in, and so we would have breweries. We have some breweries which direct ship. They would pay \$0.31 cents a gallon. Wine would be \$0.95 a gallon based upon what they're shipping in.

**BRANDT:** Plus this fee.

**HOBERT RUPE:** Plus this fee--

**BRANDT:** Plus this-- OK, thank you.

**HOBERT RUPE:** --as well as this fee.

**LOWE:** Any other questions?

**HOBERT RUPE:** For instance, you-- earlier, there was a [INAUDIBLE] about the retail license fees. The most expensive, pure retail license fee is the Class C, which is \$300 per year.

**LOWE:** OK, so if a California winery had somebody call up, say, hey, I need a case of Merlot, can you ship it to Nebraska, and he says, well, I don't have a license for Nebraska, I'm going to have to tack on another \$500 so I can ship this case there, because you're going to be my only customer this year, that pretty much it?

**HOBERT RUPE:** Yep. Now one way we are going to be able to track better is our current rules, if they pass, is we are going to be now getting reports not only from the wineries, but we're going to be checking with UPS and FedEx as direct shipper to get their indications, so--

**LOWE:** OK.

**HOBERT RUPE:** --because there-- there was a-- you know, because right now we-- we know that there's a bunch coming in illegally. That'll

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give us a little better idea of exactly how much tax we're losing. We  
think it's a lot.

**LOWE:** With-- with the price going down to \$250, we're still higher  
than the surrounding states by over one and a half times.

**HOBERT RUPE:** Yep.

**LOWE:** Is there another way for the local wineries to get funding?

**HOBERT RUPE:** That would be up to you. You know-- you know, did they  
always get a General Fund allotment from the com-- but I think what  
they wanted to do when they-- when they-- when they-- when that bill  
passed, was a-- was sort of, hey, we're trying to grow this industry,  
and so we're going to have basically our out-of-state competitors help  
us, and so that's where that funding comes from [INAUDIBLE] funding.

**LOWE:** All right. Thank you. Seeing none, thank you very much.

**HOBERT RUPE:** Thank you.

**LOWE:** More proponents.

**KENT ROGERT:** Senator Lowe, remaining members of the General Affairs  
Committee, my name is Kent Rogert, K-e-n-t R-o-g-e-r-t, and I'm here  
today in support of LB80 on behalf of Wine Institute, which is a  
association of 1,000 California wineries and associated businesses  
that has been working on this type of a project for 30 years. I'll  
tell you, I'll try to answer your question, Senator Lowe, that you  
just had. Senator Cavanaugh, the-- the numbers are in the fiscal note  
of licensees if you-- if you catch that up, I think, if you look at  
the growth over the past few years, just a natural growth is occurring  
because of whatever, you know, the mail-shopping business is a thing.  
I would-- I can't completely promise, but I can almost guarantee you  
that by lowering this fee to what it is now, or even lower if you  
wanted to, we will increase the funding stream for the local farm  
wineries because of the large jump in the number of licenses that  
we'll have. If my group is 1,000 of them in California and the total  
numbers are just over 600, that would say that a lot of my group  
doesn't belong and they-- they just look at that map that I'm handing  
out and it shows, well, what's my budget? I've got \$2,000 for shipping  
fees and because I'm a little winery, I'm going to go spend it on the  
\$100 ones and get the most bang for my buck. And as Mr. Rupe said,

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Nebraska was the first state to do this back-- way back when, and we didn't really know what to charge, so we just said, \$500, we'll try that. Since we've done it, 44 other states have come back and they're allowing it. Most of them have all now come forward with lower fees. Like I say, the only one that's higher than us is New Jersey and some-- some states don't charge anything. So we would wholly support the bill and I think-- I think the fiscal problem that's perceived would not be. I think there would be just that many more licenses, because also this would include distilleries across the country, too, but let's just talk about, you know, the Bourbon Trail or something like that. A lot of those could-- could ship and they would sign onto this, I think, as well.

**LOWE:** All right. Thank you. Are there any questions? Seeing none--

**KENT ROGERT:** Thank you.

**LOWE:** Thank you, Mr. Rogert. Any other proponents? We'll switch to opponents.

**VANESSA SILKE:** I think we're to good afternoon. Yes, good afternoon. Senator Briese-- Chairman Briese, members of the committee, my name is Vanessa Silke. It's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and registered lobbyist for the Nebraska Craft Brewers Guild. I want to thank Senator Briese and Hobie for their willingness to listen to our concerns. What I'm about to say is-- is not a surprise to them. We oppose this bill. There were some notes by prior testifiers about how high the license fees are for our out-of-state people. Our excise tax rates for producers, whether they're in state or out of state, are extremely high by comparison to other states, and we had that discussion for senators who have been around for prior years on the tax revenue bills. We are in the highest on excise tax rates for beer. You just heard us talk about excise tax rates for spirits and alcohol. And I am one of the primary introducers or developers of the craft beer equivalent of the wine board that you're going to hear about from Mr. Hruza, who represents the-- the wine group. We modeled that statutory provision off of the wine funding, and it wasn't to leverage out-of-state producers to make us grow. It was because of the reality. You can't ask for a General Fund right now, or any year that I can remember in the last decade, even for a good cause, like promoting research and development and marketing for new businesses and new industries. We also have issues with constitutional and statutory

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requirements about where certain types of fees and money that the Liquor Control Commission collects has to go-- has to go to the school fund in many cases. These particular license fees do not have to go to the school fund, so they were an opportunity to take some of the-- that funding and support these growing industries in a very specific way. For each of the boards, the members are members of the industry that have relevant knowledge. They're nominated by the Governor and they use this money, which, you know, I don't have the same level of optimism that the California wine producer group has that they are going to double the-- double, in the course of one year, the total amount of licensees that buy these licenses here in Nebraska. And that's what it would take just to maintain the funding that the wine board has. And so I'm here to oppose the bill. I support senators' efforts in the past in passing those bills to make sure that businesses can grow. And I appreciate Senator Briese. This is a global issue with the commission as far as what type of fees that we are charging, whether it's in-state or out-of-state folks, whether it's license fees or excise taxes. And so I-- I do appreciate why he brought this. I think that that makes sense. But I think that we need to look more globally at all the fees and licenses to make sure that we are aligning everything relative to other states and relative to our market here. So with that, I'm happy to answer any questions you may have.

**LOWE:** Thank you, Ms. Silke. Senator Brandt.

**BRANDT:** Thank you, Vice Chair Lowe. Thank you, Ms. Silke, for testifying. What if the inverse of this was true and your-- your members had to pay \$500 to go to Iowa or \$500 to go to Kansas? It would have a chilling effect on their sales, wouldn't it?

**VANESSA SILKE:** It might.

**BRANDT:** OK.

**VANESSA SILKE:** And that's part of what my members do deal with, because every time they distribute to another state, every state has some form of a shipper's license fee or out-of-state license fee that you have to pay for as the price of entry. I'll also note from a legal perspective, unlike the licensees that are located here in the state of Nebraska, the shipper's license fee does serve a regulatory purpose in that those producers are not located here. And I understand the

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concern that some people are skirting the system, but they've-- if they've already figured out a way around it, they're not going to come back online for \$500. That's-- that's my observation of dealing with folks and practicing before the Liquor Control Commission. If you can get away with it at \$1,000, you'll get away with it at \$500.

**BRANDT:** OK.

**VANESSA SILKE:** But that is a valid point in looking at other states. But again, I think we need to look more globally at what we have across the board rather than just benefiting wineries in California--

**BRANDT:** OK.

**VANESSA SILKE:** --for example.

**BRANDT:** Thank you.

**LOWE:** Thank you, Senator Brandt. Any other questions? Seeing none, thank you very much.

**VANESSA SILKE:** Thank you.

**LOWE:** Enjoy lunch. Welcome.

**JIM BALLARD:** Hello, Senator Lowe, members of the General Affairs Committee. My name is Jim Ballard, J-i-m B-a-l-l-a-r-d, and I'm with James Arthur Vineyards, but also repping-- representing Nebraska Wine and Grape Board this afternoon, as well, as a board member of that, which is-- is located in the Department of Ag, so all this money that comes in that we're talking about actually goes through the Department of Agriculture. I just want to give you a little history, a little background. I think, as Mr. Rupe said, I believe it was about 2004 when-- when this was originally put in place. It did have a five-year sunset clause on it. Being the oldest operating winery in Nebraska, I was around for all of that. And the genesis behind this was actually brought by the wholesalers, and that \$500 fee was that-- that's who established that mark were-- were the wholesalers, if memory serves me right. And actually, as a wine industry here, we-- we fought that because our intent was, if-- if Nebraska charges \$500 for that permit fee, other states would also charge those high fees and those would be fees that we would have to pay. And so we originally fought that and we learned early on that we weren't going to win that battle. And--

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and through some negotiations and-- and talks, we actually were fortunate to give that money-- that \$500 permit fee would come to help our industry grow. And just to give you an example, over that time, I think we've seen about a threefold growth in Nebraska wineries across the state. Can all that be attributed to this fee? Probably not, but there probably is some benefit to that. It's helped in our marketing programs. It's helped supplement those marketing programs, especially for a lot of smaller wineries, and a great example of that is our-- our Passport fee that we have. We all have to pay I think it's \$300 to be part of that program, but then this money helps supplement that, getting the printing cost, getting the advertising, the marketing, and that's helped wineries across the state of Nebraska, especially smaller wineries in rural community-- communities. It's helped in our educational programs. We've been able to bring in some-- some world-class speakers, not only about wine making but grape growing as well. This has helped supplement those programs and-- and bring that cost down. And the other thing I'd like to point out is that throughout this whole process, especially in the beginning, is that a lot of other states around us were getting help from their general fund from those states, and that was one thing that we were trying to avoid, was to dip into those General Fund-- Fund dollars and try to-- try to self-sustain our industry as best we could. And we also do that by a checkoff program. Each vineyard pays a penny a pound that goes into this, into this fee. As a winery, it's \$20 per 106 finished gallons that we also pay, so we actually self-tax ourselves and that money that we self-tax ourselves goes into-- into this fee. Will lowering this tax kill our industry? Probably not. It-- it won't hurt-- or, you know, and there's going to be dollars that we could definitely use that wouldn't be there. I wish I had a crystal ball and I could tell you that we could double the number of fees or applicants that we got. I'll-- I'll be completely honest, when they put this \$500 permit fee, I didn't think anybody was going to pay this. I-- I was so pleasantly surprised. Last year, I think we generated close to \$330,000 that's helped our industry. And again, I didn't think anybody was going to pay \$500 at the time, so I'm not sure if-- if we-- we can increase those, but I do know that this fee has helped our industry tremendously over the last 20 years, roughly. So having said that, I would be more than happy to answer any questions.

**LOWE:** Thank you, Mr. Ballard. Are there any questions? Yeah, Senator Cavanaugh.

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**J. CAVANAUGH:** Thank you, Vice Chairman Lowe. And thank you, Mr. Ballard, for being here. You-- you didn't think anybody would pay it originally and obviously-- I guess it sounds like 550 people paid it last year. Is your concern the-- just with a decrease in revenue or is there a concern related to an increase in competition as a result of more [INAUDIBLE]

**JIM BALLARD:** I think it's just the decrease in revenue, I really do. You know, there are limitations on how much wine can be shipped in per individual. Mr. Rupe can give you those exact numbers. So it's not like people are going to be ordering over and over and over again, have this wine shipped in. And if you're-- if you're in business and you're afraid of a little competition, then you shouldn't be in business, so that's not-- that's not an issue. I think it's the funding that's really helped our industry grow in terms of those marketing and educational tools that we can use from those dollars.

**J. CAVANAUGH:** Thank you.

**JIM BALLARD:** Thank you.

**LOWE:** Thank you, Senator Cavanaugh. Any other questions?

**JIM BALLARD:** Thank you guys.

**LOWE:** Thank you very much. Welcome back.

**RICHARD HILSKE:** Thank you, Chairman Lowe and members of the General Affairs Committee. Again, my name is Richard Hilske, R-i-c-h-a-r-d H-i-l-s-k-e. My wife and I, of course, own Cellar 426 Winery in Ashland. I'm in opposition to LB80 as, for me, it's a bill trying to solve a problem that doesn't exist, and I'll get into that a little bit later. We have a growing winery that's been open nine years. Between the state and the county, when I renew my liquor license each year, it costs us \$1,100. When you add on property taxes, personal property taxes, excise taxes, crush taxes, waste taxes, payroll taxes, just to name a few, it's staggering what we have to pay in this state in taxes just to open our doors. So it amazes me that the Legislature would see the need to reduce the amount an out-of-state entity pays to do business to a paltry \$250, as it seems like we're catering to out-of-state interests. And as far as increasing the number of permits from out of state, you know, I-- I looked, I did some rough research,

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checked some wineries' pages, I went to 75 California wineries. Eighty-nine percent were already shipping to Nebraska. I could order wine there if I wanted to. Oregon had similar results. Iowa has been mentioned. They're more populous, \$25 permit fees. I checked their numbers. They do 1,080 permits. I'm not sure where the 550 comes from. When I looked on the Liquor Control, it said we had 658 permits in Nebraska, so 20-- \$250 is not going to double it, so we will lose funding from that. As I mentioned earlier, the bill is trying to solve a problem that doesn't exist. It was brought up that what can a winery do to pay \$500? Well, I ship to 38 states. I don't purchase permits in each state, not necessarily due to the cost to permit, but more so because of the paperwork and other compliance issues. So what I use as a third-party service, in my case, called VinoShipper, that takes care of the compliance. There's no yearly fee. It only costs us when we get an order from a customer and the average cost is about 13 percent of what the customer's bill is. The company, along with several other similar vendors, is available to wineries across the country, with Nebraska being one of the states they can and do ship to. I talked with VinoShipper. They indicated to me they have several thousand wineries that use their services and only-- and they're only one of the vendors. They also mentioned the shipping fees isn't likely the main barrier, but the monthly reports. With these-- with these services available, the permit fee isn't a barrier for a winery to send winery-- wine in Nebraska, if they want to, legally. If a customer wants their wine, they can use one of these services fairly inexpensively and get the wine to the customer that-- that needs it. You know, I-- I understand they say our fees are out of line. As I indicated previously, I can-- I can ship to 38 states, but even VinoShipper can't ship to approximately 12 of them because they're more restrictive in other ways. In conclusion, you know, I'm a lifelong Nebraskan, raised-- I've never left here. It bothers me that we're considering a bill that is doing far more for out-of-state interests than for our in-state wineries and Nebraskans. You know, we talk about being out of line. I mean, everybody knows our license plate fees have been way higher than other states' for years and years. And we say, well, we haven't lowered those for-- to get everybody back in compliance, if you will. So I ask you reject LB80 as it's a needless bill right now, without maybe tweaking some funding issues and some other issues to solve a problem that really doesn't exist when you look at the other options that are available. Thank you.

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**LOWE:** Thank you, Mr. Hilske. Are there any questions? Seeing none,  
thank you very much.

