

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee March 10, 2021  
Rough Draft

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**LATHROP:** Take us live. Good afternoon. Good afternoon. Pardon me. Thank you. Good afternoon. My name is Steve Lathrop. I am the representative from Legislative District 12 and the Chair of the Judiciary Committee. Welcome to the Judiciary Committee. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This important process, like so much of our daily lives, has been complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you to consider taking advantage of those additional methods of sharing your thoughts and opinions. For a complete list on the four available options, go to the Legislature's website at the [nebraskalegislature.gov](http://nebraskalegislature.gov). We will be following COVID-19 procedures in this session. For the safety of committee members, staff, pages, and the public, we ask those attending our hearings to abide by the following procedures. Due to social distancing, seating in the hearing room is limited. We ask that you enter the hearing room only when it's necessary to hear-- for you to be in attendance on the bill in progress. Bills will be taken up in the order posted outside the hearing room. The list will be updated after each hearing to identify bills currently being under consideration. 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 you wear a face covering while in the hearing room. Testifiers may remove their masks during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will be sanitizing the front table and chair between testifiers. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the Sergeant at Arms who will allow people to enter the hearing room based upon seating availability. Persons waiting to enter a hearing room are asked to observe social distancing and wear a face covering while in the hallway or outside the building. The Legislature does not have the availability of an overflow, overflow room this year. For hearings with a large attendance, we request only testifiers enter the hearing room. We also ask that you please limit or eliminate handouts. Due to COVID concerns, we're providing two options this year for testifying at a committee hearing. First, you may drop off written testimony prior to the hearing. I will say that this-- for this hearing, we are allowing anyone who has not had an opportunity to

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testify, when the time limit is up, to submit written testimony today immediately following this hearing, so you'll want to listen to these conditions. Please note the following four requirements must be met to be on the committee statement. The submission of written testimony will only be accepted the day of the hearing between 8:30 a.m. and 9:30 a.m. here in the committee room, except for those people who do not have an opportunity on this bill to testify before we run out of time. Individuals must present their written testimony in person and fill out a testifier sheet-- generally, but I won't make this the rule for this afternoon. Testifiers must submit 12 copies. Four, testimony must be a written statement no more than two pages, single spaced or four pages, double spaced in length. No additional handouts or letters from others may be included. This testimony will be handed out to each member of the committee or it will be passed out to committee members and will be scanned into the official hearing transcript. As always, persons attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you will find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee. Please print legibly and then hand that yellow testifier sheet to the page as you come forward to testify. There's also a white sheet on the table if you do not wish to testify, but would like to record your position on the bill. This sheet will be included as an exhibit in an official hearing record. If you are not testifying or submitting written testimony in person, but would like to submit a position letter for the record, all committees have a deadline of 12 p.m., noon, the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address or delivered to my office prior to the deadline. Keep in mind, you may submit a letter for the record or testify at a hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill for 30 minutes, then opponents of the bill for 30 minutes, and finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer. We ask that you give your test-- your-- begin your written test-- begin your testimony, rather, by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you're submitting testimony on someone else's behalf, you may submit it for the record, but you will not be

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allowed to read it. We are using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning and when the red light comes on, we ask that you wrap up your final thought and stop. As a matter, matter of committee policy, we'd like to remind everyone that use of cell phones or electronic devices is not allowed during public hearings, though you may see senators use them to stay in contact with their staff. At this time, I'd ask you to make sure your phone is in the silent mode. Just a reminder, verbal outbursts and applause are not permitted in the hearing room. Since we have gone paperless this year in the Judiciary Committee, you may see senators using their laptop to pull up documents and follow along with each bill. Finally, you may notice some members coming and going. It has nothing to do with how they regard the importance of the bill under consideration, but senators may have bills to introduce in other committees or other meetings to attend to. And with that, we will have the committee members introduce themselves before we take the first bill, beginning with Senator DeBoer.

**DeBOER:** Good afternoon, everyone. My name is Wendy DeBoer. I represent District 10, which is Bennington and parts of northwest Omaha.

**BRANDT:** Good afternoon. I'm Senator Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

**PANSING BROOKS:** Good afternoon. I'm Patty Pansing Brooks, representing Legislative District 28, right here in the heart of Lincoln and I'm Vice Chair of the committee.

**MORFELD:** Good afternoon. Adam Morfeld, District 46, northeast Lincoln.

**McKINNEY:** Good afternoon. Terrell McKinney, District 11, north Omaha.

**GEIST:** Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

**LATHROP:** Great. Assisting the committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, one of our two legal counsel. And our pages this afternoon are Ashton Krebs and Samuel Sweeney, both students at UNL. And with that, we will begin our-- today's hearing with LB474. Senator Wishart, welcome to the Judiciary Committee.

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**WISHART:** Thank you, Chairman Lathrop. Good afternoon, Chairman and members of the Judiciary Committee. My name is Anna Wishart, A-n-n-a W-i-s-h-a-r-t, and I represent the 27th Legislative District in west Lincoln. I am here today to introduce LB474, a bill that would establish the Medical Cannabis Act and provide for the cultivation, processing, and use of cannabis for medical purposes in Nebraska. Not much has changed in the words of this bill since we debated it on the floor of the Legislature in 2020, but a lot has changed in the hearts and minds of countless Nebraskans who are impacted by these words. If you hadn't noticed, our movement has grown. In 2020, we launched a petition drive and in the span of several months, we recruited over 1,000 Nebraskans to help us collect over 190,000 signatures and we did all of that and accomplished it during a pandemic. Had it not been for a last-minute lawsuit and Supreme Court decision, our initiative would have passed by a vote of the people. I have no doubt on that. Our polling continues to show over 75 percent of Nebraskans support this issue and no amount of money spent in opposition is going to change the minds of people who care about their fellow Nebraskans. If you had spent the time I have driving across the state, collecting signatures in Johnson County, Senator Slama's district, in Saline County, Senator Brandt's district, and some of the most rural parts of our country, like Rock and Garfield and Arthur and Wheeler County, you would be as confident as I am that support for this issue spans geography, age, demographic, and political persuasion. And you would be hard pressed to find a person that you meet who does not know someone who has benefited medicinally from having access to cannabis and you'll hear from many of them today. I remember being parked outside of a Casey's in Hamilton County. This was my third day driving from Lincoln to Hamilton County for me and a volunteer to collect signatures and we'd sit outside of a Casey's and we'd text everyone in town and all of these seniors would come. They would drive up and they'd safely sign through their windows and we had one woman who came and she brought her, her father and he was a veteran. He had suffered from PTSD for many years since the Vietnam War and she had gone and gotten him cannabis and she said it was the first time he had slept in years. Those were the stories we heard every day when we collected these signatures and these are stories that are countless because they're lived experiences of people in our state who have benefited and my research into the benefits of cannabis, it's not just anecdotal, although I could go on and on about those because frankly, that's why

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I'm here. There is plenty of research to show the benefits that is, that is medical. In 2017, the National Academy of Sciences released a landmark report that reviewed over 10,000 academic studies on the effects of cannabis. It found conclusive and substantial evidence that cannabis is effective for the treatment of chronic pain, nausea, vomiting, multiple sclerosis, improving sleep, reducing anxiety, PTSD, and traumatic brain injury. Most recently, research indicates evidence that medical cannabis is helpful in the treatment of epileptic seizures and autism and we have a doctor who will be following us today who can talk to you more in depth about this. So it should not be surprising that there are medical benefits to this plant with this study, nor should it be surprising because cannabis is over 10,000 years old and is one of the oldest cultivated plants by humans. It is used around the world currently for medical purposes and was used medicinally for many years in this country until racism and greed and propaganda and government overreach led to a federal prohibition. In those 10,000 years that humans have evolved with this plant, there has not been one case of a person fatally overdosing from cannabis. And don't take my word for that, take the DEA's word for that. They, quote, say no deaths from overdose of marijuana have been reported. Compared to many prescription drugs, including opioid pain medications, which are now one of the leading causes of death in our country, medical cannabis is safer and less addictive. Yet here we find ourselves today with the FDA that can expedite a COVID vaccine, which I fully support and plan on taking, yet cannot take action on this plant-based medicine, even though all but three states, unfortunately including Nebraska, have legalized some form of medical cannabis. Most of these states have legalized cannabis by the ballot from the voices of the people because elected leaders failed to take action. No state that has legalized cannabis has ever reversed their decision. That brings me here before you again for the fifth year in a row to have Nebraska's elected leaders step up and represent the will of the people and pass a safe and regulated medical cannabis system. And I'm not going to go deep into the details of this bill unless the committee would ask me to. I've handed you and everybody in this room who would like one-- oh, I have that here actually-- this is a one-pager developed by the Nebraska Families for Medical Cannabis. It will explain all of the details of the bill. Colleagues, this is a buttoned-up bill. I've worked on this for five years. If the committee is concerned that something's missing, you know I am willing to find a

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solution to address that. This bill is not going to fail because of a lack of compromise or thoughtfulness on the part of myself and the medical cannabis, cannabis advocates behind us. If this bill fails to pass, it is because of political pressure from a few who wield their power to stamp out the will of the people. And here's the thing: the people will not be silenced. If the Legislature does not pass LB474, we will connect-- collect enough signatures to put a one-sentence, a one-sentence medical cannabis initiative in our state constitution on the November 22 ballot, 2022 ballot. We have done it once before in a pandemic and we'll do it again. It's time that Nebraska joined the majority of states and treat sick people like they should be, like patients, not criminals. And I'm happy to answer any questions.

**LATHROP:** Very good. Any questions for Senator Wishart? Senator DeBoer.

**DeBOER:** Senator Wishart, this is quite a big bill and I know you said you were-- you sort of handed out to us the summary of what it does, but maybe you could give just a brief idea of the structure since you didn't miss-- mention that so far, so that there's been a lot of conversation about it-- what it does and what it doesn't do--

**WISHART:** Sure.

**DeBOER:** --and I'm not sure if that's clear.

**WISHART:** Sure, yeah, so you're correct. This is 60 beautiful pages of legislation that has been worked on for many years and I've collaborated with, collaborated with a lot of senators over the years to address concerns. This bill takes you through what a qualifying medical condition is for being able to access the medical cannabis system. You know, I chose, when I introduced this bill this year, to allow that qualification to be a determination between the doctor and a patient. I recognize the committee, the last time around, worked with me on an amendment that had a list of qualifying conditions. Again, I'm willing to work with the committee on that. Philosophically, I don't think the Legislature should be getting involved in what a doctor and a patient determine to do and I trust our medical professionals to have the best interest in Nebraskans. But again, I'm willing to work on this issue to get it across the finish line. This goes into talking about if you're under 18 years of age, obviously you have to have a parent or guardian. It also goes into

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allowable or prohibited activities. We have one of the most restrictive amounts of cannabis that anybody can have at one time in their possession than any other state in the country. We also disallow in this bill the smoking of cannabis. You are allowed to heat cannabis in the vaporizing device, but you're not allowed to smoke it and you're not allowed to have any form of edible unless it's in the pill form, a medical form. Obviously, this requires a doctor or a nurse practitioner to certify that the person who's going to get cannabis is deemed to have a qualifying condition to do that. We did include that it has to be a bona fide relationship with the-- with a medical provider, which also means that that provider has to assess somebody for substance abuse disorder or personal or family history of schizophrenia. So this is truly a bona fide relationship. We do also limit the amount of recommendations that a doctor could make in a, in a year and in a 90-day period, as well as require additional training for doctors to ensure that they know about this plant-based medicine. We have four different types of medical cannabis establishments that we have in this bill. You have your producers, your processors. You have your dispensaries and then your laboratories and we require a incredible seed-to-sale process with this, where when you plant a seed, you can follow that seed all the way till it gets to somebody. We also require, in terms of the testing, that you test for mold, THC levels, and all of that has to be packaged and it has to be packaged in a childproof container. I did just want to point out as well, we work with the Chambers of Commerce to make sure that employers can still drug test their employees. You're not allowed to use cannabis, even if it's medical, while operating a motor vehicle, just some of the basic public safety measures and safeguards in place. And we do allow for municipalities and counties, if they do not want to have a cannabis establishment in them, they don't have to have one and I just want to be really clear about that. If you do not, as a county or a municipality, want to have a medical cannabis facility in your county, you do not have to have one. And then finally, we just set up a medical cannabis board. We set up the administration, which is self-sustaining from the revenue of licenses. Frankly, there will be additional revenue that will be up to the purview of the Legislature to determine how we want to spend those dollars, invest them in our people and then an implementation timeline and taxation timeline. So that's the summary of this bill and again, happy to answer any really

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detailed questions with you now or afterwards about the mechanics of the bill.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you for bringing this again and again, for your relentless determination and persistence. I, I hope that this goes through this time. It is the-- this is clearly the most heart-rending testimony we hear every year. And it started back in our, in our first year when Senator Seiler was Chair of Judiciary and I, I cannot thank you enough for caring for these people that are really struggling. We hear about the anecdotal evidence. We hear about the military prescribing to their veterans and again, we just-- all we go back to those "reefer madness" and the old stories and I just-- it's, it's-- I'm going to remain mainly quiet today because I want to let people talk and I really wanted-- but I really want to thank the people that are going through this and that will come up and tell their stories. And I know that a lot of us on this committee really feel for the, for the things that you're going through with your families and we just-- I know that there are many of us who want to support you and I'm all-- I don't even believe in the whole thing, but if they can't do it-- if we can't do it this year, I'm all about passing it on the ballot next year, so--- and I wasn't involved before, so I will be working on it. I know others will. This is ridiculous. So thank you for your passion, your persistence, and just your kindness and caring for others, Senator Wishart, thank you.

**LATHROP:** I do not see any other questions. I'm confident you'll be here to close.

**WISHART:** Yes.

**LATHROP:** OK. With that, we will take proponent testimony for 30 minutes. We'll take that first proponent. Welcome.

**GRANT WISTROM:** Thank you. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Grant Wistrom, spelled G-r-a-n-t W-i-s-t-r-o-m. I have two medical marijuana licenses in the state of Missouri and I'm here today to testify in support of LB474. I thank Senator Wishart for introducing this bill and I'm very grateful for the opportunity to be here in front of you today. As you probably



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know, Nebraska is and has always been my second home. This state gave me more than I can ever return and the time I have spent here were some of the best years of my life. This state taught me many things, including the meaning of hard work, about the value of community, and about the true meaning of compassion. These lessons helped me become the man I am today. I keep Nebraska very near and dear to my heart and I relish every opportunity to return. My time in front of you today is brief, so I'm going to keep my message simple. Medical marijuana has dramatically improved my quality of life, reduced my pain, and allowed me to live a more normal life. I have seen firsthand how this plant has provided life-saving relief for people close to me and I assure you its benefits far outweigh any potential risk. I started medicating with marijuana early in my NFL career. I noticed that if I consumed marijuana after games, I slept better, felt more recovered, dealt with less pain, and was able to begin to prepare to play again more quickly than without it. Recognizing the positive benefits I was receiving from consuming cannabis, I began to research other benefits of cannabis and found that people very close to me were dealing with issues that could be helped by medicating with marijuana. I helped procure marijuana for a family member suffering from PTSD from serving our country and a relative suffering from terminal cancer. In each case, I witnessed the relief they experienced for medicating and knew then that I needed to be an advocate for this plan. I knew I was doing the right thing by helping them, but was the medicine clean? Would I get caught and damage my reputation and my career? These are questions thousands of people in Nebraska struggle with every day and now we have a chance to do the right thing and allow them to legally source medicine. People should not have to choose between breaking the law or living without pain. I believe to my core that this plant was given to us to promote healing. We have an opportunity to end emotional and physical pain through plant-based medicine for thousands of good, kind, hardworking citizens of this state that I love. The people suffering today are our neighbors and they deserve our help. I believe it's our duty as a compassionate society to give aid to the suffering and to do our part in a system in living a better life. I know, like so many doctors, scientists, and researchers will tell you, that medical marijuana can help. It's helped me, it's helped my loved ones, and it's currently helping thousands of medical patients around the country. I leave you today with one last thought and that is about compassion. This topic, this legislative bill, this entire discussion,

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it really boils down to compassion. I urge all of us to find that place, that deep well of compassion for our neighbors and for the common man and bring it forth in this process. With that compassion, you can take action and with that action, you can offer some relief to those who need it most. I sincerely thank you for this opportunity to speak to you today. It was my pleasure.