**TIM HRUZA:** Vice Chairman Lowe, members of the General Affairs  
Committee, my name is Tim Hruza, last name H-r-u-z-a, appearing today  
on behalf of the Nebraska Winery and Grape Growers Association in  
opposition to LB80. I'm pinch-hitting today for our president, a  
gentleman by the name of-- sorry, Mick McDowell from St. Paul,  
Nebraska. He planned to come this morning and testify, but he's  
trapped in his rural driveway with his inability to start a tractor to  
get out as of 6:00 this morning. So I have distributed to you a copy  
of his written testimony that he would have given here this morning,  
as well as a number of letters from some of our members who-- who had  
all wanted to come testify. I think, considering the circumstances  
related to COVID, we decided not to send every winery in the state to  
come testify opposed to this bill. I-- I don't want to overdo it or  
echo too many of the comments from some of the previous testifiers. I  
think Ms. Silke really did encompass a number of the concerns that we  
have in terms of the structure of this and why we think this is an  
important way to fund a piece of this industry, I guess, in the state  
of Nebraska. And Mr. Ballard also did a very good job of explaining  
some of the history in response to some of the allegations about why  
we might oppose this legislation. I want to highlight a couple of  
things from Mr. McDowell's testimony that he's not able to give to  
you, and the first is that most of our wineries in Nebraska are small  
wineries in very small communities, located a lot in rural areas. I  
think you'll see on the second page of his testimony, and he's  
actually got Alliance, but in line 54, that the average population of  
a town near a Nebraska farm winery is 3,345 people. These are located  
in rural areas. They often are a source of entertainment, of tourism,  
of something for communities to do. And we're not talking huge  
operations that make thousands of bottles of wine every year, which  
goes to my second point, which is the concern related to competition  
or the idea that we're trying to stifle competition by charging  
out-of-state wineries. I think I personally represent the wine--  
Nebraska wine industry. I drink wines from all over the country and I  
think most anybody who drinks Nebraska wine does too. This isn't  
necessarily so much about competition as much as it is about economic  
development and tourism for the small wineries that support many of  
the communities that-- that you-- you all come from and that you all  
represent. To the licensing-- or to the fees and the number of fees, I

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think most of our opposition and our hesitation is really to the assertion that these fees will double within a year by simply cutting the cost in half. And I know we've talked about Iowa, but you'll see in-- in Mr. McDowell's testimony at the bottom of that first page, and you'll also see it on the fiscal note from the Liquor Control Commission, that Nebraska in 2020 did 658 permits. In Mr. McDowell's testimony, he lists in 2020 that the state of Iowa did 1,080 permits. That's a cost of \$25 dollars and it's still not double at a state that has a higher population than Nebraska. So Mr. Hilske also mentioned the third-party services that have popped up that allow for this. Whether it's a VinoShipper or another type of third-party option, there are-- there are ways to build a business and do it and ship into the state of Nebraska while still supporting the valuable things that this fee goes towards in terms of the economic, the tourism impact. The-- the last thing that I'll mention to you, and I know Mr. Ballard mentioned the total overall amount, but the Wine Board is funded to the tune of about \$350,000 as of last year; \$95,000 of that goes toward marketing in the industry; \$120,000 goes towards events that help support the industry and help support the different small wineries across the state; \$23,000 of that was budgeted toward education; \$8,000 toward planning for the board; and then a little over \$100,000 of that goes toward operations and expenses. So I don't-- to that point, I just want to say that I think the money is being well spent. I do think that it is-- it is not necessarily a protection-of-the-industry thing. If you're going to drink California wine, you're going to drink California wine; you're going to drink Nebraska wine, you're drinking it because you want to support the nice options that we-- we provide in Nebraska. They're not necessarily competitors just because they're wine. And with that, I-- I would ask that the committee hold LB80 in committee and I would be happy to answer any questions that you might have.

**LOWE:** All right. Senator Brandt.

**BRANDT:** Thank you, Vice Chair Lowe. So this money today is administered by who? Is there a wine industry council?

**TIM HRUZA:** It's-- it's administered by the Wine Board, right? So as-- as Mr. Ballard testified earlier--

**BRANDT:** So those are all appointed by the Governor?

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**TIM HRUZA:** Appointed by the Governor and it runs through the  
Department of Agriculture.

**BRANDT:** Is there a wine checkoff?

**TIM HRUZA:** I am not the right person to answer that question. We do  
pay an excise tax, but--

**BRANDT:** To the wine, I mean, that stays in the industry, so--

**TIM HRUZA:** I think-- I think this is the money that funds that wine  
board--

**BRANDT:** But, I mean, are the--

**TIM HRUZA:** --all of their operations.

**BRANDT:** --are the wineries in the state of Nebraska-- I think somebody  
mentioned maybe there's 90 or 95, which is wonderful. It is-- it's--  
it's growing and I want to see that. But, I mean, corn, we have a  
checkoff; beef, I have a checkoff; pork, I have a checkoff; soybeans,  
I have a checkoff. And that goes toward building that industry. I just  
was curious if-- if in this industry there was a similar structure  
where the people that participate help finance the promotion of it.

**TIM HRUZA:** I don't know enough about that.

**BRANDT:** OK.

**TIM HRUZA:** I don't know enough about the question to answer it.

**BRANDT:** No, that's fine.

**TIM HRUZA:** Yeah.

**BRANDT:** Yeah. Thank you.

**LOWE:** Well, thank you, Senator Brandt. I asked Mr. Rupe that if I  
ordered up a case of wine from somebody who doesn't ship to Nebraska  
and they felt, to be legal, that they had to charge me the \$500 or  
charge-- you know, pay the fee of \$500 to the Liquor Commission, and  
yet VinoShipper is able to-- or a third-party shipper is able to get  
that wine from the vineyard and get it to me without paying the fee,  
how is that possible? They have a license?

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**TIM HRUZA:** Yeah, so I think the answer to that question is that  
VinoShipper gets the license and then acts as the distributor into the  
state or the shipper into the state.

**LOWE:** OK, thank you.

**TIM HRUZA:** Yeah. Thank you very much.

**LOWE:** Thank you. Are there any other in opposition? Nobody's jumping  
up. Anybody in the neutral? Nobody's jumping up, Senator Briese, would  
you like to close?

**BRIESE:** I'm going to waive.

**LOWE:** Going to waive. All right. And that ends our committee for this  
morning.

[BREAK]

**BRIESE:** We'll go ahead and get started here. We're missing a few  
folks. But to keep things moving, let's get going. So welcome to  
General Affairs Committee. My name is Tom Briese. I'm the senator for  
District 41. I'm the Chairman of this committee and will be conducting  
today's hearing. We're here today for the purpose of conducting four  
bill hearings this afternoon. For the safety of our committee members,  
staff, pages, and the public, we ask those attending our hearings to  
abide by the following procedures. Due to social distancing  
requirements, seating in the hearing room is limited. We ask that you  
only enter the hearing room when it is necessary for you to attend the  
bill hearing in progress. The bills will be taken up in the order  
posted outside the hearing room. The list will be updated after each  
hearing to identify which bill is currently being heard. The committee  
will pause between each bill to allow time for the public to move in  
and out of the hearing room. We request that everyone utilize the  
identified entrance and exit doors to the hearing room. Entrance on my  
right and exit on my left. We request that you wear a face covering  
while in the hearing room. Testifiers may remove their face covering  
during testimony to assist committee members and transcribers in  
clearly hearing and understanding the testimony. Pages will sanitize  
the front table and chair between testifiers. Public hearings for  
which attendance reach a seating capacity or near capacity, the  
entrance door will be monitored by a Sergeant at Arms who will allow

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General Affairs Committee February 8, 2021

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people to enter the hearing room based on seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. We ask that you please limit or eliminate handouts. If you wish to testify in person 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 by the entrance. 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 to open on their bills. Then we will hear the proponents, opponents, and neutral testimony. Following the testimonies, 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 going to be afforded three 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 with 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. I'd first like to introduce our pages for the day. If you guys would like to stand up, that'd be great. Noah Boger, he's a student at UNL, and Kate Kissane, also a student at UNL. Thanks, guys. And I'd like to introduce committee clerk, Alex DeGarmo, and legal counsel, Laurie Holman. And with that, I'd like to have the members introduce themselves starting at the right-- on my right end.

**J. CAVANAUGH:** John Cavanaugh, District 9, midtown Omaha.

**ARCH:** John Arch, District 14, Sarpy County.

**LOWE:** John Lowe, District 37.

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

**BRIESE:** Thank you. And with that, we'll open up the hearing on LB295. Senator Wishart. Good afternoon and welcome.

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**WISHART:** Well, good afternoon, Chairman Briese, members of the General Affairs Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the great 27th Legislative District here in west Lincoln. And I'm here today to introduce LB295. And I also think this is the first time I've ever come before General Affairs Committee, so it feels pretty great. I am a true believer that whenever you go through really challenging situations like we did last year during the pandemic, that out of that you have time to reflect and see, sometimes it gives you a better focus on what's necessary, what you need to change. And this past year, especially talking with a lot of the small businesses, I represent the historic Haymarket, so you can imagine. I have a lot of bars, restaurants, concert venues, convenience stores that really got hit hard this past year. And in talking with them and reflecting and looking at the Governor's leadership with some of his emergency executive actions, it came to light to me that we have some regulations in place that I think are outdated and unnecessary. So that's why I jumped at the chance when I had some small businesses reach out to me to introduce LB295, which basically just continues one of the parts of the Governor's emergency order around the sale of alcohol. So LB295, it's very simple. It just strikes Section 53-178.01 from our statute and that section states that: No licensee shall sell alcohol, liquor, including beer, to any person for consumption off the licensed premises while such person is in any manner within any motor vehicle. This section shall not apply to sales to handicapped persons in a motor vehicle displaying a current handicapped license plate issued by the Department of Motor Vehicles. So currently it is legal to sell alcohol in its original container to individuals with disabilities in a vehicle through a drive-through or individuals who are handicapped. During the COVID pandemic, as I said, the Governor issued several executive orders to make it easier for businesses to operate in a safe manner. One of these executive orders addressed this section of statute and extended what is already legally allowed for individuals who are handicapped to all adults 21 and older in Nebraska when purchasing alcohol. LB295 simply codifies the Governor's executive order into our state statutes for it to exist in perpetuity and, therefore, continues to allow what is already happening within our state without any issues. I encourage you to support this commonsense, pro-business bill, and I would be happy to answer any questions you may have.

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**BRIESE:** Thank you for that, Senator. Any questions of Senator Wishart?  
Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Briese. Thank you, Senator Wishart,  
for being here in front of General Affairs. It is a fun place to be.  
This-- would the-- it eliminates this prohibition, but there would  
still be requirements as to what type of liquor license or the  
institution would have.

**WISHART:** Yes.

**J. CAVANAUGH:** So it would have to be-- we had somebody earlier today.  
So maybe I know that-- so it would have to be a C-style license or a  
package. So it maybe-- Mr. Hobert Rupe is going to be here later, but  
it would have to be a license that already permits for taking  
prepackaged liquor and alcohol off the premises, not just any type of  
sale.

**WISHART:** Correct. This does nothing other than just say that what I  
can do by walking into a store, I can now do through a drive-through.

**J. CAVANAUGH:** Well, it, it wouldn't necessarily-- I always think-- so  
in my district, there's a place-- well, I guess it's right outside my  
district called Don & Millie's, which I'm sure most people are  
familiar with and they have margaritas. And it's one of the ones you'd  
like to drive-through. But that wouldn't qualify.

**WISHART:** Well, no, because you wouldn't be able to-- I imagine you  
wouldn't be able to go and get a margarita to go, currently.

**J. CAVANAUGH:** I don't think so, but--

**WISHART:** No. I mean, currently you could because of our-- this place  
we're in with the pandemic. But in terms of law, you would not be able  
to do that. So everything that is legal in terms of alcohol sales,  
this would just allow for you to do that by purchasing it from a  
drive-through.

**J. CAVANAUGH:** But what about-- I think at Don & Millie's, you can buy  
a bottle of beer. Is bottle-- would a bottle of beer, does that  
qualify as package as long as they leave the lid on or would I have to  
buy a six-pack?

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**WISHART:** It would have to be in its original container.

**J. CAVANAUGH:** OK.

**WISHART:** And I have a, a couple of businesses here that can talk specifically about that. But it would-- everything would need to be in its original container.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you for this. You're going to remain here to close then? OK, thanks. First proponent testifier. Good afternoon and welcome.

**MARK WHITEHEAD:** Good afternoon. All right. Senator Briese, members of the committee, thank you very much for the opportunity to appear here before you. My name is Mark Whitehead, that's M-a-r-k W-h-i-t-e-h-e-a-d, and I'm here on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and I'm supporting LB295. We would like to thank Senator Wishart for bringing this bill forward. I've also been asked to include the support of the Nebraska Grocery, Grocery Industry in support of LB295 as well. There we go. This-- and Senator Cavanaugh, to answer part of your questions as well, we spoke with Senator Geist on her bill originally because there does appear to be some similarities between the two issues associated within both of these. But the distinction on this is pretty clear. And she felt comfortable doing this because of her support for the bars. This is an off-sale legislative action. Anything in its original container. And it is currently and it is believed for the Nebraska Liquor Commission that the Governor's executive order right now covers exactly what we're asking for to go forward on a, on a more permanent basis. We can currently, the way it's interpreted right now, sell packaged beverages through a drive-through window. We can deliver it curbside to customers through a packaged retail scenario. But again, the biggest difference between the two here is that this is an off-sale bill. Everything is in its original container. And, and as such, we think it provides some of the safeguards. With what we have been hit with, with COVID-19 over the course of the last year, we think the executive order is appropriate. We think lifestyles likewise are going to be changed permanently moving forward, even after things resemble somewhat normal, somewhat of a sense of normalcy. This is driven as a matter of convenience for our customers. We're constantly looking for

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different ways to differentiate ourselves from our competition. And in some cases that might be other package retailers or any other alternative that they've got. Whether you're talking about COVID or just as a matter of convenience to having the ability to deliver concealed packages like this while in the comfort of the vehicle, whether it be curbside or whether it be through a drive-through window, is not only safer from a COVID perspective, but also just simply a matter of convenience. As it might relate to problems of, of consumption, I can touch on that briefly. I, I did listen to part of the hearing this morning.

**BRIESE:** We've got a red light there. I'm going to have to interrupt you--

**MARK WHITEHEAD:** That's not a problem. Sorry about that.

**BRIESE:** --to be, to be consistent.

**MARK WHITEHEAD:** I did not see that. I apologize.

**BRIESE:** No problem at all. But I'd like to ask you a couple of questions. But I'd like to ask you to, to continue on for a bit, if you'd like.

**MARK WHITEHEAD:** Well, some of it relates to the ease of, the ease of delivery. Does that affect consumption? And throughout the history, since prohibition, government regulations does not affect consumption of alcohol. Hobie gave testimony in your first bill this morning that he thought consumption was up. But in talking with the chairman of the-- or president of the National Brewers Association, I spoke to him briefly about what happened when it went from a state's rights issue of drinking age to federal issue. What happened to consumption? He said absolutely nothing. We investigated that, likewise, when the increased availability in the early '90s in Lincoln, both in terms of opening it up for more off-sale licenses, more than doubling the off-sale licenses in 1991 and further in about '95, we went to Sunday liquor sales in the city of Lincoln. In both those two scenarios, consumption did not increase. Even though they doubled the number of liquor licenses, consumption did not increase. And in fact, during that same period, DWIs or problems as measured by DWIs actually went down even though there was a significant increase in availability.

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**BRIESE:** OK.

**MARK WHITEHEAD:** So this, this, of course, addresses a matter of convenience for the customer in terms of delivery of the product. It is still the responsibility of the retailer to identify sobriety and, and the rest of the legislation that goes-- the responsibilities that go along with that. And we're prepared to do that with even within the confines of the new legislation.

**BRIESE:** OK, thank you for your testimony. Any questions? Senator Lowe.

**LOWE:** Thank you. And thank you, Mr. Whitehead, for being here today. As I look at convenience stores, you always have a loss leader to try to get the customer from the gas pump into the store, whether it's a large pop or, or, or something on special, so they buy that extra bag of chips or the bubblegum or the 5-hour Energy drink or something else. So you not, not only make the gas sale, but you also buy the, buy the pop and several other things. But here you want to kind of cut that out and make it just for the convenience of the customer. Is that a good idea for the convenience store?