**LATHROP:** Very good. Thank you for your testimony. I do not see any questions at this time, but thank you for being here today. Next proponent. Good afternoon.

**NICOLE HOCHSTEIN:** Good afternoon, Judiciary Committee members and Chairman Lathrop. My name is Nicole Hochstein, N-i-c-o-l-e H-o-c-h-s-t-e-i-n, and I'm here on behalf of Nebraska Families for Medical Cannabis. I sit before you representing Will, Brooke, Jayen, Colton, and the thousands of people we have met who could benefit from medical cannabis. These families, like mine, watch their children on a daily basis, shake uncontrollably, their lips turn blue. Their bodies thrust into household objects, creating life-threatening injuries, while watching the clock and praying the seizures stop before needing to administer rescue medication that may possibly stop the seizure, but also cause respiratory distress and the need for further medical intervention. Our children deserve medications that could provide them with relief of these debilitating seizures, but their zip code is preventing it. There's a roadblock in front of them. The roadblock is this building and the people in it. Each of you could end the suffering of my child and others like him. There is empirical evidence that cannabis is medication and is being used to help children in 47 other states. The evidence is clear, concise, and plentiful, but so many put politics ahead of the lives of helpless children and suffering adults. It's time to act. It's time to enact regulation that can help Nebraskans without hurting Nebraskans. These families were able to collect, to coordinate a grassroots efforts to collect 196,000 signatures during the pandemic to allow medical cannabis program on the ballot this past year, but the provisions meant to keep Nebraskans safe derailed their efforts and halted the voice of the people. We have and we will collect signatures again if we can't work together to pass a safe and compassionate program, but fear the corner we have backed into will not allow us to include safeguards for those who do not need access. When this goes to a ballot initiative and passes, legislators will be scrambling to create laws and regulations while

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pot shops pop up on every corner of your neighborhood. Work with us now and help guide this bill to allow access to those who desperately need it. Thank you.

**LATHROP:** Very good. Thanks for your testimony. We appreciate you being here today and sharing that. Next proponent. Good afternoon and welcome.

**JASON HARPER:** Good afternoon, Chairman Lathrop, members of the committee. For the record, my name is Jason Harper, J-a-s-o-n H-a-r-p-e-r. I'm a Nebraska business owner, entrepreneur, and a Bellevue University graduate. I own and operate with my partners, a scale company with four locations across Nebraska, three in Denver, and one Iowa. I also happened to be in the medical cannabis business and I own a company called Heartland Relief. We have cultivation, manufacturing, dispensing operations in Maryland, West Virginia, soon in Missouri, and hopefully here in my home state of Nebraska. Our products are tested for metals, molds, and pesticides, as well as a variety of other impurities. I'm here today to respectfully ask for your support for LB474 and promise to be brief. LB474 as written would be the most conservative, responsible approach to legalizing medical cannabis in the nation where 47 other states have legalized some medical form, recreational or both. Unlike previous efforts, the bill prohibits home growing of any kind, no smoking, and no edible forms. I'm a small businessman, not a big tobacco producer. I'm not here advocating for adult recreational use, but it's time for Nebraska legislation to get in front of and lead this wholly behind other states, including our surrounding states. Last year, over almost 200,000 Nebraska voters petitioned this government to allow the medical cannabis. They sought out this petition during a pandemic lockdown. No public events, no ball games, no concerts, no county fairs, but from all 93 counties, they signed because according to the polling, 78 percent of Nebraskans support this and likely something much more prolific than this narrowly focused bill accomplishes. The politics at the federal level have changed as well. Without a doubt, as soon as this year, the banking laws will, will change and scheduling cannabis will be addressed. It's time, folks, that we're-- we make the change here in Nebraska. We are business owners, medical professionals, parents, and patients and it's time to get out in front of this before the voters put in place a self-enacting constitutional change in 2020. As I wrap up my comments, I ask that you go home

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tonight, you know, in your own closed doors. What if it was your child, grandchild, spouse, or parent that was suffering like some of these families that you've heard about today? Please support LB474. I greatly appreciate your time this afternoon.

**LATHROP:** OK, I don't see any questions. Thanks for being here, Mr. Harper.

**JASON HARPER:** Thank you, sir.

**LATHROP:** Good afternoon and welcome.

**AMANDA MCKINNEY:** Good afternoon. Thank you. It's hot in here. My name is Dr. Amanda McKinney, A-m-a-n-d-a M-c-K-i-n-n-e-y, and I'm a fifth-generation resident of Gage County and a triple board-certified physician. I practiced medicine in Beatrice for ten years after completing my residency and fellowship training. I went into medicine to heal people. I left practice in 2016 because I felt that there was a gap in medical education that safe, effective, and cost-effective treatments such as lifestyle medicine and cannabis medicine were being overlooked in lieu of pharmaceuticals and procedures. I now teach medical cannabis and courses in lifestyle medicine for Doane University. This happened to be fortuitous because in April of 2009. I received a phone call from my nurse of ten years that she had inoperable pancreatic cancer and that it had spread to her liver. She took chemotherapy on and off for six months, but could not tolerate it. The chemotherapy shrunk her tumor slightly, but she had relatively few options as she could no longer continue with it. She started using cannabis to help her with the side effects of her treatment. After stopping chemotherapy and continuing just the cannabis, she went into complete remission. She's still doing well today. While this seems like a remarkable story, there are many more patients just like her out there, many more cases of cancer remission. In fact, according to this paper I have here, cannabis is highly effective for leukemia patients and should be used with current drug regimens, but it is also useful for patients who have failed conventional therapy in treating their disease. There are countless more studies like this and countless more studies on the effectiveness of cannabis for a host of other chronic conditions. While I recognize that there are concerns over addiction, the truth is that cannabis has a much lower risk of dependence than other drugs like alcohol. Cannabis has a lifetime

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dependence risk of 9 percent, while for alcohol, it is 16 percent. Cannabis is less than half as addictive as heroin, 23 risk-- 23 percent risk of dependence, and cocaine, 17 percent risk, and tobacco, 32 percent risk. In fact, this study presents the compelling evidence that because cannabis has such a high safety profile, it is valuable in the treatment of opioid addiction, which we know is at epidemic levels in the U.S. and is deadly. There is no lethal dose for cannabis, which cannot be said for alcohol or opioids. It can also not be said for nearly any other pharmaceutical that we currently use today. Every year, around 128,000 people die from drugs prescribed to them, while over 2,000 die from alcohol poisoning and over 80,000 die from opioid overdose. There are zero reported deaths from cannabis overdose. Thirty-four states and the District of Columbia have legalized fully medical cannabis or both medical and recreational cannabis. It's time for Nebraska to join these other states and to legalize cannabis and its forms. We are fortunate to have the medical and industry experience in the state to create a program that is well regulated and safe for consumers and patients, while also providing revenue that can offer relief in other areas such as property tax. It's also time that we stop forcing our otherwise law-abiding citizens to become criminals by forcing them to drive across state lines to purchase life-sustaining medications that they then must illegally bring back across the border.

**LATHROP:** Dr. McKiney--

**AMANDA MCKINNEY:** Yeah.

**LATHROP:** --we're going to have to enforce that red light.

**AMANDA MCKINNEY:** OK. I have one sentence. Can I finish?

**LATHROP:** Yes.

**AMANDA MCKINNEY:** It's not only cruel, but nonsensical. Thank you for allowing me to share my thoughts.

**LATHROP:** Absolutely.

**AMANDA MCKINNEY:** Yeah.

**LATHROP:** Absolutely. We're glad you're here. Senator Pansing Brooks.

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**PANSING BROOKS:** Thank you. Thank you for being here, Doctor. I was just wondering, so if you-- if this becomes legal, will you prescribe cannabis to your patients? Do you know other doctors who will do so as well?

**AMANDA MCKINNEY:** Yeah, so the way the bill is written-- so I'm an educator currently, so I don't have a medical practice. It's not to say that I, I wouldn't start a practice where I prescribe medical cannabis, but I do know of other providers that would as well. And fortunately, we now have the educational programs available in the state so that providers can get the education they need to properly prescribe it and effectively prescribe it.

**PANSING BROOKS:** OK, so do, do you know-- what, what would you say-- because I know there are doctors who will say that there's no research out there. What do you say to that?

**AMANDA MCKINNEY:** I-- that's-- it's nonsense. I mean, I mean, I just wrote, I just wrote two chapters for a cannabis textbook on medical cannabis and 60 pages worth of documented research and I had to keep it short. I mean, I could have written, you know, 200 or 300 pages, so that's it's just false.

**PANSING BROOKS:** And so I presume that in the other states where they have passed medical cannabis, they are doing research and that there are positive results from that?

**AMANDA MCKINNEY:** That's right. So there are other-- other states are doing it, but a lot of our research is coming from other countries that-- you know, Israel is, is a huge cannabis research country, so it's, it's out there. It's not just in the U.S.

**PANSING BROOKS:** And I just have one more question. The thing we keep hearing is, oh, my gosh, the dosing, the dosing-- how are we ever going to figure out dosing of this? And, you know, of course, they ask laypeople and I have no idea how they figure out the dosing of COVID, but so it's a good question to ask people like me, but could you speak to that, please?

**AMANDA MCKINNEY:** So dosing is something that-- cannabis, especially in its whole plant form, is not like other pharmaceuticals, so, so what

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we have done in healthcare and medicine in the medical industry is we've, we've taken this reductionist approach, right? So we isolate specific compounds from various plants and, and animals and other things to create medications, synthetic medications, and then, you know, we, we target a specific pathway and so on and so forth. The thing about cannabis is that, you know, and, and Anna Wishart, Senator Wishart alluded to this is that, you know, humans have been using this plant for over 10,000 years, so we have, we have actually coevolved with this plant. We actually have a, a, an internal system called the endocannabinoid system in which we make our own cannabinoid molecules in our body and one of them is called anandamide. It's the bliss molecule. It's very chemically similar to THC, which is found in, in cannabis. It's a phytocannabinoid. So the, the endocannabinoid system in our body, it can dysfunction-- it can-- there can be dysfunction within that system and treating it and, and putting that system back into balance, it's not a dose-dependent fashion, right? So, so there's some experimentation involved with this. When we talk about medicine, we talk about it being both a science and an art.

**PANSING BROOKS:** Right.

**AMANDA MCKINNEY:** And when you talk about treating patients with medical cannabis, that is where you must understand the science and, and all of that, all of those components that go with it, but you also must know how to be an artist in medicine and help patients navigate, you know, what, what regimen works best for them.

**PANSING BROOKS:** Thank you. I, I think that's helpful.

**LATHROP:** OK. Senator Geist.

**GEIST:** Yes. Thank you for your testimony. And I just want to ask-- you, you have in your testimony that cannabis has a lifetime dependence risk of 9 percent. At what purity is that?

**AMANDA MCKINNEY:** What period?

**GEIST:** What purity?

**AMANDA MCKINNEY:** Oh, what purity.

**GEIST:** Um-hum.

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**AMANDA MCKINNEY:** So that is-- that's just for all cannabis in general. So when you talk about-- I guess, I guess what I'm asking is, are you talking about an isolated form--

**GEIST:** OK.

**AMANDA MCKINNEY:** --or--

**GEIST:** Yes, at the THC rate--

**AMANDA MCKINNEY:** Yeah.

**GEIST:** --because we know that that varies greatly--

**AMANDA MCKINNEY:** Um-hum.

**GEIST:** --even from plant to plant or--

**AMANDA MCKINNEY:** Right.

**GEIST:** --or, you know, however it's dispensed.

**AMANDA MCKINNEY:** Right.

**GEIST:** Is there a specific purity level that that--

**AMANDA MCKINNEY:** Is tied to? No, it is not--

**GEIST:** OK.

**AMANDA MCKINNEY:** -it is not tied to a specific purity level.

**GEIST:** And then within the medical cannabis field, is there a therapeutic level of THC that's advised?

**AMANDA MCKINNEY:** No, it's, it's-- so some of the studies-- so for instance, the, the study that I showed here with leukemia patients, there are-- some of the studies are, are clinically done so that they use specific dosages of, of certain medications. So they're-- it depend-- it get-- that answer is dependent upon the condition that you're trying to treat and how long maybe that person has had this condition and various other things, but it may determine-- it may be determined on that own person's endocannabinoid dysfunction. So no,



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there is no specific dose of any of the cannabinoids because, you know, cannabis contains over 200 different types of cannabinoids. THC is one of them and they're either-- and there are even isoforms of THC, but then there are a whole host of other cannabinoids that are present.

**GEIST:** Is there, in your medical opinion, a, a THC level that's too high--

**AMANDA MCKINNEY:** No--

**GEIST:** --and I don't mean too high for a specific use, but just in general to the public, that's too high?

**AMANDA MCKINNEY:** No, that-- because everybody's tolerance is different and again, too high for what? I mean, too high that it's going to cause death or too high that it's going to cause what-- I guess I'm asking.

**GEIST:** I don't know what it would cause. I'm just asking if there's-- my-- the, the basis of my question is, is there a cutoff in, in the, in the amount of THC that could be used medically?

**AMANDA MCKINNEY:** No--

**GEIST:** OK--

**AMANDA MCKINNEY:** --no.

**GEIST:** --thank you.

**LATHROP:** Senator DeBoer.

**DeBOER:** Thank you for your testimony. Are, are there side effects, right? You look about other medicines and things and there are side effects, so are there side effects that have been studied or are common to the use of THC?

**AMANDA MCKINNEY:** Right, so the, the primary, the primary side effects, I guess you would say, is that depending on the dose of cannabis that someone takes, THC, THC specifically, there does tend to be an increase in heart rate and blood pressure that's temporary and then a

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concurrent-- then lowering and decrease of both heart rate and blood pressure, so, so there are some, some instances where you, you-- there are precautions and contraindications that you would need to, to watch for. So uncontrolled hypertension and cardiac disease are two things that need to be watched for. So, so people who have those conditions should be-- you know, medical cannabis should be avoided for those conditions. Another common-- it's not common, but it's something that, that is-- you know, we're familiar with in the medical cannabis world is something called cannabis-induced nausea and vomiting. So cannabis is very well known to have therapeutic effects for nausea and vomiting, especially associated with chemotherapy. However, there is this paradoxical syndrome that can happen that when patients have used a lot of cannabis for a long period of time, they can actually develop nausea and vomiting when they consume cannabis. It's-- basically it's a heat, heat dissipation issue, but essentially it resolves with cessation of cannabis use.

**DeBOER:** And so would a doctor-- I mean, if those are the side effects, that's obviously something that should be taken care of. Can a doctor sort of see this syndrome coming? Can, can you sort of control for all of those things?

**AMANDA MCKINNEY:** No, it's, it's more of a diagnosis of exclusion. So some people have cyclical nausea and vomiting syndrome-- that's a good thing too-- and cannabis works really well to treat it. So the way it's discovered is that if, if cannabis helps the nausea and vomiting, the cyclical nausea and vomiting, then it's determined to be cyclical nausea and vomiting syndrome versus if it's, it's induced after cannabis is taken and it's cannabis related. So it's just a matter of, of stopping the, the medication.

**DeBOER:** And what about schizophrenia? Because when I was working on this bill before, one of the things I saw was that there are some contraindications with schizophrenia, so can you speak to that?

**AMANDA MCKINNEY:** Yeah, so the, the literature is really mixed on schizophrenia because there are some-- there is some research that actually says that it can help in, in cases of schizophrenia. So certainly, you know, we'd want to develop and we, we have the capacity to develop specific protocols for patients and, and I feel like this bill has done a really thorough job of looking at specific

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contraindications and actually, there's a couple I would probably add in there, but those are, those are thing-- and that's, that's the value of, of educating providers. So if a provider is going to certify patients for medical cannabis, they should have some education in it.

**DeBOER:** And so I remember reading when I was working on this a couple of years ago, that for patients who have predispositions of schizophrenia, it's possible that the use of cannabis might exacerbate that and lead them into actual symptoms. Is that a concern?

**AMANDA McKINNEY:** I mean, you know, those things are always potential concerns, but we also know that antidepressants, you know, the classic antidepressant drugs, the SSRIs like Prozac and Zoloft, those medications, when prescribed liberally, which they have been in this country, actually induce a significant number of cases of bipolar depression that-- when the patient did not have it before. So, so the answer is, is that, yes, those, those are things that we need to watch for and monitor and be concerned about, but when you compare this to other pharmaceuticals, especially psychotropic pharmaceuticals that we use, we just-- all of the time in medicine, this is a much less dangerous drug.

**DeBOER:** Are you familiar with sort of the structure for education that's involved in this bill for, for physician education?

**AMANDA McKINNEY:** Yeah, so I read through it this morning. I looked-- it-- there wasn't a lot, I don't believe-- I'd have to go back and look-- of front-end education for providers, but certainly anyone who is continuing to practice medic-- practice cannabis medicine and prescribe to at least ten people a year, then they have to do a certain number of continuing medical education hours.

**DeBOER:** Would you-- do you think the bill would be helped by an amendment that would put front-end education in place?

**AMANDA McKINNEY:** I, I-- actually, I do. I think that, you know, there, there is-- you know, we didn't learn any of this in medical school and so I do think that for people-- and, and, and I feel that people are doing this, but I do think it's important that we do, but we-- no, we have a medical cannabis course online at Doane right now and it's on a global platform and we've had-- it's been up for about two months and

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we've had over 300-some clinicians already take the class because there, there is such a gap in, in knowledge about it, not just amongst the "laypublic," but also amongst medical providers. I mean, you know, we're all just people too, so I do think that that is important and I think that Nebraska has a real opportunity to, to make-- to, to be the gold standard, to really create a program that's, like I said, safe and effective for consumers and, you know, we can, we can lead on this issue. We really can. Even though, you know, we've been beaten to the punch by all these other states, we can still lead on this issue.

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

**LATHROP:** Seeing no other questions. Doctor, thanks for being here.

**AMANDA McKINNEY:** Thank you.

**LATHROP:** Any other proponent testimony? Good afternoon and welcome.

**TERI MIKKELSEN:** Hi. Senator Lathrop and members of the Judiciary Committee, my name is Teri Mikkelsen, T-e-r-i M-i-k-k-e-l-s-e-n. As an attorney who was-- worked the last six weeks on the petition drive, a businesswoman, a lifelong Republican, and oddly enough, U.S. Senator Mitt Romney's cousin, I am here to testify in support of LB474 to make cannabis legal for medical purposes. I did not come to this decision lightly, to support the issue: to work on the petition drive, or to testify today. Three arguments brought me to this decision. One, 47 states have some form of legalized medical cannabis, including states far more conservative than Nebraska, including Utah, where I lived for several, several years. Two, there is no doubt there is change coming from the federal government and so passing the bill now makes sense from a regulation and policy standpoint. But finally, it was fighting side by side, gathering signatures with people struggling with serious medical issues that drove me here today: the veterans with PTSD [SIC], people with Parkinson's and other debilitating diseases, but especially the children. There are parents here advocating for their children. They're heroes and they need your support. Senators, the public overwhelming, overwhelmingly supports this issue, as evidenced by the nearly 2,000 [SIC] Nebraskans who signed the petition, nearly 2,000 [SIC] Nebraskans during a pandemic, which is amazing. That tells you the support that is there in our state. And as one of the attorneys who worked on the challenge in the Nebraska Supreme Court, I

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feel like I've failed these families. But you guys have a unique opportunity today. You can make this happen for these families. People support this. You can save lives and save suffering in the state. It's my hope that you guys will support LB474 and I hope your colleagues will as well. Thank you.

**LATHROP:** Thank you for your testimony, Ms. Mikkelsen, appreciate your being here today. We have time for one more proponent. Good afternoon and welcome.

**CRISTA EGGERS:** Thank you. Good afternoon. Good afternoon, Judiciary Committee, Chairman Lathrop. My name is Crista Eggers, C-r-i-s-t-a E-g-g-e-r-s, and I'm here today in support of LB474. I'm honored to represent the families who have been fighting for this issue year after year and we thank you in advance for your diligence to see that this bill moves forward. As families, we have tirelessly made it our mission to educate and raise awareness on medical cannabis in this state and each of us has a very personal reason in which we are fighting for. The fact that we have to be here yet again debating the value of the lives of suffering individuals in this state is absolutely absurd. Because Nebraska has failed to take action on this issue, we have been forced to watch our loved ones grow sicker and our fear for their future has become even greater. The pain of watching our children continue to suffer is almost unbearable. However, what's even worse is knowing that there is a medication out there proven to provide relief, but we are made to be criminals in order to access it. I have a six-year-old little boy at home. His name is Colton. Colton has a severe form of intractable epilepsy. This causes him to experience debilitating and uncontrolled seizures, which threaten his life each and every day. Those of you who have been spared from ever witnessing a seizure, I want to explain to you what many of our children go through. Colton's small body stiffens and convulses. His eyes roll back and his lips and face turn purple and blue. His heart and blood pressure skyrocket and what after seems like eternity, he begins to breathe again. What you cannot see is the damage being done to his little brain. These repeated seizures are damaging and killing my child. As his parents, we are constantly haunted by this reality. I ask each of you to imagine watching a child, a niece, a nephew, a grandparent, watching your child going through what I just described and then being told that based on where you live, you cannot use a medication that might improve the quality or even save their life.

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This is a reality for us each and every day. Our children have exhausted every medication, treatments, and surgery available. The unrelenting side effects of these drugs are often as horrific as the seizures themselves: hallucinations, liver damage, and even a decrease in brain matter. Well, as we sit at this debate-- as we sit and debate this issue each and every year, our children are continuing to suffer and being robbed of their future. The opposition is driven by fear and misunderstanding and at this point, seems to have a lack of regard for human life. I beg of you to look upon the suffering people in this state with compassion and empathy by supporting, supporting LB474 to allow access to medical cannabis, a medication that holds the hope for a better future for so many. Please don't make us criminals. We just want to save our children. Brooke, Colton, Jaylen, Will, and tens of other thousands of people will need their voice heard and they need this help. Thank you.

**LATHROP:** OK, I don't see any questions. Thanks for being here today. We appreciate hearing from the proponents. We will now take up opponent testimony. So if you're here in opposition, you may come forward. Good afternoon and welcome.

**GARY ANTHONE:** Thank you. Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Dr. Gary Anthone, G-a-r-y A-n-t-h-o-n-e. I'm the chief medical officer and director of the Division of Public Health within the Department of Health and Human Services. I'm here today to testify in opposition to LB474, which would permit certain patients to engage in the medicinal use of cannabis. As DHHS has previously testified, legalizing marijuana for any purpose, including medicinal use, could pose risks to the health and safety of Nebraska residents. The National Academy of Medicine, the nonprofit group that advises the federal government on health and medicine, released a report in 2017 stating that cannabis use is likely to increase the risk of schizophrenia and other psychoses. Concerns about how marijuana affects people's health are typically addressed through the process set out by the U.S. Food and Drug Administration for the approval of investigational new drugs. The current approved drug products containing cannabinoids have successfully completed this process. Legalizing marijuana and any form outside of this process, in contrast, would circumvent the process and lead to an increased risk to the public. Furthermore, doctors and pharmacists are not able to prescribe drugs like marijuana as a

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treatment because they are not federally approved and dosing and drug interactions remain unknown. There is no difference in the chemical composition or potency of recreational marijuana and medical marijuana, as both products are being sold under the same labels. The documented increase, increases of THC concentration levels and commercially grown marijuana and marijuana-based products raises new concerns about the risk to the public. Research has shown that percentage levels of THC in marijuana and marijuana-based products have increased dramatically from about 4 percent in 1995 to about 16 percent in 2018. Modern farmers-- farming practices and bioengineering will likely cause this level to continue to rise in the future. Outside of the drugs approved by the FDA, THC is still listed on the Drug Enforcement Administration schedule of controlled substances with no approved uses, no other approved uses. We respectfully request that the committee not advance its legislation. Thank you for allowing me to testify today and I'd be happy to take any questions.

**LATHROP:** OK. Thank you, Doctor. Any questions for Dr. Anthone. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming. Dr. Anthone. So I, I presume that you think it would be better to be under a doctor's treatment than just taking medical marijuana on your own?

**GARY ANTHONE:** That's correct.

**PANSING BROOKS:** So if-- and I'm happy to announce right now, but if, if I end up with some epilepsy or some other disease like that or my husband does or any of our grandkids at some point-- I don't have any grandkids-- I will be going to Colorado and attempting to see if it will work and I bet you that every single person here would be doing so. Whether you're Republican, conservative, whether you're Democrat, Independent, if you have a child or somebody that needs to have pain or other treatment affected, would you not go to Colorado to see if it would help you?

**GARY ANTHONE:** I don't know what I would do personally in that circumstance. Sort of a hypothetical question to me, but--

**PANSING BROOKS:** It certainly is hypothetical because--

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**GARY ANTHONE:** The thing that I learned during this pandemic, again, is how the FDA works like Senator Wishart's--

**PANSING BROOKS:** Quickly if they want to.

**GARY ANTHONE:** That's true, but why haven't they? Why haven't they--

**PANSING BROOKS:** Because people--

**GARY ANTHONE:** --after all we heard this morning, why haven't they?

**PANSING BROOKS:** Because law enforcement continues to, to ring the, the, the doomsday bell that everybody is going to get drugged out. We're all going to be sitting on the streets in a, in a drugged-out stupor and "reefer madness" is going to reign free and strong and-- I mean, that's what's happening. And, you know, other, other states are doing it. They're not in a total mess. Yeah, we're getting people coming across our state carrying marijuana because number one, there are people that are exporting or trying to go to get help, whatever help they can, and they bring it back and I just-- you know, the reason this is continued is because of brilliant and bright people like you, because of law enforcement who care about the safety of our communities, but this has got to stop. If, if it works, let a doctor say and try it out. Not every disease has a perfect diagnosis or dose. So if you take mental healthcare medicines, the, the psychiatrists go in dosages. They'll try with small doses and see if something will work and then they, they expand the dose and they go to a higher dose. Nothing is just cut and dried or black and white on dosing on other medications. So I think that this, this continuous-- you know, it's, it's Henny Penny and the sky is falling. Oh, my God, the world is going to end if we bring in medical marijuana to help protect people in our state. Anyway, I appreciate your coming. The reason it doesn't ever pass is because people like you continue to come and, and it's a detriment to our citizens. I think you do great work otherwise, but I want to say this is not helpful right now. Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Doctor, for, for coming here today. If-- I'm not going ask that question-- I guess I sort of see where, but for one Supreme Court Justice, the people would



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have probably voted on this last time. I sit on the General Affairs Committee and we just passed the regulations for legalized gambling in the state of Nebraska. If-- so relating that same scenario to this, if that had been on the ballot and passed, I would kill to have these regulations for medical marijuana as opposed to what was on the ballot. What is your opinion on that?

**GARY ANTHONI:** My opinion is, is that the FDA is there for a purpose and I'm here for a purpose. I'm here to protect the health and safety of Nebraska citizens and so I, I want to do that. I want to do that to the best of my ability. And again, like we learned with the pandemic, the FDA is the ones-- they're the experts here. They're the ones who will take the data that we heard about this morning and they'll review it and they'll meet and they'll look and they'll see if there is a benefit and they've done that. They've done that with four other forms of cannabinoids, so it's not that they're against doing it. They want to do it and I think we ought to go through that process.

**BRANDT:** And I would agree with that, but I see in two years, this will be back on the ballot and I believe they won't run into the same problem they had last time and if it passes, then we're behind the eight ball and we'll have to honor the wishes of the voters of Nebraska. And I guess what I was trying to get at was what was on the ballot for medicinal last time, I certainly wouldn't have supported that, but I could probably get behind some well-written rules that made Nebraska the most conservative state on medicinal out of all the states that have it and I would hope some others would recognize that fact or we're going to be up-- we're going to look like South Dakota.

**GARY ANTHONI:** It's also my job to educate and to help educate the citizens of Nebraska and I'll do that to the best of my ability.

**BRANDT:** Thank you, Doctor.

**LATHROP:** Senator Geist.

**GEIST:** I have a statement and you might want to, to comment about it. I do think there is another side to this and I think it's one that hasn't yet been addressed and it's one that's very real to me and real to my family and that is the addiction and the pathway that addiction goes through marijuana. And I grew up in a family where --with a

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brother who, 20 years ago, my mother would have sat out here and advocated for my brother to say help me help my son because he may have not been addicted to marijuana-- I don't know. I, I'm not a medical doctor, nor do I want to make medical doctor decisions-- but he certainly was addicted to cocaine after marijuana wasn't enough and I say that that was 20 years ago because marijuana today is not the marijuana of 20 years ago. And if you're here to protect public health, that's also the grid that I run this debate through because it very much affected my family. It very much affects the way that I look at this issue and my family is not unique and there are many families today that are not unique and whether this is medical, whether it's recreational, the fact is-- and this might be what you would want to comment on-- that this can be a pathway to serious detrimental results for many people, not just like my family, but many others. Do you have a comment to that?

**GARY ANTHONE:** My only comment for that, Senator, would be I know there is research out there that show that it is harmful to the developing adolescent brain.

**GEIST:** Yes and my brother was 13 when he was addicted and did not get treatment till he was 33 and seriously debilitated his life. Thank you. That's all.

**LATHROP:** Doctor, thanks for being here, as always. Next opponent. Good afternoon and welcome.

**JOHN MASSEY:** Good afternoon. Chairman Lathrop and members of the committee, my name is Dr. John Massey, J-o-h-n M-a-s-s-e-y, testifying on behalf of the Nebraska Medical Association in opposition to LB474. I'm a board-certified pain physician. I've been practicing medicine in Nebraska for over 20 years. Two years ago, the NMA testified before in a neutral capacity for LB110. We were hoping a compromise could be reached that would limit the scope of the medical conditions that we know cannabis can help treat. We testified in a desire to participate in the discussion from a strictly medical standpoint. Unfortunately, the NMA believes that LB474 has taken steps in the wrong direction. It does not limit the use of medical marijuana to specific conditions. It instead allows the drug to be recommended by a healthcare provider whenever they feel it will provide relief. The NMA believes there is currently limited evidence that does suggest cannabis and derivatives

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can have therapeutic benefits for patients with certain medical conditions, but that negative long-term effects and potential abuse risks remain concerning. As a pain physician, I'm well aware that many medical marijuana proponents advocate for cannabis as a means to manage chronic pain and reduce the risk of opioid use and overdose. Unfortunately, since our last testimony, additional medical literature has developed which demonstrates that chronic pain patients that utilize cannabis have an increase in opioid utilization and an increase in complications of opioid use disorder and substance misuse compared to those that do not. Medical cannabis advocates also frequently state that medical marijuana is a safe treatment for anxiety disorders and PTSD. The burdens of these conditions have absolutely accelerated over the past year. Unfortunately, developing literature does demonstrate that medical marijuana tends to exacerbate these conditions. This can be especially true with high-dose THC variants, which are increasingly invariable. Physicians in the-- and citizens in the state have learned all too well over the last year that problems occur when we fail to develop healthcare policies based on sound science. The United States has once again had a decrease in life expectancy. This is obviously associated with the pandemic and our societal response to it. It's less well known that worsening of substance use and medication overdoses has contributed to the life expectancy decline as well. As physician, it's no secret that we're tired of seeing our patients, friends, and family suffer the all too expected outcomes and complications of failing to listen to sound clinical science, whether it be with respect to COVID pandemic or with respect to the issues raised with this legislation. For these reasons, the NMA is opposed to LB474 as introduced. We're not dogmatically opposed to medical marijuana. We strongly want to serve as advisors to the clinical aspects and implications of the policy considerations underway. We promise to remain engaged in this conversation in order to help Nebraskans find the appropriate clinical role and indications for cannabis. Thanks for your time. Happy to answer any questions.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop. Thank you for your testimony. I was, I was-- I'm curious, did you know that the prohibition of marijuana in this country has been hugely led by racist propaganda since the '30s and even before then? Do you consider that sound science?