**MARK WHITEHEAD:** We'd like to be able to make that determination and this would allow that. In the case of Whitehead Oil Company, we just opened up a brand new store at Pine Lake and Highway 2. As part of that, there will-- there is a drive-through window. With the weather, we really haven't launched it at this point, but everything will be available through that drive-through window. We've got a small grill inside there, 12-pack of beer would be available currently under current conditions. Whether or not you want to pick up a pack of cigarettes or anything else. It's a simple matter of convenience for the customer. If the customer finds that more convenient and we can differentiate ourselves from our competition in that fashion, then, then, yeah, we think that becomes a viable option. But we are not going to restrict the products purchased through that drive-through window. And, and if they don't want to fight the, the lines inside or if they're concerned about their safety from a COVID perspective, being able to pick up a burger or a bag of chips or a gallon of milk or whatever through a drive-through window represents a pretty good alternative, we think.

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**LOWE:** At, at this time, do you currently sell to people at your gas pumps, advertisement, call this number we'll deliver a 12-pack out to you?

**MARK WHITEHEAD:** We have not done curbside to this, to this point. Whitehead Oil Company has not done it to this point. I think other people within our industry have.

**LOWE:** OK. All right, thank you very much.

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

**BRANDT:** So thank you for testifying. So it is legal to do under the emergency existing regulations to do beer just right out the door to the curb.

**MARK WHITEHEAD:** We've asked for an interpretation from that, from the Liquor Commission, and they have indicated, yes. We currently under the executive order of the Governor, we can deliver curbside and we don't currently operate any, any drive-through windows. But I believe that would be the case for that as well.

**BRANDT:** And I guess, a second thing real quick is, is in the '80s, I lived in Texas and then we went for a weekend over to New Mexico and they had drive-up windows back then. Is the argument against the drive-ups, the fear of increased DWIs?

**MARK WHITEHEAD:** I'm not really certain whether or not it's an opportunity to observe the person buying it while they're standing up or, or what it is. Currently, by our interpretation-- ours meaning, Petroleum Marketers Association for Nebraska, 30 states currently allow it. We have modeled our store design at Pine Lake with the drive-through after stores in Oklahoma, Oklahoma City, to be precise. And they've allowed a drive-up window prior to the pandemic and, and currently do now. But we could not make a determination as to how many were-- how many people offered it prior to COVID-19. But currently the estimate is 30 states across the country do offer that.

**BRANDT:** OK. Thank you.

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

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**MARK WHITEHEAD:** Thank you very much.

**BRIESE:** And next proponent testifier. Good afternoon.

**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 in support of LB295. And I would have been here this morning, I was in another hearing. I would have also been on Senator Geist's bill. I think from the wholesaler standpoint, as you heard from Mr. Whitehead, it is where customers, I believe, were shifting before the pandemic and the pandemic helped accelerate that on they want the convenience. They want to drive up to a convenience store. They want to drive up to grocery stores. Give you some-- an example that Mr. Whitehead didn't touch on, you can call and get your groceries for pickup right now. By Nebraska law, if you ordered a bottle of wine to go with the steaks and whatever you ordered for dinner, you have to get out of your car, meet the employee from Hy-Vee or wherever, Baker's, whoever, and they hand you the wine, then you get back in your car. They can load all your other groceries. They cannot legally place that bottle of wine into your car, because if you're-- if you stayed inside that car, because they are in violation of law that says you cannot deliver any alcohol to somebody inside a motor vehicle. So, I mean, there's-- as we changed and evolved as a society, changes like this, the wholesalers support their retail partners in saying let's, let's give them the tools they need to be able to operate and what they feel is best for their customers. And you still have the Liquor Commission, as Mr. Whitehead said, overlooking them to make sure they are checking to make sure people are 21. You still have the requirement that you can't serve to somebody who's intoxicated. And I think you, I think, it would be well-served to give these businesses across Nebraska the opportunity to see if they can make this work. With that, I'd try to answer any questions.

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

**LOWE:** Thank you. And thank you, Mr. Brady. How do you tell how tall a person is when they're sitting in their car? I mean, when you're checking ID, kind of check to see if they're six foot two or five foot ten. And when you're sitting in the car, you could be either one.

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**JUSTIN BRADY:** I suppose that, that it is more difficult, yes. And that puts more requirements on the retailers to make sure they are selling to who it is that license is and who it is. I mean, it's not exactly the same when I say that, Senator, because I know you still have to walk into an establishment. But if I were sitting at a bar here at this table, it would also be tough for you to say how, how tall actually is Justin? And so, I mean, but they've had-- but they don't go around and ask patrons, or at least I've never been to a bar where they ask patrons to stand up before you order. But I do understand what you're saying, that, yes, it is, it is definitely more difficult through a drive-through. But it is-- I don't think it's impossible to, to stop and say, is this person who they say they are and are they over the age of 21?

**LOWE:** All right. Thank you.

**BRIESE:** Thank you, Senator Lowe. Anyone else? I understand that, you know, numerous states or some states, anyway, have done this in the past, pre-pandemic, correct?

**JUSTIN BRADY:** Correct.

**BRIESE:** To your knowledge, in those states that have done it, is there any documented increase in impaired driving relative to states that, that don't allow that?

**JUSTIN BRADY:** Not to my knowledge, Senator, but I haven't researched all of them. I do know-- just throw it out there, I do know some states limit, you know, they originally talked about it as you were asking, Senator Cavanaugh, in the, in the original packaging. But they also have gone and said we aren't going to do what I refer to as those 250 milliliter, the airplane cocktail bottles, or we aren't going to do single can. I mean, there are some states that have done stuff like that to say, OK, we can't guarantee what they're doing, but odds are if somebody comes in and gets a airplane shooter, it's higher than if they got a bottle of something that they may consume it in the car.

**BRIESE:** OK. Any other questions? Senator Cavanaugh.

**J. CAVANAUGH:** Well, that raises the question here. So you could sell-- under this construction, you could sell shooters just-- somebody could drive up and just buy one shooter through a drive-through?

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**JUSTIN BRADY:** Under this-- yeah, if they-- if that retail establishment has the ability to sell that now, the answer would be yes.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Seeing no other questions, thank you for your testimony. Next proponent testifier. Good afternoon and welcome.

**VANESSA SILKE:** Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and lobbyist for the Nebraska Craft Brewers Guild. I'll keep my testimony very brief. We're in support of this bill. My members of the Guild are some of the most creative business owners in the state when it comes to this highly regulated industry. At this point, no one has a drive-through or plans for one. But we certainly appreciate the creativity and the steps that businesses like Mr. Whitehead's have taken to try and meet consumer demands and grow their tax base for their community and deal with the pandemic. So for that reason, we're supportive. I've listened to some of the other questions and concerns about volume or type of bottling or those kind of things. And I trust the committee that you would have a reasonable, you know, read on what could or couldn't be as far as further limitations than what the plain text of this bill has. And I welcome any questions that you might have as you work through that process. For purposes of my clients, that would typically be growlers, six-packs, things in original packaging as that term is defined in the Liquor Control Act that would be going through a drive-through, if at all. We also like that these establishments like Mr. Whitehead's gas stations would be selling craft beer. So that's fine with us, too. Any questions at all?

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

**VANESSA SILKE:** Thank you.

**BRIESE:** Next proponent testifier. Good afternoon and welcome.

**JOE KOHOUT:** Good afternoon, Chairman Briese, members of the General Affairs Committee, Joe Kohout, K-o-h-o-u-t, registered lobbyist

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appearing on behalf of the Associated Beverage Distributors of Nebraska. Nebraska's beer distributors. Mr., Mr. Brady did an excellent job of laying out the similar comments by our membership on why we would support LB295. I think to highlight one point that our membership looked at was we fully expect that a lot of those, those expectations that the customer base had pre-pandemic will continue post-pandemic in an effort to try to protect their families and, and their own health. So we would fully expect to see this model become more, more and more utilized statewide. The other thing I would say is-- and, and one thing that we truly appreciate that, Mr. Whitehead, when he reached out to our association a few months ago to tell us what they were working on, is that we appreciate that you have-- that your step-- that we have a, a partner in the industry who steps forward and says this is what we need, this is what we're looking at. How do we do this right? How do we, how do we work together to, to, to do that? And so we-- our, our membership very much appreciates that we're, we're talking about updates to the act that don't imperil any sort of investment made by any of our, our members in the, in the three-tier system. So couldn't get a whole day for me without saying three-tier system. So any, anyway. So with that, I'll try to answer any questions you might have.

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

**JOE KOHOUT:** Thank you.

**\*CHRIS WAGNER:** Good afternoon, Chairman Briese and members of the committee. My name is Chris Wagner, and I am the Executive Director of Project Extra Mile, a network of community partnerships across the state working to prevent excessive alcohol consumption and its tragic consequences. We are here in opposition to LB295. The current state law prohibiting the sale of alcohol to individuals in a motor vehicle was put in place to save lives by deterring impaired driving. Many states have considered this a common-sense measure to reduce impaired driving injuries and fatalities. Research conducted on drunk driving in New Mexico has shown that the odds of drinking in the vehicle prior to arrest were significantly higher for the drive-up window users than for offenders who purchased alcohol elsewhere. Nebraska already ranks as the second-worst self-reported drunk driving state with 955 DUI episodes per 1,000 population and has been called out by the Centers for Disease Control and Prevention for having almost double the

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national rate. This behavior also puts innocent Nebraskans at risk. The Nebraska Highway Safety Office reported 707 deaths due to alcohol-related crashes between 2010 and 2019. According to the National Academies of Sciences, Engineering, and Medicine, almost 40 percent of alcohol-impaired driving fatalities are victims other than the drinking driver. In 2016, 214 children aged 14 years or younger died in these crashes nationwide. LB295 is not going to move us in the right direction. In all likelihood, it will exacerbate an already serious problem in our state. Therefore, we would urge the committee to indefinitely postpone LB295 to keep our roadways safe after the pandemic has been brought under control and the executive order temporarily authorizing sales in vehicles is rescinded. Thank you for your consideration.

**BRIESE:** Next proponent testifier. Seeing none, how about opponent testimony? Seeing none, I do note that we have submitted written testimony by one opponent, Chris Wagner, with Project Extra Mile. How about anybody wanting to testify in the neutral capacity? Good afternoon and welcome.

**HOBERT RUPE:** Good afternoon, Chairman Briese, members of the General Affairs Committee. My name's Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of the Nebraska Liquor Control Commission testifying in the neutral capacity of LB295. The reason we're neutral on this one is, as you're aware, every year, according to some statute, the Commission does a legislative letter where we propose corrections or updates we think might need to the act. We did believe that this statute needed to be updated and modified. As you heard earlier, it made no sense to us that you were just pulling up to Hy-Vee, Isles to go, that you would have to get out and sign for, you know, pay for it and be ID'd as part of the pickup. However, we weren't sure if we were ready to go all the way with absolute repeal of the statute. So I did some research just, you know, where the statute came from for so-- now I put my, my law professor, history, history degree to work. Once again, this statute apparently came as a result of something one of our neighboring states did. Council Bluffs had an explosion of drive-through beer stores back in the '70s and '80s where you would just-- basically, they were garages, you would drive-through and park. You point him out, and then you would drive away. And apparently Nebraska, you know, of course, you know, we don't do anything that our neighbors do in that regard. So we had the existing statute was-- outlawed it completely. So that's where it came

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from. The concerns, of course, which, which I feel compelled to raise a little bit is sometimes it is a little more difficult to assert-- ascertain whether something-- somebody is who they say they are on their identification, makes IDing perhaps a little more difficult through a window. But one of the-- really ones we're looking at is sell to visibly intoxicated. You know, oftentimes, you know, the way you-- there's a whole litany in the act of how we can tell whether somebody is visibly intoxicated. And usually that has to do with some interaction between the seller and the purchaser. You know, you know, smell odor of alcohol, bloodshot, watery eyes, whether they're stumbling, able-- not able to walk. Of course, those will be more challenging sometimes if somebody's sitting down, because you're taking some of those identifiers out of the way. But we're not going to pose this because, as I said, we thought this bill needed to be modified anyway because like the grocery store and it's using some of the other ones. We did support the Governor's Office when they contacted me about this. You know, when this was percolating, they called us. And, and during COVID especially, we thought that the idea of just reducing interactions, especially people who might be a suspect, health concern, made sense that they could, you know, go through the drive-through or do the curbside. So in that case, we're sort of neu-- we're primarily neutral on this one. But just wanted to give you a little history of where the Commission was. And because we did reference this in our legislative letter, I felt compelled to at least address it. Be happy to answer any questions.

**BRIESE:** Thank you. Any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thank you, Mr. Rupe. Rupe?

**HOBERT RUPE:** Rupe.

**J. CAVANAUGH:** OK, I think I've said it differently every time.

**HOBERT RUPE:** It's all right. Usually people screw up the first name but not the last one, but it's OK, Senator.

**J. CAVANAUGH:** OK, so you were here on LB72 earlier today.

**HOBERT RUPE:** Yes.

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**J. CAVANAUGH:** If we were to not adopt LB295, wouldn't that hinder some of the descriptions we heard as it pertained to LB72 being the curbside delivery aspects that we talked about during that?

**HOBERT RUPE:** Well, yes and no. You can still deliver, but they would have to get out of the car, make sure who they are and prepay for it. So it would be-- so that was one reason why in our letter we thought we needed to address that because we, we did think curbside service was being impacted, you know, so we were-- we, we would support changing the statute. We weren't sure if we were ready to go all the way for repeal. But that's what-- so that's why we're here. But you're absolutely right, curbside service is one of the things that we thought needed to be addressed in a modification to the existing statute.

**J. CAVANAUGH:** OK, so adoption of LB72 and LB295 together would probably work together?

**HOBERT RUPE:** Yeah, the only thing that LB72 is going to do is, Mr. Whitehead was correct, this deals with off-sale. And so when you're talking about off-sales, you're generally talking about either Class B, which is beer, off-sale only, or Class D, which is beer, wine, spirits, off-sale only. There is a little cross pollination if they happen to have a C liquor license because C liquor license is allowed on premise consumption and off-sale consumption. So the-- technically, the only person who would probably be doing a drive-through with this would be a Class C liquor license, hypothetically, because they could sell a premade cocktail or if a Class I liquor license had a drive-through, they could do the same thing because they'd have the rights if, if, if both bills passed--

**J. CAVANAUGH:** OK.

**HOBERT RUPE:** --is what I'm saying. If both bills pass, you're going to have the Class C's, which you can do both, and then you'll have the I's and just the limitation of if being with a meal, because they can sell a premade cocktail, you know, off the premise with a meal.

**J. CAVANAUGH:** OK. OK. So I, I asked you that-- this question as it pertained to LB72 as well. What about the folks who have, have made concessions as it pertains to a liquor license with their local entity? How would this interact with those sort of concessions?

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**HOBERT RUPE:** Well, as you're aware, you know, the specific always over rules the general. And if there was a license that was issued based on an agreement between a liquor-- between a local governing body and the Commission, i.e.-- let's go back to the example we give. Sometimes people would, you know, prohibit the sale of airplane bottles. This-- the mere fact that they wouldn't be able to sell, sell through a drive-through wouldn't change that prohibition because they couldn't sell them anyway. So the specific condition on that would, would trump the general sale [INAUDIBLE].

**J. CAVANAUGH:** What about an example of a place that has allowed or they've agreed to not object to a liquor license for a particular institution? Would this now allow them to have that expansion without any further review by the local entity?

**HOBERT RUPE:** Well, if this law, law passes, it just takes away the prohibition so an existing licensee would be able to continue on. So I'm trying to think what condition we, we would be dealing with. Do you have a specific example?

**J. CAVANAUGH:** Well, I'm just saying, presumably nobody has negotiated around this condition previously. So any liquor license that's gone into effect wouldn't have [INAUDIBLE].