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**JOHN MASSEY:** Racist policies are never sound science, Senator. I'm, I'm familiar with, with the reason that we call this marijuana instead of cannabis, correct? That's, that's kind of the terminology that's often associated with that racism, so absolutely that racism is never something that's acceptable in medicine.

**McKINNEY:** I'm just curious, what doesn't the NMA bring a bill to prohibit opioids? I, I say this because we hear all these people who are going to come up-- and a couple that get up here and say marijuana is a horrible drug and it has all these horrible side effects. But I know firsthand, because of members of my family with opioids due to the individuals and I can't say the same thing for marijuana from first-hand experience throughout my life, but I do know what racist policies and the war on drugs centered around marijuana has done to my community. It's severely destroyed my community. It's the reason why our prison population is what it is today, but you guys come oppose a bill to help families and children that need help, but you don't bring bills or support bills to oppose the use of opioids and other drugs that severely harm communities. I'm just curious of why that's-- why that is.

**JOHN MASSEY:** Senator, I, I appreciate your comments, but I don't think you, you know, me and my history. I'm a pain physician who has advocated for many years the responsible limitations on opioids. I was the task force chair for the Nebraska pain guidance document creation that worked specifically to reduce harm that's associated with opioids. I'm also-- have worked last year with Senator Wishart in an attempt with her LB110 to make that bill as, as clinically accurate as possible. I'm not here as a dogmatic-- when I have patients who have-- I have a practice that's on the border with many states with cannabis. I'm a pain provider. I have hundreds of patients who take cannabis not prescribed by me. I have people who I do prescribe it for indications. I am not dogmatically opposed to cannabis. What I'm about is avoiding harm that can be avoided and unforeseen mistakes that we can make. I, I want to educate in this regard, but I think the misperception that gets out there clinically can, can harm people. That's my only point, Senator.

**McKINNEY:** Thank you.

**JOHN MASSEY:** Yes, sir.

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**LATHROP:** Senator Slama.

**SLAMA:** Thank you, Chairman Lathrop, and thank you, Dr. Massey, for being here today. Can you just expand on your point? I think it was fair to-- in your comparison of the 2019 bill versus the 2021 bill that this is far more expansive and may incentivize a bit more doctor shopping. Can you expand on your thoughts there and your concerns as a physician, both on the scope and what unintended consequences this might lead to?

**JOHN MASSEY:** Yes, Senator. So when we were working the last time around with this bill, I, I credit Senator Wishart and her staff. They listened to our concerns with respect to how cannabis can play a role. There's no physician in the state who doesn't completely understand the issue with respect to this rare seizure disorders in children. There are indications through this. Multiple sclerosis and spasticity, the indications that we have-- and, and it was our impression that Senator Wishart was listening to that and we-- they were amending that bill to make it more clinically appropriate. The thing we want to do-- avoid as clinicians is to have medical cannabis be kind of an overarching thing where really people who don't have medical implications are using it because 9 percent risk of, of, of addiction is not trivial. That's a very high number when you aggregate over 2 million Nebraskans. So, so we can't-- it, it really leaves us in a difficult situation to say that if anyone thinks it may help, go ahead and prescribe it and, and that's a big challenge. I also serve on the board of medicine and surgery and we've had discussions about this, thinking that it may come through at, at some point in time and how would we manage that? Because there's a lot of harm that can be done if we don't make this a strictly medical bill.

**SLAMA:** Sure. In some ways, you almost have an incentive to be the most expansive or the most liberal doctor when it comes to these types of prescriptions that can lead to increased traffic into your practice for those that are interested in receiving medical cannabis for things that may not necessarily fall under the scope of approved conditions as of right now, is that correct?

**JOHN MASSEY:** Well, I would say that doctors are ethical and they do their best. Substance abuse is very hard to recognize and it's very often that a doctor can find themselves leveraged as a means of

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compassion and so mistakes will be made. So the better education and the better we can make this so that it's not just an open playing field and give it a try because that, that can be-- that-- we can seriously run into trouble with that.

**SLAMA:** Thank you.

**JOHN MASSEY:** Yes.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you, Dr. Massey, for coming, appreciate it. So you've heard and you've watched the whole history of this bill and what's going on. Is this bill better than, in two years, just passing marijuana available for everybody at any point? In this bill, doctors do have some judgment and ability to prescribe and at least for me, with my own children or kid-- grandkids, at some point-- I don't why I keep bringing that up-- but I would rather have a doctor involved. But do you prefer that it just move on and not--

**JOHN MASSEY:** No--

**PANSING BROOKS:** --this not pass and then we know we're going to initiate a petition again?

**JOHN MASSEY:** What I would prefer, Senator, is for this discussion to go forward and to, to make, to make this a clinical cannabis bill as much as possible to prevent harm. I'm not, I'm not here-- you know, the sky is falling and I do think that there is considerable concern if a constitutional amendment passes and then we have to make out of whole cloth something. I, I understand your point in that regard.

**PANSING BROOKS:** Thank you.

**LATHROP:** Senator Morfeld.

**MORFELD:** Thank you for coming today, Doctor. I'll make my question quick. So if Senator Wishart put together a list of conditions that this would be limited to what-- a list of certain conditions, would you then support the legislation?

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**JOHN MASSEY:** I, I probably don't have the authority to say whether the NMA would support that or not. I, I can say that I thought Senator Wishart worked very hard the last time around to listen to our concerns and I felt that the advances that LB110 made went a long way towards that endpoint. Yes, sir.

**MORFELD:** So if she put together a list of conditions that were only the conditions that the NMA thought were appropriate, do you think that-- what do you think the likelihood of support would be?

**JOHN MASSEY:** I, I guess I can't answer that, sir.

**MORFELD:** OK, I would think that-- I would suggest that you go back to the NMA and, and figure out what those are and have an answer to that because the problem is that you're putting advocates like Senator Wishart and myself in the position of making it so that we have to have a broad constitutional right on the ballot and then it will lead to some of those unintended consequences. So I would just strongly suggest that you provide us that guidance so that we can work with you in good faith.

**JOHN MASSEY:** I appreciate that. You know, we're not dogmatic about this. We think of this like hydroxychloroquine, right? To us, this is like-- it's very interesting. Everyone thought hydroxychloroquine-- you know, there are political ideas here, right? People thought it was a panacea and people thought it was terrible and it's, it's a drug that wasn't able to do what it was purported to do and it could have caused some harm, so--

**MORFELD:** Thank you,

**LATHROP:** Doctor, I want to thank-- I did hear an offer in your testimony. I appreciate the work you did with Senator Wishart a couple of years ago and your offer that you made today. Thanks for being here. We always appreciate--

**JOHN MASSEY:** Thank you, Senator.

**LATHROP:** --hearing from you and the NMA.

**JOHN MASSEY:** Thank you.

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**LATHROP:** Next opponent. Good afternoon and welcome.

**MARK PATEFIELD:** Good afternoon. Chairman Lathrop and members of the committee. I'm Mark Patefield, M-a-r-k P-a-t-e-f-i-e-l-d, from Laurel, Nebraska. I'm a registered pharmacist who received my doctorate in pharmacy from Creighton University and I'm here today in opposition to LB474. So as a pharmacist, I play a central role in protecting patient health and safety. Ensuring the correct dosage, route, and frequency of prescriptions, monitoring for potential drug interactions, and patient education are at the core of what pharmacists do every day. The medications I dispense have undergone rigorous evaluation by the FDA and the research community for safety and efficacy. They have well-defined dosing guidelines. The interactions with other drugs are known and they are dispensed in defined, specific doses as determined by medical professionals with specific knowledge of the patient and their medical conditions. This isn't the case with marijuana. An article on the benefits and harms of medical cannabis published in Systematic Reviews Journal stated the following conclusion. It is possible that harms outweigh benefits. Evidence from longer-term, adequately powered, and methodologically sound randomized controlled trials exploring different types of cannabis-based medicines is required for conclusive recommendations. So existing law allows for that research and approval of medications that can be derived from the marijuana plant and such medications do already exist. Many of the studies that are available that are significantly powered do focus on those specifically, Marinol being a synthetic form of THC. Epidiolex is an isolated CBD oil that was recently approved by the FDA. The proposed legislation requires a dispensary to contract at least one pharmacist to be available during business hours to consult about appropriate dosing and while I appreciate that the bill recognizes the role pharmacists play in advising and educating patients, it does put pharmacists in somewhat of an impossible situation. The lack of adequate clinical trials and accepted guidelines for specific patient populations means we don't have a verified standard to base our professional advice on. So while the legislation creates the appearance of patient safety, it's not actually able to deliver it for the product itself. It also creates an ethical and a legal challenge for pharmacists in-- when state and federal law conflict, as marijuana remains illegal for the schedule one that always comes up. When they conflict, you have to follow the more stringent. So legalization of



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marijuana and the dispensary framework would work to circumvent the accepted legal healthcare practices that exist to protect patient health and safety and it creates an industry that operates under that pretense and reputation of medicine, but it doesn't meet its scientific standards.

**LATHROP:** OK. Thanks for being here today. We appreciate your testimony.

**MARK PATEFIELD:** All right.

**LATHROP:** Good afternoon and welcome.

**JOHN BOLDOC:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Colonel John Bolduc, J-o-h-n B-o-l-d-u-c, superintendent of the Nebraska State Patrol. I'm here today on behalf of the Nebraska State Patrol to offer testimony in opposition to LB474, which would allow cannabis products such as topical ointments, oils, pills, or tinctures, tinctures for medicinal use. The State Patrol is opposed to any legislation that would legalize any form of marijuana not approved by the FDA. While LB474 would only allow for the psychoactive components of marijuana to be used for medical purposes, there is a significant risk that medical marijuana would nevertheless be used for recreational purposes. The bill restricts possession of cannabis to no more than 2.5 ounces under the act, but it does not appear to limit the quantity of cannabis products that may be possessed. It merely restricts the THC concentration of each individual product to not more than 2,000 milligrams. Regardless of whether these products are used for medical or recreational purposes, marijuana has led many down the path of addiction. As we know, despite efforts by states to regulate the industry, a 2018 study found that three-fourths of legally produced marijuana was diverted to the black market. When I was a police chief in California, which was a medical marijuana state until 2018, I routinely saw the diversion of medical marijuana products to the black market. The demand for high-grade marijuana and vape cartridges is extremely high. Because of the demand and potential profit, decriminalizing the possession and distribution of even medical marijuana contributes to the dangerous problem the black market poses to public safety, including the rise in violent crime. In Colorado, violent crime has increased 20 percent from 2012 to 2017. Troopers

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also see the diversion regularly, as they have removed numerous loads of marijuana and marijuana products traveling through the-- through Nebraska that were packaged and labeled as a legal product in their state of origin. From 2016 to 2020, the weight of THC products seized increased by twelve hundred and forty three percent, and 70 percent of all drugs seized in Nebraska came from two states, California and Colorado. Specifically since 2017, the Patrol has seized about 11,000 butane hash oil vape cartridges. With the legalization of this particular item and no limit on the amount of marijuana products that can be possessed, we will undoubtedly see an increase in black market diversion. And finally, under the Concealed Handgun Permit Act, it is unclear through this bill whether or not we will be able to adequately address the issues outlined in the federal laws concerning concealed handgun permits and federal firearms laws. In closing, I'd like to express my appreciation for your ongoing support of public safety. I would be happy to answer any questions you might have at this time.

**LATHROP:** Senator McKinney.

**McKINNEY:** Thank you, Senator Lathrop. Thank you for your testimony. I'm just curious, how can you prove that marijuana has led individuals down the path of addiction? Could it not be poverty, depression, abuse, mental health, lack of economic opportunity? How could you just say marijuana did this? Could it be alcohol? How can you say marijuana? I'm just-- what research that you could point us to as a committee explicitly states that marijuana has led people down the path of addiction?

**JOHN BOLDUC:** Thank you for the question, Senator. Certainly all of those factors that you mentioned are contributing factors to addiction and certainly, you know, we can pull out battling studies that talk about addiction and marijuana addiction and cocaine addiction and alcohol, all those things that you mentioned. I'm speaking to you, sir, from my experience. In 35 years in law enforcement, I have seen personally the pain and the challenge caused by addiction, not only to marijuana, but other substances that really impacts families in a, in a significant way.

**McKINNEY:** Addiction has impacted my family in a significant way. I've got grandparents that did drugs, family members, and still to this day, they're dealing with it and no-- I'm, I'm-- you would have to

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definitely prove me wrong that marijuana was the-- let them down the path of addiction. I, I can sit here all day and name the factors, but thank you.

**JOHN BOLDUC:** Thank you, Senator.

**LATHROP:** Senator Geist.

**GEIST:** Yes, Colonel, thank you for your testimony. I'm curious if you could talk to us a little bit about the black market and why it, why it's formed when something's actually legalized, why it's such a problem when something is legal?

**JOHN BOLDUC:** So I can speak to my experience having worked in California. In 1998, medical marijuana was legalized in California, the first state to do so. What we saw was a rapid increase in productivity both in California and on the other side of the border, in Mexico and other Central American countries, because the demand rapidly increased, so the black market will fill the demand. There's the law of supply and demand, as you know, in the, in the legitimate market, but what, what happened was in, especially in California's case-- which I'm not drawing any parallels between this proposed legislation in California legislation at that time-- basically, in my opinion, the medical marijuana was used as a bait and switch, was anybody who wanted to use marijuana could get a card. So from a law enforcement perspective, anybody found in possession of marijuana likely had a card. So what happened was the black market stepped up to fill that demand under the guise of this legalized medical marijuana, but the, the difference was the folks who wanted to just consume marijuana, which there are folks who want to do that, they don't look to the regulated market in terms of quality, in terms of whether or not there are any impurities in there. The black market will undercut the legitimate market every time because they take the shortcuts.

**GEIST:** Financially, you mean? That there could--

**JOHN BOLDUC:** Financially. It's a very-- it's a billion-dollar business. The cartels and other criminal organizations have found a way to capitalize on that, literally capitalizing on addiction.

**GEIST:** OK. Thank you.

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**LATHROP:** OK. Senator Slama.

**SLAMA:** Thank you, Mr. Chairman, and thank you, Colonel, for being here today. I, I was just hoping you could expand on the black market activity you've seen. I, I have seen reports in Colorado and I can share these with the committee afterwards. The black market activity through the legalization of marijuana has actually skyrocketed because like you touched on, that demand has increased. Is-- does that mirror your experiences on that front or in the numbers you've seen?

**JOHN BOLDUC:** Thank you for the question, Senator. It does. The way the black market operates within-- with marijuana, even in the alcohol-tobacco industry, the black market will undercut the legitimate market and fill that demand that's there, again, with no respect to the quality controls that would be happening in the legitimate market and they'll always be able to cut corners because their labor costs are less a lot of times. And we saw this in California working on our-- work on the border literally. The, the forced labor market or the indentured labor market that work in the medical cultivation industry certainly undercuts the, the legitimate labor market of the, of the legalized industry, so the black market will find a way to make loopholes or find the loopholes to fill that demand.

**SLAMA:** Thank you.

**JOHN BOLDUC:** Thank you.

**LATHROP:** Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you for coming, Colonel, appreciate it.

**JOHN BOLDUC:** Thank you.

**PANSING BROOKS:** I, I thought that the statistics show that there's been a significant decrease in the cartels across the border because of legalization and so this argument that the black markets are proliferated, to me is really surprising because if you think about black markets and alcohol, they're gone because we went through prohibition. So I really don't get this whole theory that black

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markets will proliferate. They're proliferating now exactly because we don't have it legal. Isn't that right?

**JOHN BOLDUC:** Well, Senator, first of all, the black market for liquor still does exist, newsflash--

**PANSING BROOKS:** Well--OK.

**JOHN BOLDUC:** --OK? Not as prolific as it once was--

**PANSING BROOKS:** That would be like prohibition, so--

**JOHN BOLDUC:** --right? So the, the black market for medical marijuana, I can assure you, is alive and well and it has increased the more states that have legalized marijuana, making more access, more addiction, more people-- whether addicted or not, more people are going OK, that's, that's acceptable. So we're going to use that product in the states where it's legal. The black market is still coming in and undercutting the legitimate market. You don't need to go stand at a dispensary in the corner in Alamosa, Colorado, to buy your marijuana. You can just buy it from a much cheaper source, much more, you know, easily accessible. So that is happening and what, what we've seen-- and I saw this again working on the border-- was the cartels no longer need to use the cover of cultivating marijuana in Mexico. They came to California to do it and they're still doing it to this day.

**PANSING BROOKS:** That's different, different statistics that I'm reading, but thank you.

**JOHN BOLDUC:** Certainly.

**PANSING BROOKS:** I don't have any further questions. Thank you.

**JOHN BOLDUC:** Thank you.

**LATHROP:** I think that's it. Thank you, Colonel.

**JOHN BOLDUC:** Thank you.

**LATHROP:** I'm going to have one more testifier and we will have Dr. Kuehn come up here, former senator. He was here on Senator Wayne's and did not have an opportunity to testify and we've had a lot of

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questions of the opponents and in order to balance this out, we're going to hear from one more.

**JOHN KUEHN:** Thank you, Senator Lathrop and members of the Judiciary Committee. I'm Dr. John Kuehn, J-o-h-n K-u-e-h-n, and I'm out here today as the co-chair of Smart Approaches to Marijuana in Nebraska, testifying in opposition to LB474 to legalize the sale of THC under the guise of medicine. Now to begin with, I want the legislative record of this hearing to accurately reflect what is being legalized in LB474 and that is THC, the psychoactive component of marijuana. All of the other components of the marijuana plant that we've heard about today, including cannabidiol, CBD, all the cannabinoids and phytochemicals, are currently present in hemp, which is legal, which has not been an issue associated with previous versions of this legislation. Furthermore, the FDA has currently approved forms of THC and CBD, verified for their purity, safety, and standardized dosing, that are already available to Nebraska clinicians to prescribe for patients whom evidence has demonstrated will have a clinical benefit. What LB474 does seek to establish is a commercial industry for the sale of THC products under the label of medicine. These products come in a wide variety of forms other than just the whole plant, including edibles, waxes, resins, vapes, most, most of which are formulated at levels of THC significantly higher than the plant form, available in dosages of 18 to 95 percent. However, and I want to be clear to reinforce Dr. Massey's explicit point earlier, there is no validated research that high-THC products are safe for any one or efficacious for anything medical. In fact, the 2019 Colorado report found that higher T concentrate-- THC concentrations were present in medical dispensary products than even those sold in recreational dispensaries. The current medical literature is clear and unambiguous. Marijuana is a drug of abuse, as we have already heard. It is physiologically and psychologically addictive, as we have heard. It can have severe side effects, including short and long-term impairment and drug interactions causes clear and negative effects to both individuals and society, yet there's no doctor's prescription for dose, formulation, or frequency. The patient, once in possession of a marijuana card, can go to a dispensary and purchase anything regardless of their physician's recommendation. Nebraskans' Prescription Drug Monitoring Program, which was created for this specific purpose, to protect patients and curb drug abuse, is

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circumvented, allowing a practice known as looping or purchasing for multiple dispensaries. Regardless of this legislation, no pharmacist can legally dispense unapproved THC products and the entire patient focus system is bypassed in favor of a consumer-driven commercial industry that has no safeguards to prevent diversion of THC to unapproved users, including youth, much less protect patient health and safety. Again, the assertion that marijuana labeled medical is distinct from recreational marijuana is, on its face, false. There is no difference between the marijuana sold to get high and that which is sold as medical, as the same companies raise, process, package, and market both products. I appreciate your time today and happy to answer any questions that you may have.

**LATHROP:** Any questions? Let's start with Senator McKinney.

**McKINNEY:** Thank you. Doctor Kuehn, what medical profession do you work in?

**JOHN KUEHN:** I'm a licensed veterinarian.

**McKINNEY:** So you have extensive research on animals I would assume.

**JOHN KUEHN:** Yes, I'm also the MacIntire distinguished chair of biological sciences and chair of the biology department at Hastings College, so I have broad-based training and experience both in clinical practice-- yes, in the animal world-- understanding the physiology as well as teaching experience at the undergraduate level in academic science and working with undergraduate research.

**McKINNEY:** Thank you.

**LATHROP:** Senator Geist.

**GEIST:** Just real quickly, I wonder- I, I, I'm going to bet you know about this. I wonder if you would tell us just briefly what prolonged use of marijuana in adolescents looks like and what it's outcome on them is?

**JOHN KUEHN:** Yeah, there is a lot of contradictory and at times ambiguous scientific information about marijuana use, cannabinoids. There is one uncontradicted and clear piece of scientific evidence and that is the devastating impact of THC in particular and marijuana

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compounds on the developing brain. This is a compound that, as the brain develops through the course of both neonatal adolescence as well as early maturity, incorporates into the brain. It has caused measurable physiological changes on MRIs in both regions of the brain in terms of their size and of their function. And if you look at the statement by the American Psychiatric Association, they are clear and unambiguous that this is not a policy which should be purport-- put forth by ballot initiative because of the clear link, especially with early onset and frequent use of high-THC products on mental health, including psychosis. So while Senator Pansing Brooks has, has referenced the "reefer madness" of the, the '70s and the movie, the very real impact on medical-- or on the mental health of individuals, particularly those already susceptible to schizophrenia, is clearly defined within the literature. It's so much so that, you know, there's been stated a couple of times today no one's ever died from a marijuana overdose and that's actually false. There is a case report of a nine-day-old baby who died and the only known cause was THC consumption during pregnancy. There was a nine-year-old boy who died of cardiomyopathy because this is a drug that is relatively cardiotoxic, which is why the American Cardiology Association has issued concern over the 2 million Americans that consume marijuana while also taking cardiac medications. So the impact on the, the developing brain is unambiguous. The current data on increased use by adolescents, especially at younger ages, at this point is clear and unambiguous. And while I have absolute conviction and compassion for those individuals and children who are struggling with intractable seizures, with medical conditions that are, are irresponsive to many medications, we cannot also ignore the families like yours and the fact that 9 percent addiction potential-- we've worked really hard in this legislature and I carried bills before this committee to address the opioid epidemic. There are people behind me who worked very hard to develop the prescription drug monitoring program and address addiction through a medically prescribed substance and this is taking us steps back and not moving us forward.

**GEIST:** Thank you.

**LATHROP:** Anyone else?

**LATHROP:** I see none. Thanks for being here.



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**JOHN KUEHN:** Thank you very much for your time today.

**LATHROP:** We will next go to neutral testimony. Are you here in neutral, Sherriff?

**TERRY WAGNER:** No, I'm not.

**LATHROP:** You can-- you may. Hand it to the page if you don't mind. I apologize we didn't get to you.

**TERRY WAGNER:** I understand. Thank you.

**LATHROP:** OK. Any neutral testimony? And while he's getting seated, if you wanted to testify today, didn't have an opportunity to and you'd like to submit written testimony, fill out one of those sheets and hand your written testimony to the page and we'll include it in the record today. Welcome.

**BILL HAWKINS:** Thank you. Chairman Lathrop and members of the Judiciary Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm with the Nebraska Hemp Company. I'm a lifelong Nebraska resident. I'm an herbalist and organic farmer. And so in my neutral testimony as a farmer, I have some technical issues with Senator Wishart's bill. I greatly appreciate her staff and her working on this compassionate issue because I know they believe in it and I feel very sorry for all the people that lost out on the chance to vote on this. There are some issues with the farming and limiting the ability of local sustainable businesses to take part in this. There's also an issue of limiting or the Cannabis Board being able to decide qualifying medical conditions, but hopefully we can work this out. I have almost 50 years of real-life cannabis experience. We talk about the potency. In the 1970s, the potency was the same as here. I don't know who is testing what. The black market has been here. Oregon, California, Colorado have led the nation for years with the black market. We talk about FDA approval and that's-- as experienced herbalists, we look at the whole plant. And so when you get into pharmaceutical drugs, I think that's where the medical cannabis issue made a mistake in calling it medicine rather than an herbal product. FDA approval, right now, Zantac, an over-the-counter medical heartburn medicine, FDA approved, is being shopped by attorneys on the radio because it has a cancer-causing agent in it that is causing ten different kinds of cancers, including

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bladder cancer and esophageal cancer. Ladies on the committee, since I have limited time, estrogen in the '70s and '80s, there were secret congressional hearings with the FDA, pharmaceutical companies, and Congress to whether we should tell people or not that it is causing all these problems with women for home, home-- hormone treatment regimens, breast cancer, all kinds of other issues. We have fen-phen in the '90s, a weight-loss drug that all other countries removed from distribution, but the United States, through the FDA, continued to kill people for decades, so FDA approval isn't always the best. So my statement to you is all persons in the state of Nebraska have the right to use all plants in the genus Cannabis in the state of Nebraska. And I will tell you, that petition--

**LATHROP:** Bill--

**BILL HAWKINS:** --was filed this morning. So I thank you for your time and I appreciate your interest in this and compassion.

**LATHROP:** Thank you. I don't see any questions for you. Thank you for being here.

**BILL HAWKINS:** Thank you for your time.

**LATHROP:** Anyone else here to speak in a neutral capacity? Seeing none, Senator Wishart, you may close. The record will reflect that we have 19 position letters, six of those as proponent, 13 as opponents. We also have the following written testimony received in lieu of a personal appearance, proponents as follows: Marcia Mueting, M-u-e-t-i-n-g, Nebraska Pharmacist Association; Patricia Petersen, Nebraska Families for Medical Cannabis; Lia McDowell Post on her own behalf; Joshua Stortz, S-t-o-r-t-z, on his own behalf; Kristi Berst, B-e-r-s-t, Epilepsy Foundation of Nebraska; Ann Myers, M-y-e-r-s, on her own behalf; Spike Eickholt from the ACLU of Nebraska; David Swarts, the Nebraska Families for Medical Cannabis; Barry Rubin, Heartland Relief, LLC. Opponents who have provided written testimony as follows: Linda Wittmuss, W-i-t-t-m-u-s-s, Department of Health and Human Services, Division of Behavioral Health; Mary Hilton on her own behalf; David Bydalek with the Attorney General's Office; Lorella Mueting, M-u-e-t-i-n-g, Heartland Family Services; Maggie Ballard, Heartland Family Services; Ronald Lawson on his own behalf; Corben Waldron, Smart Approaches to Marijuana Nebraska. And in the neutral

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capacity: Kristen Hassebrook with Nebraska Chamber of Commerce and Patrick Habecker, that's H-a-b-e-c-k-e-r, on his own behalf. Senator Wishart, you may close.

**WISHART:** Thank you, Chairman Lathrop and members of the committee. I did want to do a little bit of cleanup and then we'll end on a-- just a quick story. First of all, I did want to point out-- and I think it was-- that the Nebraska Pharmacists Association has endorsed this legislation and for those who came in opposition and talked about the lack of dosage guidelines, the Department of Health and Human Services in Minnesota has just developed those guidelines. Where there's a will, there's a way, Senators. In terms of the FDA issues that was announced a lot today, the FDA has not acted on this because there's no financial benefit to pharmaceutical companies. You can't patent a plant and if you look at the history of this issue in the FDA, I would encourage you all to follow the money. So I don't see, in the foreseeable future, there being a change from the FDA. This is something we're going to need to do as a state. Also to address the idea of the black market, first of all, there has been a significant decrease in U.S. Border Patrol seizures of cartel marijuana because 47 states now have legalization and so people are purchasing it in the legal way. I actually had a chance to go and talk with the head of the marijuana enforcement division in Colorado. I spent two separate times visiting with him to talk about the pluses and minuses of legalization and what he said was one of the reasons that Colorado-- first of all, it's a recreational state. We're not talking about recreational, we're talking about medical, medical. But as a recreational state, they allowed home grow and that caused some gray area of being able to manage the market and they were working on that-- and he's former law enforcement and somebody who used to be against it and working it now-- says that there's no reason they're going to go back. Also, just common sense, everyone. I mean, I've been across the state working on this issue. People are consuming cannabis right now in Nebraska and this leads to the story I want to say. I sat across from a Nebraskan, a gentleman in my office-- my office has kind of become the safe place for talking about this issue-- and he is a professor. He is somebody who is battling pancreatic cancer. He was diagnosed with literally less than a year to live and so he decided to do all the research possible and try to beat this, try to beat that diagnosis, so he did acupuncture, he did chemotherapy, he did all of that. And then he also

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did some research and found that having access to cannabis allows somebody who's battling pancreatic cancer to have an appetite and one of the reasons that people die from battling cancer is called wasting syndrome. In fact, this is the reason that cannabis was incredibly helpful for HIV patients because your fear is you will waste away from not being able to consume enough calories. And he obviously couldn't talk to a doctor about it here in Nebraska, so he drove to Colorado and he tried some marijuana recreationally and he did not have a good experience and so he came home and he finally found a doctor he could talk to in Oregon. And that doctor walked him through taking cannabis through a suppository and so he illegally went to Oregon, worked with this-- worked with the farmer in Oregon, got medical cannabis, medical-grade cannabis, came home, and I'm happy to say he has beaten cancer. And obviously, this was not the miracle drug for beating it, but it was part of a medical regime and he didn't have someone, a doctor in Nebraska that he was able to talk to about this. This is what I'm talking about. I'm talking about the fact that people are sick in our state. They are going to consume cannabis. They already are doing it. Why would we not have a system in place where instead of going to a black market, they could go and talk with a doctor and go to a certified place where they can get a quality plant-based medicine? And with that, I'll take any questions.

**LATHROP:** OK. Any questions for Senator Wishart? I don't see any.

**WISHART:** Thank you.

**LATHROP:** Thanks for bringing LB474 here and a interesting discussion. That will close our hearing on LB474 and bring us to Senator Wayne and LB31.

**WAYNE:** We're going to fill up the room today. Great bill.

**LATHROP:** Senator Wayne, welcome.

**WAYNE:** Thank you.

**LATHROP:** We haven't seen you in a while.

**WAYNE:** Yeah, I was hoping the room would fill up and they would all stay, but--

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**LATHROP:** Well, we're here so you may open on LB31, Senator Wayne.

**WAYNE:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. Today I'm introducing LB31, which would authorize or actually just allow what our constitution already says for punitive damages. Senator Brandt, I know this is important to you, and every year, I'm going to bring this bill to make sure you on the Judiciary Committee can vote for property tax relief. Again, this bill is really simple. It's just a clarification bill. I have read most of the case law regarding punitive damages in Nebraska and I do have to thank-- if you-- what I passed out in front of you is the article of the constitution that they continue to say-- when I say they, the Supreme Court says it doesn't apply or a punitive damages are not authorized. If you read Section I, II and III, nowhere in there does it say punitive damages do not apply. They simply say that if there is a fine, it has to go to what we do with all of our fines, which are to our local school funds and that's how it's property tax relief and I'll tell you how it equals into the TEEOSA formula and how we can make it work. But in Omaha, let's just take a-- for example, we get-- the fines that are paid for parking tickets, any fines, licenses, parking tickets, all that goes into the local Omaha school fund, which is part of a greater, bigger equation of TEEOSA for equalized school districts, but even unequalized school districts can benefit from punitive damages in the sense that it would go to their local school fund. This issue started in 1878 with Boyer v. Barr in the Nebraska Supreme Court. It's really simple. If you read that case, it's a short read. It's less than two pages or actually less than four pages and they struggled with Wisconsin, what everybody was doing with this idea of punitive damages. They talked about exemplary damages. They talked about treble damages and what it simply came down to, they were not even sure if punitive damages was considered double jeopardy. And they continued to struggle with it and they finally said well, you know, it's unconstitutional, but what you'll hear from a later testifier, when you look at the case law, that is when the punitive damages is trying to go to the individual and our Supreme Court has never clarified that. Any fine, any penalty goes to the school fund, not to the individual, but most of the people, when you file an action, in particular with punitive damages, you think all the money is going to

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the individual and that's where the Supreme Court has, I think, crossed lines or misinterpreted what the constitution says. Our constitution does not allow the private individual to seek punitive damages. That is clear from the constitution. That is not what this bill does. It just clarifies-- it says punitive damages actually are allowed under our constitution. It's really simple. I don't need to go into a whole lot more than that. If you read the case law-- and part of it is, unlike last year, I have somebody who actually has studied a lot longer than I have in this area to answer more questions about some of the case law. But it's clear from our constitution, it's allowed. It goes to the local school districts and why we don't do it is beyond me, except for I think it's easier to just say it's unconstitutional based off of precedents than to correct themselves and sometimes that happens. And with that, I'll answer any questions.