**HOBERT RUPE:** No, because we see this as a flat prohibition. So even if, if they tried to get an agreement to allow them to do it through the local governing body, we would never approve the license.

**J. CAVANAUGH:** So I guess my question is somebody in my district who I'm thinking about has a liquor license that doesn't have a specific prohibition for this. If we adopt this law, they could go in, knock out a window, and have a drive-through then if they had the correct--

**HOBERT RUPE:** The only thing that would apply hypothetically and this is-- because we're speaking hypothetically here, one of the things the, the Commission can look at, I think what we would probably do is if somebody is adding an additional license, we would have them file what's called an addition to the premises. Because what addition to the premises means that to make sure that it's being done in accordance with fire codes and health safety codes, and that also allows the local governing bodies to be aware, you know, from their zoning to make sure it's OK. The only concern I would have in this

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one, one of the things that often sometimes comes up and it's one of the conditions we look at to issuance of a license is the flow of vehicle and pedestrian traffic in the area. And so hypothetically, I can see a city maybe objecting to, to a drive-through if it's going to pose a, you know, a risk, you know. You know, I'll, I'll just use, since she is sitting here and she is introducer, Senator Wishart's district down in the Haymarket. You know, Lincoln might have a problem if a place down there wanted to retrofit a drive-through and, and right where the-- right through a pedestrian parkway or something like that. There might be some issues there, hypothetically, if you're looking at that. So internally, I'm just sort of thinking off the top of my head, we would probably treat anybody who wants to add a window as having to file an addition to the premises just so we're made aware and also make sure that they got-- changing their fire codes.

**J. CAVANAUGH:** I'm sorry, the Liquor Commission would deal with that.

**HOBERT RUPE:** Yeah.

**J. CAVANAUGH:** OK. So there would be some-- it wouldn't just be an automatic that they can start.

**HOBERT RUPE:** No, I don't think so. I, I think, you know, it's-- the carryout is probably OK. But, you know, normally what they have to do is they have to do either an addition or a-- either an addition or a, a, a-- if they change the footprint or change what they're doing inside they have to file with us primarily so we can-- because it triggers the fire marshal and the health department to make sure. So I would have them do the same here because it might change them depending upon how it's looking. You know, I mean, more than likely, probably 98 percent of time it's probably not going to be an issue. But it might, you know, come up with something. You know, they might not be able to do it to meet fire codes because it would be, it would be changing the original footprint as was approved.

**J. CAVANAUGH:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Senator Groene.

**GROENE:** Forgive me for being late, Chairman, roads weren't real great this morning.

**BRIESE:** Understood.

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**GROENE:** But maybe I'm being redundant here, it's been asked. How many states already allow this?

**HOBERT RUPE:** I believe there's about 32 or 33.

**GROENE:** I think Kansas and Colorado do, don't they?

**HOBERT RUPE:** I'm not sure. I know Texas does. Iowa does. But I think Iowa's is limited to beer. Perhaps, I'm not sure beer, beer and wine. Iowa is always a different neighboring state because we're-- Nebraska has a control [INAUDIBLE] in either western and, and eastern edge. So they often will have-- will treat distilled spirits far more differently than they drink beer and wine. So I think Iowa allows it, but just for beer and wine. I'm not sure about, about Kansas.

**GROENE:** This, this is for sealed containers, right?

**HOBERT RUPE:** Yes. Yes.

**GROENE:** And it's drive up and how would you know if somebody isn't already inebriated?

**HOBERT RUPE:** Well, the [INAUDIBLE] truck has a-- about a page and a half of signs. We have a, a rule against sell to visibly intoxicated. People think that that rule is somebody who's tipsy or over the limit. That's not really what it is. It's a decision that somewhere along the continuum, someone who has consumed alcohol and could no longer make the responsible decision to stop drinking and then that burden then shifts to a licensee to notify, hey, they need to cut this person off. So those signs are-- you're usually way over the DUI limit to trigger that traditionally. But one of the most common ways is people have problems with their balance and their gait. They fumble a lot for, you know, for change or stuff like that. And so a lot of that is based upon a face-to-face interaction. I'll tell you, you know, one of the concerns we have oftentimes, we don't see a lot of those in bars a lot where the, the waitstaff is interacting. But when you shorten that interaction time, like somebody goes into a convenience store and tries to buy something and goes off, sometimes we have more problems with that. But most times, you know, they catch it. We've had multiple cases where-- I believe, there was one case where the person was refused at three different convenience stores before they finally successfully bought. They were like .24.

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**GROENE:** But you would have a video camera to show that. You wouldn't have that on a--

**HOBERT RUPE:** Well, I think most of the drive-throughs probably do have video cameras on going through. I mean, on a-- if there's-- I mean, I know Mr. Whitehead's, I think, probably has a camera there, see who goes through.

**GROENE:** Are people under age allowed into a liquor store?

**HOBERT RUPE:** Yes.

**GROENE:** They are. So if somebody drives up and got a bunch of kids and they're teenagers and they drive up and buy, it's fine?

**HOBERT RUPE:** Yeah, we often will-- we've always said that there's nothing that, that stops them from IDing other people with them. We get this a lot at grocery stores. You know, it's pretty clear if dad and mom show up there and they're over age and they got their kids, they're aren't going to identified. But sometimes grocery stores will-- if they see somebody who's walking with five other people who look like a year or two younger than them to double-check. And sometimes we get that. One of the most egregious examples we've had of that, they had the camera, they had the minors pointing out what things that the guy could take up. And then he went up there with the beer and they were coming back behind with the chips and the person said, uh, and, and refused the sale because he knew that he was there buying for the minors.

**GROENE:** Through the COVID thing, has liquor sales been down?

**HOBERT RUPE:** Overall, revenue for the Commission went up almost 6 percent.

**GROENE:** So it doesn't seem like there had been a barrier or any barrier about access to alcohol because of COVID?

**HOBERT RUPE:** No, what we've seen is, we've seen a market haves and have nots in the sale. The off-premise locations have done pretty well for the most part. Whereas, your on-premise locations have really suffered.

**GROENE:** But this addresses the off-sale.

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**HOBERT RUPE:** This addresses off-sale.

**GROENE:** So they really don't need any more tools in their bag to sale.

**HOBERT RUPE:** I believe you've heard, we-- this has been allowed during the COVID because they're trying to reduce interplay. And, you know, the concern is the longer this is going on, how much have people's buying habits changed and will they continue to not really feel comfortable going into bars, restaurants, crowded convenience stores? And so, as you heard Mr. Whitehead address that, is that he's trying to address his customers.

**GROENE:** Thank you.

**BRIESE:** Thank you, Senator Groene. Senator Lowe.

**LOWE:** Thank you. Is Nebraska a dramshop state?

**HOBERT RUPE:** No.

**LOWE:** OK.

**HOBERT RUPE:** We are a limited dramshop liability. We have a minor liability act where if a minor is served illegal alcohol and then they injure a third party, that third party can seek recourse against the supplier, either a private person or a retail licensee for their damages.

**LOWE:** And then in, in the bar business, you always worry about that serving somebody one drink, even though they may have drank a bottle of-- or a couple of shooters outside your door and the effects haven't hit them yet. And here you're handing a 12-pack to somebody who could have done the same thing and, and then go off and get in an accident.

**HOBERT RUPE:** Yeah.

**LOWE:** All right. Thank you.

**HOBERT RUPE:** Yeah.

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

**HOBERT RUPE:** Thank you very much.

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**BRIESE:** Any other neutral testimony?

**HOBERT RUPE:** I've been here so much, I figured they would just have a permanent one for me.

**BRIESE:** Seeing none, Senator Wishart, you're welcome to close.

**WISHART:** Well, thank you so much for hearing this legislation today. You know, colleagues, if it was up to me and obviously it's not entirely, it's up to all of you. I think we should strike this entire statute. We have already seen last year this in play with the Governor's leadership. The sky has not fallen. There are businesses that are starting to shift for the consumer needs. And this is one way to do that. And these are the same businesses that have been struggling through other regulatory changes that have happened because of the pandemic. It makes no sense to me that when we've already removed this regulation for this temporary time, that we'd go back and put it back in place. You know, the other thing I'll remind the committee is nothing else is changing in terms of the laws. We still have stringent-- this is still a very highly regulated system. We still have stringent laws about drinking and driving. We still have string-- stringent laws about selling to a minor. We still have stringent laws about open containers within a vehicle. None of that changes. This just allows us to be more contemporary for the time and the consumer needs. Thank you.

**BRIESE:** Thank you, Senator Wishart. Any questions for the senator? Seeing none, thank you. I do note that we have three letters in support of LB295 and one letter in opposition to LB295. And that'll close the hearing on LB295. And now we will open the hearing on LB274. Senator Lowe. Good afternoon and welcome.

**LOWE:** Thank you, Chairman Briese and fellow members of the General Affairs Committee. My name is John Lowe, that's J-o-h-n L-o-w-e, and I represent the 37th District, which is made up of Kearney, Gibbon, and Shelton. Today, I'm happy to introduce LB274. LB274 is another attempt to update and make changes to the special designated liquor license, or SDL, that is used by the State Liquor Control Commission. Many of you have served on this committee before, so you are familiar with SDLs, how they work, and the challenges that come before them. For senators who are new to this committee, an SDL is, is a process that allows certain groups to sell and serve alcoholic beverages in special

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situations or in a way that is different than they are normally allowed. Examples of this are churches selling beer at a fish fry, craft breweries getting together for a beer festival, a bar wanting to celebrate St. Patrick's Day with a parking lot party, or farm wineries attending a local farmers' market. SDLs are very useful for, for not-for-profits as well as countless small businesses. Unfortunately, in some of these instances, the process becomes burdensome and the entity-- they become burdensome for these entities. At the same time, the volume of SDLs has become a problem for the State Liquor Control Commission. This is why last year this committee prioritized LB1056. My part of that bill allowed the entities with liquor, liquor license to temporarily expand their license to an adjacent property as long as it was approved by the local governing body. This effect-- effectively removed the need for a bar, brewery, microdistillery, or a farm winery to go to Liquor Control Commission if they wanted to temporarily expand to celebrate a holiday, a sporting event, or things of that nature. Today, I'm bringing LB274 to take a similar approach to last year's bill. But to now apply it to farmers' markets. LB274 would create a promotional farmers' market special designated license. This will allow farm wineries, breweries, and microdistilleries the ability to apply for a yearly license from the State Liquor Control Commission to attend a farmers' market. This license cost \$15. These entities are currently allowed to do this, but they have to apply to Liquor Control Commission each and every time they want to attend a farmers' market. This can lead them to sending out dozens, if not hundreds, of applications and the need to attend dozens of hearings in Lincoln. This is burdensome for the business and the Commission, especially because farmers' market applications are almost never denied. LB274 removes this hurdle, but still allows for oversight by the Commission. A farmers' market is defined as any common facility or area where producers or growers gather on a regular reoccurring basis to sell fruits, vegetables, meats, and other farm products directly to the consumers. This definition can be found on page 7, lines 26 to 29. This definition was taken from a Kansas statute that deals with the same concept. Once the Liquor Control Commission approves a yearly license, a recipient must still apply for permission from the local governing body to attend a farmers' market in that jurisdiction. All decisions of that governing body will be final. If it is approved, the local governing body must notify the Liquor Control Commission so the information can be provided to local law enforcement. LB274 is beneficial to the Nebraska small business, local governments, and the

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state, all while ensuring public safety. With that, I can answer your  
questions.

**BRIESE:** Thank you, Senator Lowe. Any questions for the senator.  
Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Briese. And thank you, Senator Lowe,  
for bringing this bill. I, I really like it, actually. I just have one  
question. Is this one license for the year so that you could then go  
to a farmers' market in Lincoln and then go to a farmers' market in  
Omaha? Or would it be one that would cover that farmers' market in  
Omaha for the whole year?

**LOWE:** It, it would be one for that one particular farmers' market in  
Omaha.

**J. CAVANAUGH:** So--

**LOWE:** So if you wanted to do one in Omaha and one Lincoln, you would  
get two licenses, but it would cover it for the whole year.

**J. CAVANAUGH:** OK.

**LOWE:** Instead of doing one--

**J. CAVANAUGH:** Statewide.

**LOWE:** --for, for Monday the 15th--

**J. CAVANAUGH:** Right.

**LOWE:** --and then next Monday.

**J. CAVANAUGH:** I, I was thinking that maybe you could do it statewide  
and then that individual institution, say Brickway, or whoever we had  
earlier, could then get a license, license from the state of Nebraska  
to be eligible to go to farmers' markets. And then they could go to  
the city of Omaha and get a local specific one just for that event  
like you describe here. But, I still like it.

**LOWE:** Thank you.

**BRIESE:** Thank you, Senator Cavanaugh. Any other questions? Seeing  
none, thank you, Senator. You'll be here to close?

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**LOWE:** I may stick around.

**BRIESE:** Thank you. Proponent testimony. Good afternoon and welcome.

**HOBERT RUPE:** I remembered the green sheet. She remembered to grab it from me. Thank you, Senator Briese and members of the General Affairs Committee. My name's Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of Nebraska Liquor Control Commission. We're in support of this bill. Over the last couple of years, we've been trying to sort of decrease the amount of-- how should I phrase this, repetitive paperwork that we have to do at the Liquor Control Commission. And so what would happen is this is a modification with the special designated license. An SDL, normally it's what you would, you would do for a wedding reception at a nonlicensed establishment. A city would do a street dance at the park for the, for the, for the centennial for the city, wedding receptions a lot, fundraisers. And one of the ones that we've seen more and more is you've got local producers, in which this case this bill really affects the, the three local producers here who make it, you know, classes, the Zs, the craft distilleries, the Ys are the farm wineries, and the Ls, the, the craft breweries. You know, as you've seen more and more people want to do this food, this farm to table, you know, they want to, you know buy local, eat local. These farmer markets have become a very good marketing resource for them. And so what would happen is we would have to give a separate SDL for every single one of these events. So every single weekend they'd have-- they'd pull one. We have one farmers' market who I think pulls almost a hundred in a year because they go to two in Lincoln and one in Omaha every single weekend over the season. And what this would do is be streamline this. And so the cities would still have their say because the cities have to approve an SDL. But so Hobie's, you know, Hobie's Hops, the brand new craft brewery on the block, hypothetically. If I want to go down to the Haymarket SDL instead of having to file one every single weekend from May through October, I filed one, this form, and the city would approve me for those dates. So I'm not having to file that much paperwork. We're trying to make it simpler on the, the applicants, make sure that it's timely. And also, let's be honest, to take some of the make-work that doesn't make a lot of sense out of the Commission, so we're not having to go through and approve all these every single week.

**BRIESE:** Thank you.

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**HOBERT RUPE:** With that, I'd be happy to answer any questions.

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

**GROENE:** So this is for open drink or, or somebody--

**HOBERT RUPE:** This is--

**GROENE:** --a craft brewer just wants to sell a six-pack of his beer at the farmers' market?

**HOBERT RUPE:** Yeah. Normally, an SDL allows you to consume on the premises. So this bill, you would have to ask for if they went to do the off-sale. Sometimes, they just want to do tastings. Sometimes, they want to sell off-sale. So all they would have to do is when they do the original application is ask for-- also for off-sale, you know, tastings and off-sale privileges. So.

**GROENE:** So you mentioned cities have to approve it, what if you're out on a barn dance out in the country at a farm?

**HOBERT RUPE:** The local governing body-- SDLs are the only license that have to be approved by both the local governing body and by the Commission. And so the local governing body, if it's in the city is a city. If it's out in the county or unincorporated, it's the county board.