**LATHROP:** Any questions for Senator Wayne? I don't see any. Are you going to stay to close?

**WAYNE:** Yes.

**LATHROP:** OK, perfect. We will take proponent testimony.

**VINCE POWERS:** Oh, yeah. Thank you. Good afternoon. My name is Vince Powers. I'm a lawyer, practice here in Lincoln, Nebraska, and I represent human beings. I want to talk about punitive damages.

**LATHROP:** Vince, we got to have you spell your name for us.

**VINCE POWERS:** Vince, V-i-n-c-e, Powers, P-o-w-e-r-s, 411 South 13th Street, Lincoln, Nebraska, 68508 is my business address. This is a misunderstood issue and I'm very thankful that Senator Wayne has introduced this because in my private practice, I have sought and I've obtained punitive damages, but it's a split. Some district court judges say no, punitive damages are not allowed. However, when you look at the law, you'll find that Senator Wayne is 100 percent correct. Punitive damages are not allowed if they go to the individual. They clearly can go to the common school district. In Nemaha County, the judge allowed me to-- and instructed on punitive damages and we received a substantial award from a jury in Nemaha County. The judgment was not collectible, but had it been collectible, the folks in Nemaha County wouldn't have to pay property taxes for the

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next 100 years. It was over \$2 billion, but the point is that this will-- if you pass this, it changes nothing other than it clarifies it because there is a Nebraska Supreme Court case-- every single case says the money shall not go to a private individual. Question then is why hasn't this come up before? Well, that's because very few people want to go and pursue a claim for which they are not going to recover any money. For example, if I represented a plaintiff, we get to a good, fair verdict. The judge has not allowed punitive damages. I say to the client, I'd like to take this up to the Supreme Court. They'd say, well, what could happen? I said well, the defense is going to cross appeal so we could lose that verdict, but if we win, you've made good law and you've helped the school district and they say don't appeal. So it, it's in the type of cases that-- there was a recent punitive damage award in a libel-slander case out west and, and it served its purpose because, remember, the whole purpose of our civil justice system is two-- twofold; one, to compensate the victim and two, to deter future bad conduct. And so what I'd like to say when I'm in front of a judge is-- as I did in Nemaha County-- I represent-- I'm here representing the plaintiff and I'm representing the school children of Nemaha County and the property tax holders. And in that particular case, the judge allowed me to, to pursue it. I-- the one problem that Senator Wayne's bill resolves, I had a judge in Lancaster County say I think you're right that the constitution allows it, but there's no statute that enables it and this gives us an enabling statute. The reality is if this is passed, we're not-- it's not Iowa where 50 percent of the money goes to the victim. It all goes to the school district, but there are those cases in which, whether it's a criminal-- a murderer, in the case of Nemaha County-- there's certain bad conduct and I'll leave you with this thought. Years ago, I had a friend, still a good friend, who represents a lot of businesses, and he said what's the point? If you commit fraud in Nebraska, there is no civil penalty. If I cheat you-- if my client cheats you out of your farm, the most you're going to get back is your farm unless your attorneys fees and the Nebraska Supreme-- and you folks, I guess I'll leave with this. Each one of you, your title is Senator. That's what you're called. You are really the conscience of this community. You're the conscience of the state of Nebraska and you can decide-- you're either on the side of the schoolchildren and property taxpayers or you're on the side of those who put profits over people. Thank you very much. If you have any questions, I'm happy to answer them.

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**LATHROP:** Any questions for Mr. Powers? I do have a couple for you.

**VINCE POWERS:** Sure.

**LATHROP:** Just for the benefit of the committee, can you share how many states have punitive damages?

**VINCE POWERS:** 46, 46 other states.

**LATHROP:** And tell us what the standard is. It's not every civil case where punitive damages would be awarded. Is there a-- does it have to be particularly egregious for them to be in play?

**VINCE POWERS:** Yes, Senator, it has to be reckless conduct. In the case that-- the case I had with the jury instruction, I took it from the 8th Circuit, which is our federal court, that allows it for willful or wanton reckless conduct, disregard of safety. So these cases are fairly rare, thankfully, but they do have a deterrent effect and what-- the best way, if this is passed, would be simply to take the Iowa statute on punitive damages--

**LATHROP:** OK. Senator--

**VINCE POWERS:** --the jury instruction, excuse me, yeah.

**DeBOER:** OK. Senator Wayne knows this is our perennial argument.

**VINCE POWERS:** Sure.

**DeBOER:** So what prevents the threat of punitive damages from just being a way to get somebody to settle?

**VINCE POWERS:** Well, that's not how the world works.

**DeBOER:** I mean, wouldn't I-- if I had the choice of, as a plaintiff, settling for an amount maybe greater than I know my claim is worth-- because I've got this threat of punitive damages-- be able to induce defendants. Because they know that the punitive damages are there, wouldn't I be able to get that slightly elevated recovery because it would be smarter for me to do that if I don't get any of those punitive damages? Do you see what I'm saying?



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**VINCE POWERS:** Senator, I understand exactly that, but that's not what goes on in Nebraska. You don't get the money.

**DeBOER:** I get that. That--

**VINCE POWERS:** The school district would get the money.

**DeBOER:** That's why I'm saying I think you would be-- as a plaintiff, you would want to settle because you wouldn't get any punitive damages that were given from the, from the, the court case, so you would be better off if you got a slightly elevated and so with the defendant, so the school district would be out of it.

**VINCE POWERS:** I, I understand what you're saying as a negotiation-- negotiating posture, but the difficulty is because all of the money goes to the common school fund, if you were my client, you would not want me to be seeking punitive damages because that would take away from the settlement because it would be going to the school districts. It's only a certain type of cases that that would happen and now I also understand if you're saying gosh, I mean, if in fact, your fact scenario also has to assume that the conduct of the defendant was so egregious, so outlandish as to shock the conscience of a jury. Then in that case, I, I don't, don't see what the, the difficulty is and the school district would not be out and there are a couple of things you also have to consider, Senator, which is the conflict of interest. So if, in fact, I file a claim and I include a punitive damages award, now, the senator, I think he makes good sense. He said bring in the county attorney. Up to this point, we-- I would say you bring in the school board. The school board attorney is not going to allow that settlement because now you have two claims and they're going to look out for their client, so the--

**DeBOER:** OK.

**VINCE POWERS:** --the pract-- it's a practical matter--

**DeBOER:** If--

**VINCE POWERS:** --and, and I've yet to have-- I've been practicing unfortunately longer than I care to tell you. I have yet to have a defendant want to overpay me for any reason or overpay my client.

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**DeBOER:** So, so the, the way to do it would be to bring in that school district interest as a party to the suit. Is that what you would do?

**VINCE POWERS:** Well, actually, that's-- Senator Wayne has come up with a very good--

**DeBOER:** That's, that's--

**VINCE POWERS:** He says you got to notify the county attorney. County attorney is elected. I don't think the county attorney is going to say oh, yeah, we're going to let that skate because that county attorney-- and again, you're-- you have--

**DeBOER:** Does he have a standing in the suit?

**VINCE POWERS:** Sure.

**DeBOER:** OK.

**VINCE POWERS:** Sure because under the constitution, the money goes to the county and the political subdivision, the political subdivision is the school district. And if you pass Senator Wayne's bill, the county attorney is notified. So the county attorney is going to know about it and they're going to be saying-- and they're going to be at the table there.

**DeBOER:** They have a way to sit at the table and then that's brilliant. And then I, then I will say that Senator Wayne has figured out a solution that I am happy with.

**VINCE POWERS:** No and it's true and it does. I, I, I guess you'd have to ask him when he closes, but I recall reading the text saying the county attorney gets notified. And so if you think about the type of cases-- and, and here's the best example. There used to be-- and I hope it never happens again. Car dealers would charge \$169 or something to paint the rust roof, right? Well, there, there was a dealer in Lincoln-- has long since out of business-- never did it. I would get a call-- I go if I'm going to see somebody for \$469? No, I mean, the filing fees and cost, so they get away with it. So if you vote against this, you're-- well, I don't want to say that, but I'm just saying that opposing punitive damages rewards only wrongdoers and especially-- there was a case in Atlanta, because I remember right

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after I turned down this case, there was a significant verdict in Atlanta for punitive damages for that so that there are people who would say I don't like getting cheated. I know I'm not going to get any money, but I'm happy that the Lincoln Public Schools gets some money and most importantly, the wrongdoing stops that takes the profit out of it. Does that make sense?

**DeBOER:** Yeah.

**VINCE POWERS:** OK, sorry if I spoke too long.

**LATHROP:** I don't see any questions or any more questions. Thanks for being here today.

**VINCE POWERS:** Thank you very much.

**LATHROP:** Good to see you.

**VINCE POWERS:** Appreciate it, thank you.

**LATHROP:** Any other proponent testimony? Anyone else here is a proponent? Seeing none, we will take opponent testimony. Good afternoon and welcome.

**EMILY BOTTORF:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Emily Motto Bottorf, E-m-i-l-y, last name, B-o-t-t-o-r-f. I'm an attorney at Baylor Evnen Law Firm. I'm here on behalf of the Nebraska Chamber of Commerce and also on behalf of and as president of the Nebraska Defense Counsel Association, but will combine my testimony today. I am not a paid lobbyist. As was discussed previously, the Nebraska Supreme Court has stated as recently as 2017 that in no uncertain terms, punitive, vindictive, or exemplary damages contravene the Nebraska Constitution and are not allowed in this jurisdiction. It's very well settled under Nebraska law that the measure of recovery in all civil cases is compensation for the injury sustained. And even when the court has analyzed laws which attempt to add a specific penalty, the court has always come back to this principle. Now, this bill does not codify a specific penalty for certain behavior or at least it does so in a very broad sense, as compared to some other laws. For example, our Supreme Court has allowed a penalty, a 50 percent penalty under workers' compensation laws for delinquent payments. That's a very specific

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penalty for a specific action. To the contrary, this bill gives the trier of fact rather unlimited discretion, which I believe directly contravenes our case law that upholds that principle that the measure of recovery is compensation for the injury sustained. And I realize that this bill attempts to define language within our constitution. It-- I don't think that's exactly the purview of the Legislature and I think it would actually take a constitutional amendment to do this. In terms of this specific bill, I think the language is a bit vague and undefined in terms of the standards under which these damages would be decided. For instance, in nearly all states that allow for punitive damages, punitive damages are required to be proven by clear and convincing evidence as opposed to just a preponderance of the evidence. This law does not comment on a separate, requisite burden of proof. Also, several states require a bifurcation for the purposes of determining compensatory damages as opposed to punitive damages because the evidentiary burdens are generally different. One of the justifications listed within this bill is deterrence. Normally, in order to award punitive damages or to defer-- to deter future behavior, there are additional evidentiary requirements and that's because we treat punishment and deterrence different. Is there just a human error component to what happened here or is there some company-wide policy that we're really concerned about that we need to deter behavior? And finally, you know, I think there are some economic concerns here, driving businesses or driving businesses into bankruptcy, but one major concern I have is jury bias. If a jury feels like they could directly benefit the schools in their area, they could directly benefit from the property tax relief, quite literally, they have a financial stake in the lawsuit. And Senator DeBoer, you know, your point is a really good one with regard to, you know, taking into account the possibility of punitive damages because defendants have to make business decisions all of the time as to whether or not we should put potentially more money on the table because of this risk of punitive damages or attorney fees or whatever it may be in a certain situation. So it is something that is important to take into account. I see that I don't have any more time, but I would--

**LATHROP:** You do.

**EMILY BOTTORF:** --be happy to field questions.

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**LATHROP:** Let's see if there's any questions for you today. I don't see any, but we appreciate you being here and--

**EMILY BOTTORF:** Thank you.

**LATHROP:** --sharing your perspective. Anyone else here in opposition? Anyone here to testify in the neutral capacity? Senator Wayne, you may close. We do have 31 letters-- pardon, not-- I've done that before-- we have a letter.

**WAYNE:** I was going to say 31? I didn't know there was that many.

**LATHROP:** I've done that a couple of times.

**WAYNE:** Somebody is--

**LATHROP:** I'm about fried. This is, like, my 151st bill. LB31 has one position letter that is in opposition and we have four written testimony. Coleen Nielsen is opposed. She's with the Nebraska Insurance Information Service. Bob Hallstrom with the National Federation of Independent Business is an opponent. Korby Gilbertson, American Property and Casualty Insurance Association, is an opponent and the Nebraska Insurance Federation, in the name of Robert Bell, is also opposed. Senator Wayne.

**WAYNE:** Thank you. I did have circled right here and I didn't say in on opening, the part about we already have punitive damages on workers' comp because last year during their opposition testimony, they said the same thing and I thought I'd wait for them to say it. We already have it. When somebody does something wrong in workers' comp, we add 50 percent. It's already there. What we're asking is to extend that to regular civil cases if their action is egregious enough. It's not every case. The burden is still on the per-- the plaintiff's attorney and the plaintiff to prove that it was a company-wide policy, not a single mistake. Why does that matter if you have a company who consistently, consistently engages in behavior that as company-wide, they should be treated differently than somebody just being negligent at that company. That's a different standard you have to prove. So we, we already have that. It's about holding the company accountable in that sense. The jury bias, I found that a very interesting argument and very clever. I thought that was good and my-- but my answer to

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that is that is every juror. I mean, if you're in a criminal trial, you don't move the trial and the venue because that person lived down the street or in the same neighborhood because they don't want that criminal in the jury-- or in their, in their community. That's every jury, everything. In all juries, that bias, I guess, is always there and that's part of what you do in jury selection to figure out who's more favorable to your case and who's not. As far as the county attorney interest of the school, the way the bill is written-- and this is actually a very important bill, not one of the bills I tell you to hold and not kick it out. I really want this bill out. I do say once the jury-- once the punitive damages is awarded, if we have to extend that to notification of a potential claim, I don't think plaintiffs attorneys would object to that, so at least they are notified so if they need to be notified or any punitive damage settlement. I don't think-- I don't-- I mean, it will be more work on our part, but I don't necessarily think plaintiffs attorneys would object. The purpose of putting that in there is once there is an establishment of a, of an award for the local school district or the local school fund, that county attorney now has the right to intervene in the case to make sure everything is distributed correctly and that, that was the purpose of adding that. So I don't have a problem adding them earlier. I, I can work that out with, with many of the groups, but, but the issue is we're one of the last states to do this. We have a restrictive constitution, but even within our constitution, it's allowed, so why we don't allow it is just beyond me. And it's-- and again, it's because in 1878, we were trying to figure out, after we passed in 1875, this section of the constitution and the Supreme Court was struggling with it and didn't know what it was and so was the rest of the country. And since then, we just continue to go down the path of, well, it's not allowed. And if you read the case law carefully, it's not allowed to the individual, but the inherent conflict of appealing a case for the good of the school is what's been said. If I have a client and we won and we got \$1 million and I said hey, we can get another \$1 million in punitive damages, we need to appeal this, they have a chance of losing that \$1 million on appeal. And so for their own safe interest and for our own duty as attorneys, we can't really appeal it because we don't have that school interest as my client. So that's why there's never been a case that went up necessarily on the school issue, so we're just asking the Legislature to clarify it. And let me be clear on our authority to clarify, that's

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what we're here to do. If we think things are not decided incorrectly, many of the bills that we have before us, oftentimes overturned, particularly from this community-- from this committee, overturn things. We think they might have decided incorrectly or we don't think it has-- we think it has bigger ramifications, so we as-- in this committee often overrule the Supreme Court all the time through legislation and that is the checks and balances we have and that's what this bill is about. Brandt is going to leap across the table so I'm going to be quiet.

**LATHROP:** He once said that I always wanted to be on Revenue Committee and here's a revenue bill. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Wayne, for bringing this bill. First question, I would assume that any income derived from this would be divided equally among the school districts in said county.

**WAYNE:** So it would go the way it's currently going, so however your parking tickets or speeding tickets are distributed, it would follow the same guideline.

**BRANDT:** OK.

**WAYNE:** I'm just familiar with Omaha because I get parking tickets in Omaha.

**BRANDT:** Right and I get overload tickets where I live, so it's the same thing. Mine are a little bigger. Where is the bar association at on this? They didn't testify, I-- do you know?

**WAYNE:** Well, here's, here's the-- I mean, so they're in the room--

**BRANDT:** Yeah, I saw them earlier.

**WAYNE:** --but the bar association represents both the plaintiffs and defendants, right? So it's kind of like dealing with the League of Municipalities of those kind of things. There are some cities that want it, like Omaha, but maybe Gibbon doesn't, so they take a neutral position or they don't testify at all and that's the same thing with the bar association. There's, there's just different interests there.

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To try to have them come to vote on this would probably be pretty difficult.

**BRANDT:** So there's no opposition from them?

**WAYNE:** I have, I have not had any opposition from them.

**BRANDT:** OK, thank you.

**LATHROP:** Any other questions for Senator Wayne? Senator DeBoer.

**DeBOER:** Just so we have it on the record, Senator Wayne. I think that you have figured out a way to solve the problem that I brought up the last time.

**WAYNE:** Correct. We worked on it.

**DeBOER:** I'm, I'm sure I--

**LATHROP:** Was that for this bill?

**DeBOER:** We'll look to see if there's another one, but I think that you found a solution to that one.

**LATHROP:** Oh, yeah, I did this.

**WAYNE:** I will always try to work to solve the issues you raise.

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

**WAYNE:** Thank you.

**LATHROP:** I don't see any other questions. Senator Wayne, thanks for bringing LB31 to this committee. That will close our hearing on LB31 and bring us to LB397 and Senator Bostelman. Yeah, you can come on up, Bruce. Welcome, Senator Bostelman. You may open on LB397.

**BOSTELMAN:** Great. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is Bruce Bostelman. That's B-r-u-c-e B-o-s-t-e-l-m-a-n and I represent the Legislative District 23. I am here today to introduce LB397, which would prohibit an individual involved in an accident from suing the other driver for noneconomic damages if they were knowingly operating a motor vehicle without



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insurance or other financial responsibility or were under the influence of drugs or alcohol. LB397 also requires the Department of Motor Vehicles to establish an online vehicle insurance verification system. This system will require all insurers providing private passenger insurance policies to transmit their book of business onto the system at the end of each business day rather than twice a month. The system may be used then by law enforcement and the DMV to track and verify in near real time which motorists are actually insured. I'm introducing this bill after being contacted by a constituent whose son had been involved in two separate accidents where the other driver involved had provided, had provided proof of insurance at the scene of the accident. However, after further investigation, these, these drivers were not actually insured and I believe you have a position letter from a Mary that-- to this effect. In addition, I have also been contacted by individuals who were hit by an uninsured drunk driver who then later sued them. In researching the subject, we have found that several other states have enacted legislation that has the same or similar effects of this bill. I feel this is a very important issue to take up and I ask for your support of LB397 and its advancement to General File.

**LATHROP:** Very good. Thank you, Senator Bostelman. Any questions for the introducer? I see none. Are you going to stay to close?

**BOSTELMAN:** I will stay.

**LATHROP:** All right, perfect. Thank you, Senator. Any proponent testimony? Anyone in support of LB397? Anyone here in opposition?

**RANDI SCOTT:** Good afternoon, Chairperson Lathrop and members of the Judiciary Committee. My name is Randi Scott, R-a-n-d-i S-c-o-t-t, here today as a lobbyist on behalf of the Nebraska Association of Trial Attorneys in opposition to LB397. The Nebraska Association of Trial Attorneys is an organization made up of attorneys from across the state dedicated to the improvement of the trial practice and preservation of the civil justice and jury system. As such, we advocate for both the trial bar and consumer interests in the Legislature. Specifically to LB397, our opposition surrounds the provisions found in Section 1, which deny recovery of noneconomic damages sustained in a motor vehicle accident to persons operating a motor vehicle without insurance or other financial responsibility.

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While economic damages are those which address monetary costs associated with the motor vehicle accident, noneconomic damages are those extending from the accident in which-- those in which a jury would award under Nebraska statutes. These damages are subjective, nonmonetary, include pain, suffering, inconvenience, mental suffering, emotional distress, loss of society and companionship, loss of consortium, and injury to reputation and humiliation. Noneconomic damages are important to our system because the effect a motor vehicle accident has on one person's life is more than just the dollar amount on a medical bill. These accidents often result in serious injury and impact on the quality of life a victim has because the accident created debilitating physical or emotional problems, which ends up reducing their capacity to enjoy their life. Noneconomic damages help to compensate a person for their losses that affect the enjoyment of their life. And they are intended to bring a person as close as possible to the state that they were in prior to the accident. So the unfortunate consequence here of LB397 would be to bar a person's recovery of such damages in a, in a motor vehicle accident where the other driver was at fault or even worse, where the other driver was at fault and intoxicated. We have spoken with Senator Bostelman's office, so there may be some changes coming down the road that we've heard of. So we are in conversations with his office and would be, would be happy to continue those conversations. But as the bill is introduced, we would ask the committee not to advance. Thank you.

**LATHROP:** OK, I don't see any questions. Thanks for being here, Ms. Scott.

**RANDI SCOTT:** Thank you.

**LATHROP:** Any other opposition testimony?

**TIM HRUZA:** Good afternoon, Chair Lathrop, members of the Judiciary Committee. My name is Tim Hruza, last name is spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in opposition to LB397. I'd like to start by apologizing to Senator Bostelman. I haven't been able to talk directly with him about this bill before the hearing. I did alert his office that I'd be appearing very briefly here this morning. Our objection to LB397 is along the same lines as the Trial Attorneys Association and the testifier who appeared before me, specifically only to Section 1, and we would limit

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ours also to the, the lack of insurance provisions eliminating the ability to recover noneconomic damages. The bar association tends to and will typically take positions on bills that affect the administration of justice and access to the courts, as well as the proper functioning of a judiciary system. Oftentimes, you see me here for technical reasons as well. On this one, our legislation committee in the house of delegates, when they reviewed it, really had some concerns about what sounds like a simple lack of insurance, denying somebody the full recovery of damages that they experienced at no fault of themselves or at the negligent hands of another. And to that extent, we took a position in opposition to the bill. Absolutely interested in working on the legislation if Senator Bostelman is willing to do so and would be happy to work with the committee as well. We just think that the, the denial of access to these noneconomic damages that are, are truly deserved in, in many instances for injured parties goes a little bit too far. So with that, I'm happy to answer any questions that you might have as well.

**LATHROP:** OK. I don't see any questions, Mr. Hruza. Thanks for being here.

**TIM HRUZA:** Thanks, Senator.

**LATHROP:** Any other opposition testimony to LB397? Anyone here in a neutral capacity? Senator Bostelman waives close. Before we close the hearing, however, the record will reflect that we have two position letters. Those are both proponents of the bill and we also have two written testimony. Korby Gilbertson with the American Property Casualty Insurance Association is in the neutral capacity, as is Coleen Nielsen with the Nebraska Insurance Information Service. Thank you, Senator Bostelman. We appreciate you being here and introducing LB397. With that, we'll close the hearing on LB397 and take up our last bill of the day, LB634 and Senator John Cavanaugh. Senator Cavanaugh, welcome.

**J. CAVANAUGH:** Good afternoon, Chairman Lathrop and members of the Judiciary Committee. For the record, this is my last bill in Judiciary Committee, so-- of the year. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent Legislative District 9 in midtown Omaha. I'm here today before you-- final time of the session-- introducing LB634, which would provide a cause of action for the

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unsafe disposal of treated seed. I introduced this bill in response to what's going on in Mead, Nebraska. You could open any paper in the last month and chances are you would see an article about the ethanol plant in Mead and for the record, I'll tell you a little bit about it. Most ethanol plants use field corn in production of ethanol. It's under Brandt's-- he can-- he'll correct me if I get anything wrong here. The Mead plant uses seed corn treated with pesticides. The seed companies send the excess seeds to the Mead plant for disposal and the plant turned into ethanol and byproducts, which are extremely high concentrations of dangerous chemicals. The byproducts were deemed not suitable for animal consumption and then not suitable for land application. At this point, that wet cake byproduct was considered waste, which has been stored on the-- on site for the last two years. In the last month or so, we've seen a flurry of activity, partly as a result of a leak of one of the digester tanks that release about 4 million gallons of contaminated wastewater. This activity includes a lawsuit filed by the Attorney General and the Department of Energy and Environment seeking to get the plant to clean up the waste stored on the site. And while I certainly agree with those effort, efforts, what happens when and if the company goes bankrupt and the state is left with all the liability for the cleanup? Why did it take so long for the Department of Environment and Energy to take action after years of noncompliance and how do we prevent Nebraska from being the dumping ground for the waste contamination of our air, drinking water, and our soil? I brought LB634 to try to address these questions by creating a cause of action for unsafe disposal of treated seed corn, but also to draw the community's awareness to this ongoing crisis that-- as we look for a long-term solution. I thank the committee for its time and I'd be happy to take any questions and I'd ask you to pass LB634 onto General File.

**LATHROP:** Senator Geist.

**GEIST:** I have a question. Thank you for bringing this, and I'm curious, through your testimony, I, I thought I might have discerned that this is going on widespread. Is that the concern?

**J. CAVANAUGH:** So currently-- thank you for your questions, Senator Geist, and clarifying-- I was trying to be brief, so if I didn't cover everything, please ask me. But there's this one incident where this is happening that we know of currently and it was ongoing for a number of

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years before any action was taken. And so there's currently a remediation action that's going on and I think maybe the-- some of the testifiers after me will talk a little bit more about that. But we don't know the extent of the damage because the, the-- this waste material was piled up on site at Mead for at least two years, which means that it was subjected to environmental issues like rain runoff that could seep into the groundwater, runoff into the waterways and so there's contamination from the water, there's contamination to the groundwater, there's potential hazards to the flora, fauna, animals, bugs, things like that. And so the extent-- and then-- and of course, there is always the potential for the wider effect that we don't know about to the humans. And right now, what's going on that's attempting to address this particular issue is more of a surface level, cleaning up the piles, cleaning up the lagoons. But we are not getting to the issue of the, the broader potential implication and realistically, this may be a horse out of the barn situation, right? If we pass this bill, it doesn't really apply to the action that took place in Mead. This is a bill-- this is a forward-looking bill that is going to say we need to head off bad actors and attach liability, which I know you've just had a long conversation about that-- the value of attaching liability and money damages to people-- but making people responsible for their actions and that can head off some of the potentiality for bad actors in the future. So right now, this was really an economically driven opportunity for big seed companies nationally to dump a waste product in Nebraska at no cost to them and so we're trying to head that.

**GEIST:** One follow-up question--

**J. CAVANAUGH:** Sure.

**GEIST:** --just for clarity for myself. The waste product, is that the seed corn itself or the product that's made after the ethanol is refined and what's left?

**J. CAVANAUGH:** So the treated seed corn itself is a waste product that the seed companies would have to dispose of if they didn't sell it to-- obviously to be planted. And so rather than dispose of it in some other fashion, they gave it to this plant that then turned it into ethanol, but also turned it into this byproduct that is an-- even more concentration of that dangerous chemical.

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**GEIST:** Thank you.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Cavanaugh, for bringing this bill. I guess I need a little clarification too. So I'm a corporation disposing of seed corn and I've got an outfit locally that said I'll take it off your hands if you give it to us. Does that relieve the corporation of any liability if it-- did a transaction take place if there was no sale?

**J. CAVANAUGH:** So I think if I'm understanding-- thank you for your question, Senator Brandt. That essentially sounds like what has happened here, right, and we're trying to capture--

**BRANDT:** Sort of.

**J. CAVANAUGH:** --is that they-- that it was given to the ethanol plant in need and they processed it. What the bill does is attach a-- attaches liability for inappropriate disposal, essentially, so-- and I, and I think that there's a good argument that this method of disposal is not an appropriate method of disposal. And so if you continue to dispose of the waste product being this treated seed corn in this fashion, that you would be liable for the proximate damage caused by that. So the-- even, even that original company would be, yes.

**BRANDT:** So what I would assume happens is truckloads of this product come in and are dumped and held somewhere in the seed corn phase until it is processed through an industrial phase to become what normally would be distillers. That's what this, this product is. Would they have a liability once it goes through that industrial process from that company? Is there still liability attached to the distillers?

**J. CAVANAUGH:** So your question is does the originator of the, the producer of the seed have liability after it's distilled into the distillery's grain?

**BRANDT:** Right.

**J. CAVANAUGH:** That-- and that's exactly what we're trying to capture is saying that this is not an appropriate method of disposal because

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then it becomes that distiller's-- which is a concentrated waste product, the distiller is, and that's why it's a waste because they tried-- they went through the process of using it in the normal fashion, which was-- I think there was a point where they tried to use it as feed and then they used it as land application, which they found had an 85 times the concentration of the seed, which was a lot higher concentration and the, and the Department of Agriculture here determined that it could not be used as a land application product. And at that point, it clearly became a waste product that was sitting on the property that-- and that is-- the distillers grain or the wet cake became a waste product that was being stored there. While this bill is not addressing necessarily that, I, I would argue that they think that state law already contemplates storage of the waste material. What this does is just makes a manufacturer liable for a product that is inappropriately disposed of and they can't couch that disposal in some other kind of beneficial economic process.

**BRANDT:** So then what happens-- instead of the current situation, they take it to a landfill and six months down the road, they determine that that's not the correct way to dispose of that particular product in a landfill because of leaching. Is, is that company still on the hook in that situation? I mean, at what point does liability release from the manufacturer and go to the next stage?

**J. CAVANAUGH:** Well, yeah, so this would say that the manufacturer is liable to make sure that it is disposed of properly. And so it-- there are appropriate ways to dispose of waste material of this type in landfills. I think-- and I'm not an expert on this, but my understanding is that you'd have to have a landfill that is lined in some way to prevent that kind of leaching and that would be an acceptable way to dispose of it. This is a different thing where you were trying to get it off your hands for free. That would cost you money. Obviously, it's going to be more expensive to dispose of in that sort of landfill, but this is where they are trying to get it off their hands without any kind of cost, so-- and then it's causing a-- exacerbating the, the damage to the, to the community.

**BRANDT:** So existing law doesn't cover this situation?

**J. CAVANAUGH:** I don't believe so.

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

**LATHROP:** I suspect it's a nuisance. You know, we did the right to farm bill a couple of years before you got here and had a big debate about, about nuisances on farm property, on ranches, feedlots, and grain elevators, interestingly enough. I have a question for you, which is my understanding is Senator Bostelman had a bill on the same subject matter. Can you, can you-- I think it was a Natural Resources one.

**J. CAVANAUGH:** Yes.

**LATHROP:** You're on that committee?

**J. CAVANAUGH:** I am.

**LATHROP:** Can you tell us what that one did and what this does is different?

**J. CAVANAUGH:** And I have been working with Senator Bostelman on that bill as well. That bill would prevent the use of treated seed corn in this particular process. What-- and we're getting some amendments on it, but ultimately, that's what it will do is prevent this exact incident from, from continuing, meaning that this plant would not be able to start back up and process treated corn into ethanol. This bill differs in the sense that that captures this specific instance and says that we-- clearly, we're not doing that. This bill attaches liability for some other potentially unanticipated way that you could unlawfully or, or inappropriately dispose of that treated corn.

**LATHROP:** OK, OK. Any other questions for Senator Cavanaugh? I see none. Are you going to stay and close?

**J. CAVANAUGH:** I will stick around.

**LATHROP:** OK, very well.

**J. CAVANAUGH:** Thank you.

**LATHROP:** We will take proponent testimony at this time. Good afternoon and welcome back to the Judiciary Committee.

**AL DAVIS:** Thank you, Senator Lathrop.



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**LATHROP:** It's always a pleasure to see you.