**GROENE:** And this would eliminate that?

**HOBERT RUPE:** No, they would have to-- they would still be able to-- on the original application, they'd be able to say, are we going to have this farmers' market or this recurring event? This is basically so on those regularly scheduled, recurring events to make it more streamlined, to, to get the license to conduct business at those locations.

**GROENE:** So if it's a farmers' market that's every week, that would be just one permit instead of every week.

**HOBERT RUPE:** Exactly.

**GROENE:** But if you had the barn dance, you'd have to get a new one for that?

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**HOBERT RUPE:** Yes.

**GROENE:** All right.

**BRIESE:** Thank you, Senator Groene. Anyone else? Seeing no other  
questions,--

**HOBERT RUPE:** Thank you.

**BRIESE:** --thank you for your testimony. Next testifier. Good afternoon  
and welcome.

**CHRISTY ABRAHAM:** Hello, Senator Briese and members of the General  
Affairs Committee, my name is Christy Abraham, C-h-r-i-s-t-y  
A-b-r-a-h-a-m. I'm here representing the League of Nebraska  
Municipalities, and I just want to say hello to your legal counsel as  
well. It's good to see you. The League is very supportive of this  
legislation and we're very grateful for Senator Lowe and his staff.  
They have done these SDL bills for the last few years, and they have  
always let the League sort of preview them, look at them, make any  
comments that we have, and we're very grateful for that. And we have  
traditionally always supported these because of the component that the  
city council or village board needs to approve these licenses, as well  
as the Liquor Control Commission. And so in that same tradition, LB274  
also requires the local, local governing body to approve one of these  
farmers' markets' SDL. So we're in strong support of this bill and are  
happy to answer any questions you might have.

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

**CHRISTY ABRAHAM:** Thank you so much.

**BRIESE:** Further proponent testimony. Good afternoon and welcome again.

**VANESSA SILKE:** Hello again. Thank you, Chairman Briese and members of  
the General Affairs Committee. My name is Vanessa Silke, that's  
spelled V-a-n-e-s-s-a S-i-l-k-e. I'll keep it short and sweet. The  
Nebraska Craft Brewers Guild supports this bill. We very much support  
and appreciate Senator Lowe's efforts to work with everyone in the  
industry to find ways to reduce unnecessary regulatory paperwork and  
make things easier for licensees throughout the state to have their

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creative event. So with that, I'm happy to answer any questions you  
have.

**BRIESE:** Thank you. Any questions? Seeing none, thank you again.

**VANESSA SILKE:** Thank you.

**\*TIM HRUZA:** Chairman Briese and members of the General Affairs  
COmmittee. My name is Tim Hruza (T-I-M H-R-U-Z-A) and I appear today  
on behalf of the Nebraska Wineries and Grape Growers Association in  
support of LB274. I'd like to first start by thanking Senator Lowe for  
introducing this bill. Over the past few years, Senator Lowe and his  
staff have been working to assist licenseholders with the special  
designated license process in an effort to streamline the system and  
to make things easier for both the licenseholders and the commission.  
This bill works toward those end goals and will provide positive  
benefits for all who use the process. These are the types of good  
changes that we like to see in the industry. Thank you again, and we  
ask that you advance LB274 to General File.

**\*JUSTIN BRADY:** Chairman Briese and members of the General Affairs  
Committee; my name is Justin Brady, I am testifying as the registered  
lobbyist for the Nebraska Liquor Wholesalers in support of LB274 and  
would ask that this testimony and support be made part of the  
committee statement. LB274 came out of discussions that have happened  
over the last several years on how we eliminate some of the  
administrative cost and burden both to the Liquour Commission and the  
industry when dealing with SDLs. One of the areas that was clear to  
everyone that it seemed like we could lower this burden was when it  
came to farmers markets. If you have any questions, please do not  
hesitate to reach out to me. We respectfully ask for this committee to  
advance LB274. Thank you.

**BRIESE:** Any other proponent testifiers? I do see that we have  
submitted two pieces of written testimony in support of LB274, one  
from Tim Hruza on behalf of the Nebraska Winery and Grape Growers  
Association, another from Justin Brady on behalf of the Nebraska  
Liquor Wholesalers. Any opposition testimony? Any neutral testimony?  
Seeing none, Senator Lowe, you're welcome to close. Senator Lowe  
waives closing. I do know note we have one letter in support from one  
individual. And that will close the hearing on LB274. And with that,

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we will open the hearing on LB415. Senator Groene. Good afternoon and  
welcome, Senator Groene.

**GROENE:** Thank you, Chairman Briese. I didn't really prepare much of an  
opening, didn't have a chance. This legislation was brought to me by  
Bill and Todd Roe, a father and son operation and they have a facility  
in my district and they also have a facility in Senator Hughes's. In  
my district, they prepare the sugar from Nebraska grown corn for their  
whiskey. And in Moorefield they-- is where they have the distillery  
and create it. It's really nice they, they-- they've gone to two  
little small towns and taken existing structures and put them to good  
use. They are one of-- I believe I was told by Todd that there are  
seven licensed microdistilleries in the state. They are one of the  
more successful ones and they brought this limit on free enterprise  
that's in our statutes where they can only produce 10,000 gallons of  
the, of the liquor. If they produce more than that in their growing  
company, they become a manufacturer, no longer a craft brewer with a  
microdistillery. And they, they lose some distinct advantages that  
they really work hard on. And that's marketing by tasting events and  
going into bars in local areas. And they have tasting events. And then  
by statute, they have to distribute through a distributor. And then  
the distributor comes in and sells the bar or the restaurant their  
product. It works pretty well. If they cap 10,000 gallons, they lose  
that advantage. Then they're competing with Jim Beam on massive cost  
of paper and, and print and advertising, which doesn't work for a  
small company. So we, we took the limit to 100,000 gallons. Struck one  
word and added two. According to the Liquor Commission, Iowa has  
100,000 gallon; Kansas has a 50,000 gallon limit; Missouri, no limit;  
Minnesota, 40,000 gallons; Nebraska has the lowest at 10,000; South  
Dakota is at 50,000 gallons. So it shows you the disadvantage we have  
in the state of Nebraska for these, these new and expiring businesses.  
I didn't think any more language after reading it needed to be added.  
There's pretty strict statutes in place already about they must-- just  
the next sentence after where we change the-- from 10,000 to 100,000  
it says: The microdistillery may also sell a license-- to licensed  
wholesalers for sale and distribution to licensed retailers. There's  
two other places in our statutes where it already makes it darn clear  
that no alcoholic beverages can be wholesaled directly by a  
manufacturer. They must be done by a licensed wholesaler in the state  
of Nebraska. That's how we keep track of our taxing and it works well.  
They're not trying to change any of that. They don't want to change

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any of that. They-- a microdistillery can, like the breweries can, market at their locations and other places they can go retail just like where, I think, Senator Lowe's bill would cover them, too. But they just want to grow unhindered family business and they want to be proactive on this. So when they do hit that limit and they're pushing to hit that 10,000 gallon limit, they don't run into burdens. So I appreciate your support of the bill. And, and Todd and his dad are here, and they'll-- I'm sure they'll tell you more about this than-- and correct me where I misspoke, but they're really passionate about this endeavor that they've started. So you can hear from them.

**BRIESE:** OK, thank you, thank you, Senator Groene. Any questions for Senator Groene. Seeing none, you'll be here to close? Thank you. First proponent testifier. And I will note that the following bill LB311 is very similar to this current LB415. If you'd like your testimony to apply to both bills, you can let us know. Otherwise, you're welcome to testify on the next bill also. It's up to you, just, just let us know. Thank you and good afternoon.

**TODD ROE:** Thank you, Senator Briese and thank you guys for letting me be here today. My name is Todd Roe. First, my legal first name is Lyle, but I go by Todd and that's T-o-d-d, last name, R-o-e. I want to thank Senator Groene. I've been a big fan of his for a long time. Done a lot of other things besides our distillery. My dad, Bill, is back there. Him and I started this together, started off in his woodshop. First still I made was a two gallon pressure cooker and I tacked well over the column on it and we thought, man, we'd better get legal. And so we did. We're located in Moorefield, Nebraska. And if you don't know where that is, it's no big surprise. But its population, about 17 of us. Currently, there's only 15 because Dad and I are here. I do live in Brady, Nebraska. In Brady, we have what we call our sugar shack. It is a proof kitchen. We buy all local corn from local farmers. We're also in South Dakota and Kansas. We buy local corn from them as well. So when we take our whiskey down there, they feel like they have some agricultural skin in the game and it sells well. The big thing that we are is part of what we do. And I'm extremely close friends with the other distilleries in the state. We have kind of a, a good texturing going of conversation of how we're doing this and doing that. But a lot of what we do is who we are and, and our attitudes and, and how we present ourselves. And, and being a microdistillery, we're allowed to have people at our facilities and shake babies and hug hands and do all the things that I'm sure political people like

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you know nothing about. But it's an imperative part of what we do and how we do things. And if we become too big and, and produce over 10,000 gallons, it changes the dynamic of what we're allowed to do, utilize our personalities, utilize our ability to go out and talk to people somewhat. And by doing that restriction, it changes how we've built ourselves up to be where we are. I mean, I, I have to admit, I get to hang out with my old man and make whiskey all day. So I'm not complaining about my job, but I, I, I am worried this, you know, with restrictions, we won't be allowed to grow and flourish and, and maintain what we started. I can answer any questions if you guys have any.

**BRIESE:** Very good. Thank you for your testimony. Any questions?  
Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman Briese. And thank you, Mr. Roe, for what you do and for being here. Is there anybody in Nebraska over 100,000?

**TODD ROE:** Yep. Yep. Right now, we have a-- and, and Zac's back there, I believe he, he hit the mark this year.

**J. CAVANAUGH:** Over 100,000 or over 10,000?

**TODD ROE:** Ten thousand.

**J. CAVANAUGH:** I'm asking anybody over 100,000.

**TODD ROE:** Oh, not yet, no.

**J. CAVANAUGH:** And so-- and as far as you know, the only folks in between 10,000 and 100,000 is, is at Brickway?

**TODD ROE:** Yep.

**J. CAVANAUGH:** Is that where you're--

**TODD ROE:** Yep. Yep. Yes, sir.

**J. CAVANAUGH:** Thank you.

**LOWE:** Senator Brandt.

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**BRANDT:** Thank you, Vice Chairman Lowe. Thank you for making the trip  
today.

**TODD ROE:** Yes, sir.

**BRANDT:** You guys made it here before he did.

**GROENE:** They're closer.

**BRANDT:** So if, if under current law and you go to pass 10,000 gallons,  
what's the penalty for that? What happens when you go past 10,000  
today?

**TODD ROE:** Sure. The, the, the penalty, if, if we want to call it that,  
would be I change my status from a microdistillery to a manufacturer  
of distilled spirits. And it changes-- basically, it stops. No longer  
microdistillery, no longer there's consumption on premise to sell my  
products. I'm a closed manufacturer of distilled spirits, which that's  
completely different than what's made-- allowed me to have some  
success.

**BRANDT:** So in other words, you can sort of do what the craft brewers  
and the wineries do. You have, you have an on-site tasting facility--

**TODD ROE:** Yes.

**BRANDT:** --and that's part of the program. But do any taxes change? I  
mean, you aren't charged more--

**TODD ROE:** No.

**BRANDT:** --because you're over 10,000?

**TODD ROE:** The only thing-- in fairness, to answer your question  
correctly, the only thing is the permit fee to be a microdistillery is  
\$250 a year plus \$100 catering endorsement. If I go to a manufacturer,  
it's \$1,000 permit per year to be a manufacturer of distilled spirits.  
But as far as the taxation on the actual product stays the same.

**BRANDT:** OK, thank you.

**TODD ROE:** Yes, sir.

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**LOWE:** Thank you. And are there any other questions? What, what kind of spirits do you make?

**TODD ROE:** We make corn whiskey, 100 percent corn whiskey. We, we have one we call Daddy Juice, and that's the aged-corn whiskey. We have fun with that. And then we do a lot of flavored corn whiskeys, but we're 100 percent corn. We don't use any other grains.

**LOWE:** What kind of flavors do you have?

**TODD ROE:** We have a lemon flavored whiskey, strawberry/lemon flavored, cinnamon flavored, lime flavored. Pretty much-- one really cool thing, we got into Whole Foods with our stuff because we're 100 percent organic. We don't use any synthetic flavorings. It's just like two hillbillies got together and decided to make the whiskey taste good and so.

**LOWE:** I've seen the TV program.

**TODD ROE:** Good, good.

**LOWE:** No other questions. Thank you very much.

**TODD ROE:** Thank you, sir. Thank you, Senator Groene.

**\*JUSTIN BRADY:** Chairman Briese and members of the General Affairs Committee; my name is Justin Brady, I am testifying as the registered lobbyist for the Nebraska Liquor Wholesalers in opposition of LB415 and would ask that this testimony and opposition be made part of the committee statement. By increasing the production cap for a micro-distillery from 10,000 to 100,000 does allow them to drastically increase their self-distribution. A current micro-distillery can sell their own product without going through our three-tiered system. A system that policy makers have chose to uphold for years. By increasing this cap you are significantly increasing the amount that they can self-distribute and therefor bypass the system that is in place in Nebraska. The Nebraska liquor wholesalers are not opposed to increase production; they are opposed to the increase self-distribution. If there were a corresponding cap placed on how much they could self-distribute, then the liquor wholesalers would remove their opposition to the increased production cap. We would propose a cap of 10,000 for self-distribution. If you have any

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questions, please do not hesitate to reach out to me. We respectfully  
ask for this committee to IPP LB415. Thank you.

**LOWE:** Other proponents? Seeing none, any opponents? Those in the  
neutral? Welcome back.

**HOBERT RUPE:** Well, thank you, Vice Chairman Lowe. My name's Hobert  
Rupe, H-o-b-e-r-t R-u-p-e, executive director of the Nebraska Liquor  
Control Commission, appearing here in a neutral capacity. And if  
necessary, based on the next one, I might testify that one as well.  
But otherwise we'll just keep-- treat this one as my testimony for  
this and for LB311. Sometimes, I, I don't like being right. I thought  
that when we first passed the Z license, we'd be back here in about  
five to six years seeking to increase the cap of it and take its head  
taken off. And it did. Just so you know, the, the level of, of the  
production limit we'll leave to your determination. Senator Groene was  
absolutely right as to the-- our surrounding states. One thing I can  
add to his testimony was that the federal limit is 100,000 gallons.  
Now it's slightly different because it's 100,000 proof gallons the way  
they tax things. But at that point in time then you would transition  
from-- they have different tax rates for small microdistilleries and  
large and that 100,000 gallons for the federal demarcation. So by  
going here, we're going similar. One thing I would say that just to  
throw more-- another nugget into it is if there-- if you guys are  
considering passage of the ready-to-drink cocktails that we had this  
morning, that production we factored in because, you know, the  
Commission only, only taxes on production when it leaves your facility  
to be sold in Nebraska and which on the gallonage. So if you're  
leaning towards that, you're definitely going to have to look at  
increase in the overall gallonage. Because as you heard earlier, we  
had at least one manufacturer come up against the limit. I believe Zac  
came up against it in middle of December. He called me and asked me if  
there was any-- if I had a magic wand because a lot of people go over  
the 10,000. I said, no. And-- but I felt bad. But, you know, I just  
enforce the laws that you guys come up with. So it does need to be  
increased. The Commission did not come down on a particular level  
because there are some surrounding states have different levels. But I  
could tell you what the national demarcation line is and then answer  
any technical questions about the administration of the act.

**LOWE:** Thank you very much, Mr. Rupe. Senator Brandt.

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**BRANDT:** Thank you, Vice Chair Lowe. Thank you, Mr. Rupe. How do you measure the 10,000 gallons? Is that gallons in the bottle, gallons in the barrel? Do you guys go out and measure? How do you verify 10,000?

**HOBERT RUPE:** OK. Every single one of these distilleries is also what's called a DSP, distilled service provider, from the federal government. And where we tax it is when it leaves-- you know, if it's back there being made or aged and that thing, it doesn't tax because it's-- so when it leaves out of the bonded warehouse to be sold. And so some of that would be sold in other states because oftentimes some of these have. And so there's no Nebraska excise tax attaches on that. But so let's say they take it from the barrel, put it into 20 cases, and those cases go out to either to the wholesale tier or through their own channel, they would be taxed when they leave the bonded warehouse to be sold at retail or through the wholesale tier. That's where the tax would have to be paid.

**BRANDT:** So couldn't that producer that had that problem simply just warehouse his product until January 1 and then--

**HOBERT RUPE:** Unfortunately, you'll have to ask him what he did. I think he had to do some of that.

**BRANDT:** OK.

**HOBERT RUPE:** But, but, you know, unfortunately, he asked for some relief and we couldn't give him any relief because, you know, once he kicks over that, you know, up to that-- 10,000 is the limit under the existing statute.

**BRANDT:** And then he would lose-- and then, like the previous testifier, then he would lose the right for an on far-- or an on-site tasting facility.

**HOBERT RUPE:** It really would change his, his business model. He would have to then become a manufacturer, a pure manufacturer, who's just making it and selling it, not really having a tasting room or, or having a catering permit or going to farmers' markets, you know. You know, he-- they would lose out on a lot of that ability.

**BRANDT:** But don't we want somebody to get that big, employ that many people? Can't we change the law so that they could keep the tasting facility and keep the kitchen--

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**HOBERT RUPE:** I, I think--

**BRANDT:** --and still encourage them to go to a million gallons?

**HOBERT RUPE:** We had this conversation remember a couple of years ago  
when the beer guys were running up against this level.

**BRANDT:** Yeah.

**HOBERT RUPE:** And so what we did was there's-- in this craft brewery  
law, there's a statute that when they-- if they cross, cross the  
Rubicon, they basically grandfather in a certain amount of the tasting  
rooms. And so eventually you might have to do that if that becomes an  
issue here. It was an issue that has happened in other states. I know  
that the, the beer guys came early on to try to head that off because,  
because you either have to, you know, stay smaller underneath the  
limit or you have-- would lose those rights. And so, for instance,  
right now if a beer guy gets over this production limit and they  
become a manufacturer, they can keep, I believe, five tasting rooms  
underneath their license without having to lose them. So I think  
eventually if this becomes a problem at this 100,000, we might be back  
here to deal with that.

**BRANDT:** All right. Thank you.

**LOWE:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chairman Lowe. And thank you, Mr. Rupe,  
for being here again. Do we have any current licensed manufacturers in  
Nebraska?

**HOBERT RUPE:** We have one who is pending going through. I believe they  
are waiting to see what happens with the ready-to-drink cocktail mix.  
There is a manufacture-- or there's a, there's a place in here right  
now, a DSP, which is producing product that he's not selling in  
Nebraska.

**J. CAVANAUGH:** And so if he-- it's not sold in Nebraska, they don't  
fall under this statute at all?

**HOBERT RUPE:** No.

**J. CAVANAUGH:** And--

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**HOBERT RUPE:** There's a lot-- there are, there are so many DSPs in the state that we don't regulate because every single-- ethanol plant is a DSP.

**J. CAVANAUGH:** Oh, OK. And kind of following up on what Senator Brandt was asking about the-- this individual who reached the ceiling last year and who I assume we'll hear from. But would the, the recourse or the ramifications be not that something would have happened to them in those last two weeks of December, but that their status would have been changed for all of 2021 then?

**HOBERT RUPE:** Exactly. We would have probably had them-- we would have had to issue them to file a long form application to make sure that they were in the appropriate license category.

**J. CAVANAUGH:** And then potentially they could have dropped below, throttled back their production in 2021 and then go back to--

**HOBERT RUPE:** Yeah. I don't think they want to do that, though.

**J. CAVANAUGH:** Well-- and kind of to Senator Brandt's point, don't we want to create a regulatory structure that's going to encourage growth and not discourage growth?

**HOBERT RUPE:** And this is one reason why we're neutral. We believe that this, that this limit needs to be raised. The exact level, we'll leave up to your discretion.

**J. CAVANAUGH:** One other question.

**LOWE:** Yeah.

**J. CAVANAUGH:** You address the federal limit of 100,000. Is there a point at which we could get sideways with the feds if we change the regulation in a certain way?

**HOBERT RUPE:** Well, the lovely thing about the Twenty-First Amendment is we have pretty broad latitude about how we license alcohol. Remember, technically, we could prohibit alcohol-- all sell alcohol in the state under the Twenty-First Amendment. So being-- we try to be consistent with the fed rules on the dual-licensed entities as much as possible to sort of reduce the regulatory, the regulatory headache. And so the people who have both the state license and a federal

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license would be your manufac-- your DSPs, your farm wineries, your, your craft brewers have what's called a Brewer's Notice and then the wholesalers have a federal license as well. And so we try to be as least as far as we can be, not inconsistent with the feds just because we don't want to be telling them red where the, where the feds are telling them green and getting them crossways. So luckily, knock wood, we've avoided that for the most part.

**J. CAVANAUGH:** But this change would not raise any [INAUDIBLE]?

**HOBERT RUPE:** This would not put us crossways with the feds at all.

**J. CAVANAUGH:** OK, thank you.

**LOWE:** Thank you, Senator Cavanaugh. How many microdistilleries are there in the state?

**HOBERT RUPE:** I would have to look, I think somewhere between seven and ten are either licensed or in the process of application. So if you look on our website, it actually has the ones who are currently licensed in Class Z and then you also then have where they are called the, the-- there is Z, with a catering permit, it will be ZK. And those would also be ones in process of application.

**LOWE:** All right. Seeing no other questions, thank you.

**HOBERT RUPE:** Thank you.

**LOWE:** Are there any other in the neutral? Seeing none, this closes the hearing-- or, Senator Groene, would you like to close?

**GROENE:** Thank you, Vice Chair Lowe. Just the point when Senator Cavanaugh's question got answered. It's an industry we've lacked in Nebraska, and I go back to the days when stores and Falstaff and all those had the breweries in Omaha. Wasn't the hard stuff, but we used to have a tradition in this state where we produced our own and bought locally. And these guys are trying and it's an infant industry. And I just think we can help them along a little bit, gradually help them grow. And maybe someday one of them will be a Nebraska-corn whiskey. So thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee February 8, 2021

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**LOWE:** All right. Are there any questions? Seeing none, thank you,  
Senator Groene. And now this closes the hearing for LB415. Next we  
have Senator Vargas and LB311. Senator Vargas, welcome.

**VARGAS:** Hey, how are you?

**LOWE:** We're quite well.

**VARGAS:** Well, good.

**LOWE:** And we're glad you're the last bill of the day.

**VARGAS:** I am? Oh, I'm standing between you and the--

**LOWE:** And lunch.

**VARGAS:** --sunlight in, in a sub-degree weather. OK. Good afternoon,  
Chair Briese, Vice Chair Lowe, members of the General Affairs  
Committee. For the record, my name is Tony Vargas, T-o-n-y  
V-a-r-g-a-s. I represent District 7 in the communities of downtown and  
South Omaha, here in our Nebraska Legislature. I'm handing out of one  
pager, you're going to see one crossed out. And that's because there's  
a remnant of another bill that we're working on a one pager. So just  
disregard that piece. This piece just provides a very quick overview  
and a summary of some of these changes. LB311 is very straightforward.  
And you've already heard a lot about it from Senator Groene's hearing  
just now. I'll just add some brief context to my bill and our process  
in developing this legislation and then open it up for questions and  
other testifiers that will be testifying on this bill I'm introducing.  
Now the largest distill in our state is Brickway Brewery & Distillery.  
It is located in my district. It's right down the street. The owner,  
Zac Triemert, came to me towards the end of last year to talk to me  
about the possibility of raising the production cap for  
microdistilleries because they had hit their cap and had to shut down  
production for the rest of the year. Now, as you know, currently we  
cap production at 10,000 gallons per year, which is the lowest cap in  
the country. This bill would increase the cap to 100,000 gallons,  
which is still low in comparison to other states, but will facilitate  
growth and a successful industry and eliminate limitations, needless  
limitations on these businesses. I've worked with Zac, the Liquor  
Control Commission, representatives of the wholesalers, and other  
stakeholders on this bill. And this is legislation they'd like to see

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move forward. They will testify behind me on this as well and talk about why this is important in they're ask for LB311. There is one sentence that is different in LB311 from Senator Groene's bill, which is on line 14, page 2. Now I've received some questions about this line. And there is at least one testifier behind me who will go into more detail on this difference. And with that, I'll close and be happy to answer any questions.

**LOWE:** Thank you, Senator Vargas. Are there any questions? Seeing none, are you going to stay for close?

**VARGAS:** I will.

**LOWE:** All right.

**VARGAS:** Thank you very much, Vice Chair Lowe.

**LOWE:** Thank you. Welcome.

**ZAC TRIEMERT:** Good afternoon, Senator Lowe and members of the General Affairs Committee. My name is Zac Triemert, that is Z-a-c T-r-i-e-m-e-r-t. I am president and head distiller of Brickway Brewery & Distillery in Omaha, Nebraska. And I'm here today to speak on behalf of LB311, which would increase the volume that a Nebraska distillery can produce from 10,000 gallons to 100,000 gallons. First time I sat here in front of General Affairs was in 2006 to testify on behalf of LB549, that was the craft distilling bill. I made a number of strong statements that included starting a new industry in Nebraska, increasing jobs, tourism, excise taxes, and the use of Nebraska agricultural products. I'm proud to say that all of those things have come true. Now, today, there are over ten distilleries either operating or in planning and LB311 will help this industry segment grow. Brickway is the first distillery to reach to 10,000 gallon cap. I actually had to stop production, as you heard, in December. And that didn't just hurt my bottom line. That hurt my staff members that I had to tell to stay home and it hurt payroll taxes and excise taxes to the state of Nebraska. Before I proposed this cap to Senator Vargas, I did some research on what other states allow. There are 20 states in the U.S. that have no cap at all. The 30 that do that in the United States, Nebraska has the lowest by half. And I have to ask the question, what's the value of limiting a Nebraska company when out-of-state producers have no limit? These big companies don't employ

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people in Nebraska. They don't use Nebraska agricultural products. They don't promote tourism. They don't pay sales tax, payroll, excise taxes. I personally cut and pay all of those things to the state of Nebraska. Asking to increase the cap to 100,000 gallons isn't random. That is what the federal government uses to categorize a small distillery. And so in closing, LB311 would support the growth of Nebraska spirits producers, create more jobs, more income tax and more sales tax and more utilization of Nebraska agricultural products and more tourism. So I respectfully ask the committee to support LB311 and increase that cap from 10,000 gallons to 100,000 gallons. And I'm happy to answer any questions that you have.

**LOWE:** All right. Thank you, Mr. Triemert. Senator Brandt.

**BRANDT:** I'm over here by myself [INAUDIBLE].

**LOWE:** Well, you're another John, we keep you over that way.

**BRANDT:** Yeah. Yeah, I'm another John. That's right. Thank you, Vice Chairman Lowe. Thank you, Mr. Triemert. We talk about Nebraska ag products. Are you using corn also for your distillery?

**ZAC TRIEMERT:** We're using some corn, but not near what the guys at Lazy RW are using. We--

**BRANDT:** I'm just, just curious, as a corn farmer, what is the ratio of pounds of corn to a gallon of distilled product?

**ZAC TRIEMERT:** So if we use 1,000 pounds of corn, we probably get about 75 gallons of whiskey when it's all said and done.

**BRANDT:** So that's, that's roughly 20 bushels. A little less than that. And so your operation is the first one to hit 10,000 gallons. Congratulations.

**ZAC TRIEMERT:** Thank you.

**BRANDT:** So how many employees are we talking about and how much tax money are you paying the state of Nebraska?

**ZAC TRIEMERT:** We employ 17 people right now, certainly looking to grow that, and excise tax wise, that would be 30-- is that right, \$37,500 or \$37,500.

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**BRANDT:** So if we, if we get you to 100,000, it'd be 10 times that  
amount.

**ZAC TRIEMERT:** Absolutely.

**BRANDT:** All right, thank you.

**ZAC TRIEMERT:** Yes, thank you.

**LOWE:** Thank you, Senator Brandt. Senator Groene.

**GROENE:** If it's a trade secret, that's fine, but how much do you  
retail and then-- on your facility and how much do you sell through  
the distributor?

**ZAC TRIEMERT:** I did the math and I believe 14 percent of our sales  
went out our front door and the remainder went to Nebraska  
wholesalers.

**GROENE:** And you have a facility where you can come in and taste or, or  
buy retail?

**ZAC TRIEMERT:** Yes, sir.

**GROENE:** You can sell in Iowa?

**ZAC TRIEMERT:** We can legally if we get the proper licensing. We are  
not currently licensed in Iowa. We are licensed in Kansas and Missouri  
and South Dakota.

**GROENE:** So but those other microdistilleries that are in Iowa or  
Kansas can do the same thing, reciprocate and sell in Nebraska?

**ZAC TRIEMERT:** Yes.

**GROENE:** And have you seen their products in liquor stores?

**ZAC TRIEMERT:** I have.

**GROENE:** So you're at a real disadvantage to them, even though you  
would-- you have a better product, I'm sure.

**ZAC TRIEMERT:** Yeah, well, thank you. Yes.

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**GROENE:** But you have to-- to try to stay under 10,000, you have to probably maximize your exposure to make the most profit instead of expanding your, your area. Is that true?

**ZAC TRIEMERT:** Yes.

**GROENE:** Thank you.

**ZAC TRIEMERT:** Thank you.

**LOWE:** Thank you, Senator Groene. Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chairman Lowe. Thank you, Mr. Triemert?

**ZAC TRIEMERT:** Triemert.

**J. CAVANAUGH:** Triemert. So how long have you been in production?

**ZAC TRIEMERT:** Seven and a half years.

**J. CAVANAUGH:** And how long-- like, obviously, you saw, kind of saw your growth trajectory coming and this was looming over you. How long have you been kind of staring down this, sweating whether or not you were going to be affected by it?

**ZAC TRIEMERT:** Oh, from the beginning. I worked with bill writers write the original craft distilling bill back in 2006. And we wanted that number to be higher initially, but one state senator worked hard to get that number slashed down to 10,000 gallons. And so I've been nervous about it ever since then. And now we just really came up against it.

**J. CAVANAUGH:** And presumably everybody else, these other ten or nine individuals kind of look at you as a good example of aspirationally. And I assume everybody knows that you've hit that point and now you have to make a choice about which way to go if we don't pass this bill, right?

**ZAC TRIEMERT:** Correct.

**J. CAVANAUGH:** Does that-- have you heard from other people whether they're making decisions about whether to continue growing or not in light of that?

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**ZAC TRIEMERT:** Well, it's not in my nature not to continue to try to, you know, move the boulder up the hill. And so we would want to indeed keep growing. If we had to do it as a manufacturer, it would put us at a significant disadvantage. And that makes me quite nervous.

**J. CAVANAUGH:** What about everybody else in the industry?

**ZAC TRIEMERT:** Everybody else is in support of raising this and they all hope to, to grow to our level and beyond us as well.

**J. CAVANAUGH:** Thank you.

**ZAC TRIEMERT:** Thank you.

**LOWE:** Thank you, Senator Cavanaugh. You have 17 people work for you.

**ZAC TRIEMERT:** Yes.

**LOWE:** Is that just in the distillery alone or is out the distillery and the brewery?

**ZAC TRIEMERT:** That's distillery, brewery, and our tap room.

**LOWE:** OK.

**ZAC TRIEMERT:** So if I, you know, all of my production people, I have six full-time production people. They all go in between distilling jobs and brewing jobs.

**LOWE:** And how large a distiller do you have?

**ZAC TRIEMERT:** Our distillery, our actual stills are the largest in the state.

**LOWE:** OK.

**ZAC TRIEMERT:** And so if I ran them every day, we could probably reach a 100,000 gallons.

**LOWE:** You could do that with the equipment you have today?

**ZAC TRIEMERT:** I would need more fermentation vessels and I'm pretty out of room, so I'm probably going to have to look at some more production capacity in another location before too long.

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**LOWE:** Could you go up to 20,000 barrels in-- or gallons in, in the  
facility you're at now?

**ZAC TRIEMERT:** Absolutely.

**LOWE:** So you could double in size pretty easily?

**ZAC TRIEMERT:** Absolutely. I think I could get easily 50,000 without  
doing anything new. I took on more space in Omaha's Old Market last  
year to help myself grow. And so I put in six more fermentation  
vessels in that new space. And so that's drastically allowing me to  
increase our production.

**LOWE:** OK. All right. Thank you. Senator Groene.

**GROENE:** So you, you, you mix your grains. What grains do you use?

**ZAC TRIEMERT:** Probably more than anything, we use malted barley, but  
we also use rye and corn and wheat.

**GROENE:** So you use the barley for the brewery and the, and the  
distillery?

**ZAC TRIEMERT:** Yes, sir.

**GROENE:** So the Lazy RW, their distinction is corn, that's their  
selling point,--

**ZAC TRIEMERT:** Yes.

**GROENE:** --and yours is-- what, what do you sell yours-- what's your  
marketing to sell?

**ZAC TRIEMERT:** Well, first, I guess I step back to why we do it. Our  
motto is celebrate, commiserate, commemorate. That's why we do it. And  
so with the beers that we make and the spirits that we make, we know  
that no matter what's going on in life, we're going to be there for  
you. And we've started entering competitions and our single-malt  
whiskey has won now, five international gold medals in the last four  
years. So our quality competes with anything that's done out there  
around the world. And we're very proud of that.

**GROENE:** And that's competitions between microdistilleries?

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**ZAC TRIEMERT:** Yes, really between-- any spirit producer can enter,  
enter them. So the large distilleries do it as well.

**GROENE:** Now, hopefully-- well, maybe there's some pretty stout people  
out there, but you're not selling it by the gallon, probably. What's  
your-- is it fifths and pints or--

**ZAC TRIEMERT:** We have-- mostly we sell is a 750 milliliter bottle. But  
we do with our vodka, have a 1-liter bottle and a 1.75 liter bottle.

**GROENE:** You don't sell it by the old fifth anymore?

**ZAC TRIEMERT:** No.

**GROENE:** That's the old days.

**ZAC TRIEMERT:** Yeah, I don't know if I'd say that, but.

**GROENE:** All right.

**LOWE:** Senator Arch.

**ARCH:** Thank you. You, you mentioned earlier that you, you have on-site  
retail sales.

**ZAC TRIEMERT:** Yes.

**ARCH:** And then you sell to a wholesaler.

**ZAC TRIEMERT:** Yes.

**ARCH:** Can you sell currently to another retailer?

**ZAC TRIEMERT:** No.

**ARCH:** OK. All right, thank you.

**ZAC TRIEMERT:** Yeah.

**LOWE:** Thank you, Senator Arch. Senator Brandt.

**BRANDT:** And I guess that's a lead-in to my question. So the only  
difference between the previous bill and this one is we added this one  
sentence that said "A microdistillery shall not sell its

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microdistilled product directly to another Nebraska retail license."  
Do you know why is that in there?

**ZAC TRIEMERT:** I think other people probably could speak on it better,  
but I think it had something to do when-- I, I called the Liquor  
Wholesalers Association to kind of let them know the bill that we were  
working on so they weren't blindsided. And that may have been  
something that just made them feel comfortable that we're not trying  
to, you know, work toward self-distribution.

**BRANDT:** Oh, OK. And then I guess the last thing is, Mr. Rupe before,  
the 10,000 gallons was just applied to gallonage in the state of  
Nebraska, didn't it, just 10,000 gallons sold inside the state. So if  
you would have took your excess and sold it outside the state, you  
could have still been underneath?

**ZAC TRIEMERT:** Well, I did talk to Mr. Rupe about that, and he told me  
the opposite advice.

**BRANDT:** Oh.

**ZAC TRIEMERT:** So he said all my product in and out of the state  
counted towards that 10,000 gallons.

**BRANDT:** OK, we'll let him clear that up--

**ZAC TRIEMERT:** OK.

**BRANDT:** --when he comes up here. All right, thank you.

**ZAC TRIEMERT:** Thank you.

**GROENE:** Can I ask one more question?

**LOWE:** Senator Groene.

**GROENE:** So you as a microdistiller, you're-- the law's pretty clear,  
you can't sell to another retailer. You can't wholesale.

**ZAC TRIEMERT:** Correct.

**GROENE:** So there's no need for redundancy as far as the way you  
understand the law?

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**ZAC TRIEMERT:** I guess, I just-- I'm hoping for a, a bill that will  
pass so I can start to make more like this.

**GROENE:** One hundred thousand gallons. All right.

**LOWE:** Whichever one works.

**ZAC TRIEMERT:** Yeah.

**LOWE:** All right. Thank you, Senator Groene. Seeing no other questions,  
thank you, Mr. Triemert.

**ZAC TRIEMERT:** Thank you. Thank you, all.

**LOWE:** Another proponent. Thank you and welcome back.

**CODY SCHMICK:** Yeah, thanks, Senator Lowe and members of the General  
Affairs Committee. My name is Cody Schmick, C-o-d-y S-c-h-m-i-c-k. I  
am one of the owners of Sideshow Spirits, a distillery here in  
Lincoln, Nebraska, and our capital's first legal distillery ever. I'm  
here before you to urge-- today to urge you to pass LB311 as written  
and help Nebraska grow this industry that is still relatively small  
and new in our state, but we believe will grow the way craft beer has  
over the past decade. Along with being the first distillery in  
Lincoln, we are also the newest in the state. Our very first shipment  
of product out the door ate up 20 percent of our current yearly limit  
of 10,000 gallons, 20 percent in our very first ever shipment. Nobody  
knows about us. Nobody's heard of our brand. But, but it's out there  
and we put about 1,800 gallons out in our very first week. If we would  
continue on that trend, we'd have to shut down and send our production  
staff home the last few months of the year, kind of like Zac did. This  
is a killer for our small business. And we ask that you lift the limit  
to that 100,000 gallons to help our small business and others like it  
succeed and grow. Our growth started as a small brewery in Broken Bow,  
Nebraska, called Kinkaidier Brewing Company in 2014 with just one  
employee, one location. We have grown that business to 4 locations and  
upwards of 70 employees. I believe the distilling industry has a  
similar opportunity to expand and grow, creating jobs, tourism, and  
additional tax revenue. My partners and I have invested a considerable  
amount of money on equipment, training and facilities and hope to grow  
this Nebraska product right here in the capital of the state. In  
closing, I urge you to support LB311 to help the industry grow and

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flourish in the state of Nebraska. And with that, I'll answer any  
questions you may have.

**LOWE:** Thank you very much, Mr. Schmick. Senator Groene.

**GROENE:** Thank you. Been to your Kinkaider's in Broken Bow.

**CODY SCHMICK:** Yeah.

**GROENE:** I have a place 25 miles away.

**CODY SCHMICK:** Yeah, cool.

**GROENE:** But anyway, you, you, you distill in Lincoln?

**CODY SCHMICK:** Yes, sir.

**GROENE:** Is it one LLC, the entire group?

**CODY SCHMICK:** Yes, we decided to put it under one LLC, just-- it's all  
the same partnership.

**GROENE:** So if you distill in Lincoln, can you sell the whiskey retail  
at Broken Bow?

**CODY SCHMICK:** I have to go through a distributor first. So--

**GROENE:** You do?

**CODY SCHMICK:** Yes. So we're-- for our three satellite locations or  
Kinkaider locations, we go through the distributor in order to buy it.  
So I sell it to them and then buy it back from them. Yes.

**GROENE:** You're involved in management of the entire--

**CODY SCHMICK:** Yes.

**GROENE:** So that kind of answers maybe, maybe I'm assuming why you were  
able to sell 1,800 gallons your first production because you had the  
distributorship already in good relations with distributors earlier.

**CODY SCHMICK:** Yep, we, we were a little bit out of the norm. We didn't  
go through, through a traditional spirit distributor. We went through  
actually our, our beer distributor. We had that relationship built

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with them. They were excited. They sat down and said, hey, we want to expand our business with you guys as the flagship. And so it's quality brands out of, out of Lincoln, Omaha, and North Platte. And they, they added us to their group for that and hired on some additional staff just to sell our spirits, so.

**GROENE:** Thank you.

**CODY SCHMICK:** Yep.

**LOWE:** Thank you, Senator Groene. Any other questions? Seeing none, thank you very much, Mr. Schmick.

**CODY SCHMICK:** Thanks.

**LOWE:** Good afternoon.

**VANESSA SILKE:** Good afternoon, Vice Chairman Lowe and members of the General Affairs Committee. My name is Vanessa Silke, that's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and also the registered lobbyist for Brickway Distillery. And I'm here to testify in support of Senator Vargas' bill. I, I have a couple of background items I want to address that I'm certain that there's probably questions about that one sentence that we've talked about. So I'm that person that'll answer your question. So you've seen me testify quite a bit today. Most of you have seen me around for the last few years for the different alcohol-related clients that I have. And the one thing that I have learned is that even though we often disagree and you guys have heard a few phone calls here and there about that on what these bills should be, we do work hard to work together in advance of the session so that bills are cooked. You know, for what it's worth to address legal and regulatory issues and any other competition issues or just feelings that people have before a bill comes to be introduced by a senator. So in this case with Senator Vargas' bill, certainly Zac Triemert and his district was very concerned with his shutdown. He also approached me. We talked to Hobie. We spoke with other industry stakeholders. I know Zac has spoken with Lazy RW to talk about the growth of the industry. And because of the brewery side, Cody Schmick of Sideshow Spirits also has a relationship with Zac. And so there's been quite a lot of discussion about the opportunity for growth. And I reiterate everything the prior testifiers had to say about that. In our process of working with other stakeholders, particularly the

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distributors, we talked about the strength of those relationships and how on the beer side and as you just heard from Zac and Cody on the distillery side, the faster and the more these businesses grow, the more they come to rely on the good relationships they've built with their distributors. That strengthens the three-tier system. When we limit growth like the current statute, or we have tiny breweries in outstate Nebraska, for example, that can't find a distributor to pick them up. We start raising questions about the three-tier system. And this bill is not that day. It's not that ask. This bill is flipping one switch. It is asking us, asking you to vote in favor of moving this production cap up to 100,000. And I understand in the background from these communications that perhaps a distributor's representative will testify that that's all well and good, but we need to guarantee a cut above a certain amount to the distributors. I attempted to write that into the bill. I attempted to look at any legal, regulatory or state police power tax purpose for doing that and could not find any example anywhere. And the remnant of that effort by me is that one sentence that you see that's different and it simply states the law. And you're all very right when you say this is redundant, 53-175 and 53-123.16 already guarantee the distributors they're cut. If a distillery produces product and they're going to sell it to any other retail licensee in the state of Nebraska that's off their licensed premises, they must go through a wholesaler. Wholesalers already guaranteed a whole tier of business and having and allowing these distilleries to grow to 100,000 only guarantees more business for the distributors. I do not believe it's appropriate and I would not support any amendments that require an additional cut to the distributors above that cap or within that cap. With that, I'm on the red. I'm sorry. Happy to answer any questions that you might have.

**LOWE:** Senator Brandt. I saw you first.

**BRANDT:** Thank you, Senator Lowe. Thank you, Miss Silke. You just heard the previous testifier owns four locations in the state. He distilled on one. And the only way he, he could get it into his other three locations is he still had to go through a distributor. Do you feel that's correct?

**VANESSA SILKE:** That's a great point. And it's one that has been discussed and currently being discussed among industry stakeholders. And that's why I caution that this bill is only what it is. That's the only ask that we're making. And it's because you can flip the switch

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to 100,000 without having any other dominoes fall at the federal level, at the state level for the Liquor Control Commission. What you're talking about, I agree with 100 percent. We should be asking a lot of questions about when and if and how the three-tier system should apply under certain circumstances. But that's a lot bigger conversation. And if you knock over one of those dominoes, even if it seems really simple, and I agree with you, it's still going to knock over other things that are unintended. And for that reason, we really need the industry. And Senator Groene, I know I've asked you and identified and absolutely appreciate your support for just exactly that question in prior discussions is we need to, as an industry, look at exactly that issue of self-distribution or thresholds for distributors at the lower end of production primarily and definitely in outer-- sorry, outstate Nebraska. So that is a conversation for another day because it requires more time and effort. And I don't know that will all come to an agreement. Certainly, there are distributors here and Hobie who can speak for themselves, but I don't think this bill or this session is the time and the place for it. That's why we're only asking for the cap increase and I anticipate that will strengthen the relationship with the distributor tier--

**BRANDT:** OK.

**VANESSA SILKE:** --for this business.

**BRANDT:** Thank you.

**LOWE:** Thank you, Senator Brandt. Senator Groene.

**GROENE:** Thank you, Vice Chair. You mentioned a couple of places in law--

**VANESSA SILKE:** Yes.

**GROENE:** --where that they must sell through a distributor. I have another one, 53-171: License and issuance of more than one kind to same person. At the end of it, it says: The holder of a microdistillery license shall have the privileges and duties listed in section 53-131.16 [SIC], which we are changing here, both Senator-- myself and Senator Vargas, with respect to the manufacture of alcohol, liquor, and the Nebraska Liquor Control Act, shall not be construed to permit the holder of a microdistillery license to engage in the

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wholesale distribution of alcoholic liquor. I don't think we're  
getting redundant. I think we're starting to beat a dead horse.

**VANESSA SILKE:** Yeah, I, I don't disagree. And, and as I said, that is  
the remnant. That one sentence is all I had left after trying--

**GROENE:** But you repeat.

**VANESSA SILKE:** --to account for what was there. So I don't disagree  
with you and I definitely trust the committee. This wouldn't be the  
first bill that I've seen where we're just reiterating the law. But I  
also respect that if you choose to take it out through the committee  
process, we already have it in the law. And this is not--

**GROENE:** Three, four times.

**VANESSA SILKE:** --opening the door yet that would allow for  
self-distribution. So I, I definitely wanted to explain that process,  
but that's where that came from.

**GROENE:** Well, you started-- I liked your testimony, but you started  
your testimony by, with trust. Beating a dead horse don't sound like  
you're trusting people very much--

**VANESSA SILKE:** You know,--

**GROENE:** --from one part of this three-tier thing that you're talking  
about.

**VANESSA SILKE:** I welcome you to join the conversations in the interim  
within the industry. Over the last five years, we have excellent  
examples where we have actually spoken together. Senator Lowe has  
witnessed it himself along with his dedicated staff, Patrick. But we  
also have a lot of examples where a senator who's no longer in the  
body worked with one stakeholder group to introduce a bill to destroy  
an entire industry. They did not meet with us in advance. And the day  
that it was introduced was the first day we saw that bill. And so  
we've got lots of examples of where trust falls, maybe were warranted  
and maybe where they weren't. And so we continue to work together. And  
I think over the last few years we've done a much better job as an  
industry in at least talking to each other even when we don't always  
agree.

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**GROENE:** Thank you.

**LOWE:** Thank you, Senator Groene. Any other questions? Thank you, Miss Silke.

**VANESSA SILKE:** Thank you so much.

**LOWE:** Yes. Are there any other proponents? Seeing none, opponents?

**JUSTIN BRADY:** Vice Chairman Lowe 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 opposed to LB311. Let me start with we are not opposed and the wholesalers are not opposed to increasing the cap. They fully work with their partners as you've heard. There were multiple as they get larger. They do reach out to wholesalers to distribute their product across the state. The piece that we are raising is the, as Miss Silke referred to, the self-distribution piece. We didn't ask for the sentence to be put there three times. I understood the first time that they can't do it, and I bet you they do too. But Miss Silke thought, well, if I put that there, then I can come up here and say, well, I tried to address the wholesalers' concern. No, what our concern is, is under current law, they can make 10,000 gallons and they could sell all 10,000 out their front door. Fine, no problem with it. If we move it to 100,000, the, the wholesalers who also have employees. The two wholesalers I represent have about 250 employees each all across the state. And they, too, are saying, why then would you as a body say we're going to pick a winner and say, this person, if you grow three jobs over here and they have to cut three over here, the state ended up with a net zero. And what I would say and what I said to Miss Silke, and I'll be honest, I don't think it would have been that hard to draft, would have been go ahead and increase production to 100,000. Fine, support you on that. But then also say there's a cap of 10,000 that can be sold out their front door. You heard from Brickway, they said 14 percent is going out the front door. So only 1,400 gallons. We're-- I'd say give them 10,000 off the first-- give them the ability to continue to grow their businesses. But when they become large enough that they are using wholesalers across the state, use them. And don't-- you also heard from Miss Silke, today's not the discussion. We just want to move the cap. Well, then next year, I'll guarantee it's going to be, well, give us six tasting rooms across the state and let us just move these-- move our products around our tasting rooms. And

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pretty soon you just keep cutting out existing business that is there. And so, no, we are not at all opposed to increase the production. Just increase at some point should utilize the system that has been in place and as employing Nebraskans at this point. With that, I'll try to answer any questions.

**LOWE:** Thank you very much, Mr. Brady. Senator Groene.

**GROENE:** Is it very well-defined in law that the front door is the place of business or can they load a van up and go to a farmers' market right next to the sweet corn guy and sell fifths of whiskey?

**JUSTIN BRADY:** It is-- I would say, Senator Groene, is defined in law very clearly the front door is their premise. However, they can also then go ask the Liquor Commission for an SDL, a special designated license, to go sell that at a farmers' market. So, I mean, the actual microdistillery license, I think, is clear that it is their premise. Are there other avenues for them to go and do that? Yes.

**GROENE:** Right now?

**JUSTIN BRADY:** Right now.

**GROENE:** Any good marketer is not going to try to do that. He's going to, he's going to expand his, the places he gets into by make-- working with a distributor. I don't see how anybody would do that. But I understand from the distillers, they use the tasting, they use the on-premise sales to get that bar, to get that people to buy it and then go to the liquor store and purchase it because they don't, they don't have the staff or the means to go out and sell 10,000 fifths of whiskey.

**JUSTIN BRADY:** Right. And I would agree that the tasting room is their marketing piece and it is their destination piece and they do a great job of that. And yes, when you talk-- when I-- I do appreciate Zac calling-- called before session and said, I'm doing this, can we, you know, talk about it? And certainly have talked and not have-- never opposed sitting down talking. And he said I couldn't do this without my wholesalers now. I mean, at the size he's grown. And I would just say we're-- we obviously were comfortable with letting them go up to 10,000. Fine. But after that, let's use the system we have.

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**GROENE:** Aren't you getting ahead of yourself? We've got one guy making 10,000 gallons, another one making 6 or 7, and he's in second place. And you're putting restrictions on a growing industry before it's even a problem.

**JUSTIN BRADY:** Well, Senator, I would say with the one individual who's at 10,000, that there is a problem now. Yes, I understand the individual at six or seven or somebody at three or somebody at-- that's not necessarily the problem. But the one guy at 10 now does become an issue of could he then change and all of a sudden move 11 or 12 or 50,000 out his front door.

**GROENE:** I'm done. Thanks.

**LOWE:** Thank you, Senator Groene. Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Chairman Lowe. Thank you, Mr. Brady, for being here. Just to clarify a question about, you said that potentially you're worried that, that somebody would set up a bunch of tasting rooms around. Is that something that's within the law now or would that be-- have to be a subsequent change to the law to allow the tasting rooms without going through a distributor?

**JUSTIN BRADY:** That would be a subsequent change, Senator.

**J. CAVANAUGH:** OK, so because my understanding of Mr.-- I think if was Schmick, Schmick, sorry, the Sideshow, they, they currently go through their distributor--

**JUSTIN BRADY:** Yes.

**J. CAVANAUGH:** --for other locations that they already currently own. Isn't that kind of the scenario you just sort of set up there as the bigger problem?

**JUSTIN BRADY:** It is, but that would be interesting and I-- I mean, I don't know if Mr. Rupe's going to testify or not and if he's-- can recall specifics. It would be interesting to see how those licenses are held, because we also have back to what Senator Groene made reference not just in the microdistillery act, we have and say-- the easiest way I can simplify it is, we got three runs-- rungs on the ladder, wholesale, retail, and manufacturer. Our law starts with the premise that you can only operate one of those steps. But there are

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ways, depending on how you do your licensing, you know, whether or not it's you own the distillery, Senator, and your sister owns the retail establishment and your brother owns the other retail establishment. I mean, in essence, you're all in the same family operation, but the license is under different people's names is one way you could-- and I'm not saying that's how they're doing it. I don't know how they've got their licenses.

**J. CAVANAUGH:** But there's, there's currently no structure under the current law to accomplish what the problem you were laying out, though, which is that they would just set up other tasting rooms that aren't also distilleries and just ship the product out the door.

**JUSTIN BRADY:** Correct. They would have to come back and make a change.

**J. CAVANAUGH:** Yeah, I guess I'm having trouble understanding, I think, the same thing Senator Groene was hitting on, the logistics of moving that amount of product out of a storefront to reach the level of concern that you're right-- raising here, I guess, is my-- I'm just trying to figure out how we get to the problem that you're, you're laying out. But your point is taken. I'm just trying to understand when it comes into play. Thank you.

**JUSTIN BRADY:** Um-hum.

**LOWE:** Thank you, Senator Cavanaugh. Any other questions? Thank you, Mr. Brady.

**JUSTIN BRADY:** Thank you.

**LOWE:** Is there another opposition? Seeing none, neutral? I saw the green sheet in your hand.

**HOBERT RUPE:** I thought I better [INAUDIBLE]. Yeah, come clear up my own stupidity from earlier. Once again, my name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission. That's spelled H-o-b-e-r-t R-u-p-e. And, and the good thing about these things being televised is my auditors who have to do the real work are watching me and make sure I'm corrected. So the way we calculate it, Senator Brandt, is we calculate their full production and then they receive a tax credit on anything that goes out of the state. So, so earlier on, Zac was right. You know, the only-- I guess, I was getting confused, they only pay taxes effectively on what stays in the state

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because they get the tax credit back. But we do the full production because that's the only way we can check on them to make sure they're underneath the cap.

**BRANDT:** OK.

**HOBERT RUPE:** So that's, so that's, that's where that would come up. The other issue, I, I guess maybe I'll try clarifying, what you're seeing here, Senator Cavanaugh, is a little bit of a, of a industry that started in the late '80s versus the one that started in 2006. The craft brewery license has been around since, I believe, 1988 or '89. It's grown-- has some permutations. And so one of the things that was addressed in the craft brewery license a couple of years ago was-- are-- what's always going to happen? Are they going to get over their production cap? What, what do we do when that happens? Said it was happening in other states. Maryland, for instance, had ran into it. And so we were trying to head that off at the pass. And so as part of that was, you know, we made it clear that-- because remember both the craft brewery and the, and the craft distillery, they're, they're the taxpayers. They pay us. They pay the excise tax. On spirits and beer, which come in from out of state, the taxpayer is the wholesaler. All right? So even though a wholesaler might be involved with distributing Zac's beer or his whiskey, he's the taxpayer as the producer because-- if for in-state product-- in-state consumption. Even though it goes to the wholesaler, he'll pay whatever-- the tax is actually, he's the taxpayer. So what happened was when the beer guys were getting-- we were getting concerned that they're were going to get up over their cap. What do we do? Do we head this off? So it was clarified that then they could have-- keep a certain amount, I believe it was five off-site retail locations because both the craft breweries and the craft distilleries can get an additional retail license beyond their manufacturing license if they want to deal with product that they don't produce. That's one of the clear differences between them and the farm wineries. The craft distilleries and the craft breweries are basically two rungs, to go back using Justin's analogy, they are the production rung with limitations on, on how much they can do and they're at the retail side. And they could also then get additional retail license if they want to sell any other product other than their own products. So in other words, we'll use-- I'm assuming-- I'm not sure I have to look, I'm assuming Zac probably has a Class C or at least a Class I on top of is his, his Z, which allows him to sell other whiskeys, other beers, other products. So you're right, but when

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we sort of did that adjustment to that maturing industry in the craft brewery license, we made it clear that they can, that they can move product from one beer location to a wholly-owned off-site loca-- different location. And the reason we did that was because they were getting a craft brewery license a L at locations where they weren't making any product. They were getting the L just to do the bond-to-bond transfer from one production facility to the other production facility, then bring it out there. And it wasn't really what they were making it. And so from our perspective in auditing, it was problematic. And so we made it clear that if it's a wholly-owned subsidiary-- so in other words, if I have my production facility-- I'll use, I'll use Zipline as an example. Zipline has their, their production facility in west, in west Lincoln. They have a tasting room there. They also have a wholly-owned tasting room over on Pine Lake and 56th Street. And so they can move, they can move their product to there because it's basically they already own it and it's moving from one location, wholly-owned to wholly-owned. That's probably why Cody is one LLC for both his locations. So we might have to address that for the craft brewer distillers because it's probably going to come as that industry grows as well. So I'm just trying to clarify where we're at. And just to also to bring up, Miss Silke brought up, the Commission is probably going to be asking the committee for an interim study this year to try to deal with some of these issues as we're growing. As she clearly stated, this is an industry where you think you're just pulling one thread and you're not really realizing what it's unraveling and so we're probably gonna look for an interim study to try to address some of these concerns that really are dealing with the interplay between the manufacturing, the local manufacturing and wholesale to try to get some consensus and go forward. So, you know, that's my pitch for why we might be asking for an interim study. Sometimes those work, sometimes they don't work but that's probably going to be the way we're going to look at it. We just thought, especially, coming into a, a long session with budget and with no one knowing what restrictions were going to be from Coronavirus, we thought we didn't want to come forward at that point, but we figured this would be a good thing to do in the interim to try to address some of these concerns that you raised.

**LOWE:** Thank you,--

**HOBERT RUPE:** I see I'm way into the red, so I apologize.

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**LOWE:** --Director Rupe. Senator Groene.

**GROENE:** Thank you, Vice Chair Lowe. So you said mature industry, the craft breweries, you didn't put a cap on what percentage of their production they can sell retail, how you capped them was to say they can only have five facilities.

**HOBERT RUPE:** We have for that. The only cap that they would have is a, a production cap. But we've never done a cap-- we've never-- the Commission has never had a how much you have to sell through your tap versus through a wholesaler.

**GROENE:** So you haven't done it with the beer or--

**HOBERT RUPE:** No, we've, we've never done that at all.

**GROENE:** But you kind of did it with saying you can have five outlets, right?

**HOBERT RUPE:** Well, technically, they could have more than that. But if they were to then go into the manufacturing line, they could only keep five. So they would have to pare down. So I think most were keeping it five or less.

**GROENE:** So Kinkaider, they can only have five facilities that they can sell through?

**HOBERT RUPE:** Well, Kinkaider-- well, as I said, technically they could have more. But if they ever go over the production limit, which means they'd be an actual manufacturer, they-- only five of them would be grandfathered in. So they might-- so if they go to seven or eight, they might have to sell three or four of them.

**GROENE:** [INAUDIBLE] ought to do once they go to manufacturing.

**HOBERT RUPE:** Yeah.

**GROENE:** That's what you're saying because--

**HOBERT RUPE:** Yeah, there's a cap on how much they can keep because the theory was we didn't really want-- if, if somebody was so large, they were turning into a manufacturer, we didn't want to kill the goose which laid the golden egg by saying, OK, they were able to get there

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because they've had these facilities to take them away from them, but they wouldn't be able to get any more, of course.

**GROENE:** Have you had any troubles with-- I know originally with the brewers, you had some problem with craft brewers with trying to avoid the distribution system. But have you had any problems with the distillers?

**HOBERT RUPE:** I don't think we've had any problems. And I would say we had problems with the, you know, the brewers, but, you know, we've had no problems with their attempt of self-distribution. As far as I'm aware of, the craft distilleries either sell through their location, through an SDL, which they can get or different like the farmers' markets or a event or through the wholesale tier. So no, no problems.

**GROENE:** Thank you.

**LOWE:** Thank you, Senator Groene. Are there any questions? How-- if Mr. Roe decides to sell his product in South Dakota, Iowa, someplace else, how does he get it to the border or to the distributor there?

**HOBERT RUPE:** OK, he would have to acquire a license in that state, you know, through every state because-- so going back to the Iowa people-- I'll use Templeton Rye as example, they have a license to ship it in Nebraska. They have a shipping license. Generally, you'll use a common carrier, you know, they'll, they'll engage a common carrier, who will pick it up, take it over there, and drop it off. And that's how we keep track of product that's produced in Nebraska that's leaving is when they do their taxes, they have to give us a copy of the bill of lading, you know, showing that they sent, you know, 1,500 gallons to Iowa. So then they would receive that much credit against their next taxes because it left the state and, therefore, they paid a tax on it. They didn't have to so they get a tax credit.

**LOWE:** Thank you. Any other questions? Seeing none, thank you very much.

**HOBERT RUPE:** Thank you.

**LOWE:** Is there anybody else in the neutral? Seeing none, Senator Vargas, you have an opportunity to come greet us once again.

Transcript Prepared by Clerk of the Legislature Transcribers Office  
General Affairs Committee February 8, 2021

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**VARGAS:** Thank you, Vice Chair Lowe, members of the committee, I just want to thank people for testifying. The only, the only comment I have here is in both in Senator Groene and, and Senator Cavanaugh's questions, in particular, there, there are, there are existing statutes that I personally believe already are things that would have to change if any of the things that Mr. Brady testified to were to happen. And that would mean that this committee and the public, by duly electing you, would still have to work through the process. And I think that, that already exists. I think this is a good bill. I think it is the right idea. You know, if Senator Groene and I have a similar idea, I think that must be a good idea. And we're talking about making sure that we are getting out of the way in some instances here of something that is going to impede small businesses. We tend to look to our market and our, and our competitors and our competitors are other states. I, I say competitors in a healthy way. We always want to be more competitive. And we are-- we have an opportunity to make sure that we are creating this market, supporting our distillers, and, and doing what we can that still keeps intact the current system, the distributors so that relationship still works. So I ask that you support this bill. I thank you and happy to answer any other questions.

**LOWE:** Thank you, Senator Vargas. Any questions? Seeing none.

**VARGAS:** Thank you very much.

**LOWE:** There was one letter in support, Nicole Fox from the Platte Institute. She also sent a letter in support for LB415. Two other ones were Noah Boger and Kate Kissane.

**LAURIE HOLMAN:** No, they were the pages.

**LOWE:** Oh, OK. You guys are in support. That ends our hearing.