**AL DAVIS:** Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Al Davis, A-l D-a-v-i-s, registered lobbyist for the 3,000 members of the Nebraska Chapter of the Sierra Club in full support of LB634. We only wish this bill had been introduced years ago before the incalculable damage done to the environment around the AltEn plant took place. In passing. I want to endorse LB507, which prohibits the use of pesticide-treated corn in the manufacture of ethanol in Nebraska. While LB507 is a good bill that is limited strictly to seed corn, but AltEn's advertising indicates that the plant processes other seeds also and they should be included in that bill. Neonicotinoids don't fall neatly into a regulated category of pesticides after their application to seeds. That does not mean that they are not dangerous when misused. It simply means that they have escaped regulation. Neonicotinoids work by binding to the central nervous system cell receptors, causing paralysis, lethargy, and death. This is why AltEn cannot feed the distillers grain it produces at the Mead facility to livestock. Instead, the business plan was focused on producing a soil amendment without considering the massive quantities of neonicotinoids present in the product. As an example of what these pesticides can do, birds consuming only three canola seeds treated with neonicotinoids lost up to 17 percent of their body weight in six hours and took several days to recover from the consumption of the product. The troubled history of AltEn appears to reach its apex when pipes burst in the plant last month, permitting millions of gallons of pesticide-contaminated manure, sludge, and water to escape the plant and migrate several miles downstream. Unfortunately, this is only one instance in a long, troubling history of violations at the plant, dozens over the last five years. Lagoons have failed and are permitting contaminants to leach into the water table below the fetid piles of wet cake which remain at the plant. Those lagoons are now full, but a strong spring storm is predicted to dump several inches of snow or rain in the area this weekend. What then? We also know that air contaminants are extremely high surrounding the plant. Dust and emissions from the piles of residue are blowing through the area. Livestock in a nearby feedlot breathe in the dust with every breath they take, as do the animals and residents of Mead. What effect does that have on pregnant women and the fetus? We know that fetal growth is stunted in animals, so is it the same in humans? Is the Lincoln

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water supply threatened? Is the biochar produced at the plant contaminated and what of the smoke and steam associated with that part of the business? We believe that a well-funded legislative task force must be appointed to examine what went wrong at AltEn. Exhaustive testing must be done at the site to determine the levels of degradation in the soil, the water table, and the potential health damage to employees at the plant and residents of Mead. All this testing can be done by university professors, but they will need significant financial resources to conduct the research. It seems inevitable that AltEn will not survive and the liability for cleanup will fall to someone else. Legislative oversight will be essential in assuring the best practices are implemented, that exhaustive tests are done, and proper cleanup implemented. Thank you.

**LATHROP:** Oh, boy, that's quite a mess, isn't it?

**AL DAVIS:** It is. It's terrible.

**LATHROP:** I, I'm a little surprised it's taken this long for it to become as widely understood as it is because I think the people in Mead have been complaining about this place for years, right? Just the stink, never mind the, the leak.

**AL DAVIS:** Yeah. You know, you need to study the long-term history of the plant. It went through a bankruptcy. It was reorganized. I think the same people probably own it and then they started treating the-- this is not a new product. It was done in Kansas, as I understand it, prior to this at one time. Now 98 percent of all the seed corn that they need to dispose of, it is going through this plant. That's one of the things that they promote, but there's nothing they can do with it after the state ordered them to not apply it to the fields because of the high pesticide content, so it's just sitting there and it smells and it's dangerous.

**LATHROP:** OK, well, we appreciate you being here today. Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Senator Davis, for your testimony today. I don't know if you read the article in the Lincoln paper today that they have a char unit set up there and that they did test the emissions on that and it appears to be clean.

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**AL DAVIS:** I'm not convinced that that's really true. I, I don't have the data to back that up, but I think there are only a limited number of things that they test for, so there could be other contaminants within that exhaust that are not--

**BRANDT:** OK.

**AL DAVIS:** --that are dangerous.

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

**AL DAVIS:** I did see the article.

**BRANDT:** Yeah.

**LATHROP:** I don't see any other questions. Thanks for being here and good to see you again.

**AL DAVIS:** Thank you. Good to see you.

**LATHROP:** Next proponent. Good afternoon and welcome.

**KEN WINSTON:** Good afternoon, Senator Lathrop and Members of the Judiciary Committee. My name is Ken Winston and I'm appearing on behalf of Nebraska Interfaith Power and Light. My name is spelled K-e-n W-i-n-s-t-o-n and I won't read my testimony because that would be insulting to you since I'm sure you can read it yourself. I will highlight a few comments from, from my testimony. One of the issues the Nebraska Interfaith Power and Light is, is interested in is environmental justice. And in that respect, we're both interested in the harm that's caused to poor and minority communities and also addressing that harm, making sure that, that when harm is done, regardless of who does it, that the people who profit from it pay for the damage that they caused. And particularly we're concerned about the AltEn ethanol plant and I appreciate the testimony that, that Al Davis just provided and we would support what he just said. One of the things that is very concerning to us is looking at the record of this case. The fact that there were violations that go back to 2015, the fact that there were violations in 2018 and 2019, very serious violations and if I can just talk a little bit about my own personal experience, I've been dealing with the environmental cases for nearly 40 years and this is the worst one I've ever seen in the state of

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Nebraska by far. So, so this is, this is a bad case and one of the things that's, that's particularly appalling is that things got worse while the, the NDE was, was investigating. There were 4,000 tons of waste on their site in 2019 when they told them to stop doing that and it multiplied. Now there's 84,000 tons. I mean, I can't even comprehend that amount of, of waste and I don't know how you-- I don't think you can get rid of it just by doing biochar. I know that there's the article in the paper today about them trying to create biochar using it, but-- and then the, the river of manure flowing downstream, down through creeks and ditches, 4 million gallons of that and it's pesticide laden. I mean, it's just an incredible image and I can't imagine how the-- and there's no way that they can clean all that up. I mean, I don't-- there's no way that you can sponge all that out of the ground. And as Senator Davis indicated, if there's a big rain event this weekend, God help us all. I mean, that, that water will-- that will be waste material flowing down to Platte River. I just can't imagine that they can stop it all and so consistent in-- as Al Davis just said, we would recommend the creation of a special committee to investigate this and not just this, but the underlying issues that are involved to deal with the liability, to deal with natural resources issues, to deal with health impacts, to deal with potential funding problems. But I mean, it looks to us as though the state is going to end up picking up the tab on this, as, as opposed to the responsible parties and the people who profited from this. So, so those would be our recommendations and, and I'd be glad to answer any questions.

**LATHROP:** OK. Any questions for Mr. Winston? I don't-- I-- there aren't any. I-- you know what? I-- this is one of those things that's just a complete failure of state government, right? I, I talked to Senator Bostelman about this when we were doing the right to farm bill and he was saying there's this plant out in Mead that's putting this stuff out and it's just piles of stinky stuff and so what-- the State Department of Environmental Protection, whatever the state version of that is, we did nothing or we, we kept ordering them to stop and they kept going?

**KEN WINSTON:** Yeah, yeah. Basically it was like when the-- when your kid doesn't do something, you tell them not to do it. You, you tell them don't do that and they keep doing it and you just keep letting them do it.

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**LATHROP:** So has anybody been charged criminally?

**KEN WINSTON:** No and that's one of the-- I mean, one of the other concerns that we have is the, the way that the lawsuit was filed and it's a massive lawsuit. There's 98 pages of, of--

**LATHROP:** By the Attorney General?

**KEN WINSTON:** By the attorney general. No individual has been-- has-- was named in the lawsuit and that's a concern. I mean, if, if this corporation files bankruptcy tomorrow, I, I suppose they can turn around refile against the individuals, but it would seem to me that they should have filed against the individuals in the first place and that's typical pattern in federal cases, as I understand, and I have, I have not dealt with in myself, but that's my understanding. And another concern is, well, I mean, I've never handled a case of this magnitude, but as a person who's done a bunch of divorces, if somebody is-- if there's a concern about somebody making off with assets, you file a motion to make them preserve the assets and preserve records and, and there's nothing that in there. So there's, there's some real concerns about what's been filed so far as well. I mean, are-- is the state going to be made whole in, in this process?

**LATHROP:** OK. Senator Brandt.

**KEN WINSTON:** And I guess another concern, if I could just follow up, there's also nothing protecting the interests of any individuals that may be-- may have been harmed, including the state of Nebraska. I mean, we have-- the Nebraska-- state of Nebraska has a research facility there that this material has contaminated and so there's nothing dealing with that as well. So, so I think there's, there's more things that need to be investigated.

**LATHROP:** OK.

**KEN WINSTON:** And thank you, Senator Lathrop.

**BRANDT:** Thank you, Chairman Lathrop.

**LATHROP:** Senator Brandt.

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**BRANDT:** Thank you, Mr. Winston, for your testimony. You're obviously very close to the situation. One thing I have not seen from the many articles I've read on this is an estimated cost of cleanup. Have you heard or seen anything on the, on the estimate to clean this situation up?

**KEN WINSTON:** I have not and, and, and I think that's one of the things that, that, that the committee of the kind that Al Davis and I were suggesting would, would do, would be to look into the costs that might be-- that might be created. And, and I am very concerned. I mean, just from a selfish standpoint as a taxpayer, I don't want to pay for damage that's somebody else's cost.

**BRANDT:** OK, thank you.

**KEN WINSTON:** Thank you, Senator.

**LATHROP:** OK. I don't see any other questions. Thanks for being here, Mr. Winston

**KEN WINSTON:** Thank you, everyone.

**LATHROP:** Anyone else here is a proponent of LB634? Anyone here in opposition. Anyone here in the neutral capacity? Good afternoon and welcome.

**JUDY WU-SMART:** Hello. OK. My name is Dr. Judy Wu-Smart, spelled J-u-d-y W-u-S-m-a-r-t. I'm an assistant professor and extension specialist at the University of Nebraska-Lincoln in the department of entomology. I want to first thank Senator Cavanaugh and the committee for this opportunity to testify regarding LB634. I'm testifying today in a neutral capacity, acting in my own personal capacity as an expert and not on behalf of the, of the university. I run the UNL bee lab and we typically manage 60 to 85 honeybee colonies each year and roughly a dozen research and teaching apiaries. Since 2017, we've had consistent losses and zero survivability of colonies only at the apiaries located at the Eastern Nebraska Research, Education, and Extension Center in Mead, Nebraska. During our investigations into potential causes, we uncovered a novel practice of treated seed disposal through ethanol processing that produced solid and liquid byproduct waste highly contaminated with pesticide residues, which LB634 would begin to

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address. My testimony today will highlight some critical research needed to better understand the potential practice-- potential impacts of this practice. The first critical need is examining the leaching of pesticide residues from wet cake stockpiles, liquid waste effluent, and soil amendments applied to local farms and the potential impact to wildlife. Currently, there's little or no information regarding the pesticide residue levels in soil under and near the stockpiles or from locations where over 33,000 tons of the pesticide-laden soil amendments were land applied. The second critical need is to examine the release of airborne particles contaminated with pesticide residues. In 2018 and 19, we deployed sticky traps designed to capture airborne particles around the property. Our results indicated neonicotinoid insecticide levels at high concentrations sampled around a mile away from the property and those residues decreased moving outward, going two to three miles out. While not designed specifically to assess airborne exposure risk, the residues found-- levels found indicate potential concerns regarding inhalation exposure to wildlife and humans. It's unclear whether the residues detected from the air samples originated from the facility's function, normal movement of seed bags around, or dustoff from the piles of wet cake. The last concern I want to highlight is the systemic pesticide pollution issue. Systemic pesticides such as neonicotinoid insecticides that I just mentioned can translocate to all parts of the plant, including the root system, making them really popular chemical options for seed coat dressings. However, the systemic action of these chemicals increases the risk of leaching and off-target movement. Systemic pesticide residues in contaminated water and soil can actually be picked up in nearby vegetation and expressed in the leaves, nectar, and pollen, which is where I think the bees and other wildlife may begin-- become exposed. Current monitoring and mitigation efforts in the water, soil, and air, which are separately regulated, may not fully consider the systemic movement of these residues across the different matrices and then the expression of them in nearby vegetation. So I'd like the committee to just consider that this isn't really at one health concern, meaning that the bees are just an indicator here. They're canaries in the coal mine indicating that there's something more serious going on. Our data remains incomplete. It's preliminary. We're still determining why our bees are dying and how they're getting exposed, but it does show that there is a highlighted need to look at

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the other environmental and ecological impacts as well as human concerns.

**LATHROP:** OK.

**JUDY WU-SMART:** Thank you.

**LATHROP:** Thank you, Doctor. Senator Pansing Brooks.

**PANSING BROOKS:** Thank you. Thank you, Dr. Wu-Smart. I have a few questions. I'm just wondering about the neonicotinoids. Is that how you say that?

**JUDY WU-SMART:** Yes.

**PANSING BROOKS:** Are they the main concern or are there other parts that contribute to tox-- are concerns that contribute to toxicity?

**JUDY WU-SMART:** Thank you for the question. Yes, a lot of the articles and the conversations have been focused on neonicotinoid insecticides, but I just-- I want the committee to know that there are a lot of other compounds that have been detected. Some of the ones that are concerned about our fungicides. They were detected at really high levels and these are the class of pesticides that are the least well studied compared to insecticides and herbicides. And there's growing literature concerns about their impact to gut microbiomes in bees and humans, as well as their ability to synergize or enhance the toxicity of other compounds that might be present-- in, in their presence. So the combination of these chemicals could be more toxic than them all separately alone and those are some of those concerns.

**PANSING BROOKS:** OK. What about the remaining byproducts, is there some sort of economic value to what's left there?

**JUDY WU-SMART:** I don't have a whole lot of information there because I haven't seen very much in terms of the nitrogen values and some of the other agricultural-- agronomical benefits of those products. What I have seen are very limited pesticide residues that show extremely high levels. The other things I would point out is that those pesticide tests are quite limited. The, the pesticide testing facilities have to use a set of standards in order to screen for the pesticides. So if you screen for 20, you may only detect 20. When we can have a bit-- a



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bee kill and we're looking for pesticide compounds that may be suspected of those losses, we test for 180 different compounds to get a really wide screen of the potential agricultural compounds that are commonly used. So we don't have an accurate picture here if the testing facilities are only looking for a couple dozen and there could be hundreds of different compounds involved in ag.

**PANSING BROOKS:** OK, thank you. I'm grateful for your research and all you're doing on this. When, when we read about it in the paper, some of us-- I am one in particular-- grow-- become more alert when I read about the bee kill and the fact that that was going on. It made me understand that they were the canaries. It was pretty clear. So when you were investigating the bee kill, did you have others or any other institutions or governmental entities helping you to investigate that bee kill?

**JUDY WU-SMART:** We did, we did seek state and federal assistance. You know, the first step was to look at, at-- when we suspected water contamination as being a potential source, we reached out to NDA to see if there was any kind of water treatment going on or, or pesticide spraying. They alerted us of the stockpile issue and also connected us to NDE with the water contamination concerns. And so one of the roles I found myself surprisingly playing is that there wasn't a whole-- at least-- there's not a clear communication between the interagencies and I was going from one agency to another to try to piece together these, these pieces of information. And what it looks like is maybe the, the, the issues related to water and wet cakes were separately dealt with. It wasn't until the bees kind of brought the picture together to say hey, the problems are offsite. They're not restricted to the stockpiles and the lagoons. We need to look, you know, a little bit potentially at off-target movement of these contaminants.

**PANSING BROOKS:** OK and then just-- thank you for that. Finally, as just-- as a honey and flower lover, is this affecting the beekeeping industry in Nebraska?

**JUDY WU-SMART:** I believe it is. Unfortunately, our state is one of the few states that do not have a mandatory beekeeping registry, so we do not really have a good handle on the impact to the industry, but what I can say is that the state of Nebraska typically holds or manages between 30,000 to 77,000 colonies for the state, for pollination

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services, honey production, and that kind of sort. In the last three years, we've had a handful of commercial beekeepers that have completely pulled out of our state because of 60 to 80 percent losses and that-- just the handful that I know, rough count, 25,000 hives have pulled out of our state and this statewide pulling out is completely unrecognized because we don't have a state registry. We don't have a good way to monitor those impacts, but I do suspect that there is an impact to not just the bee community, but the rural communities that depended on the jobs and the, and the honey revenue and all of the, the income that came with that.

**PANSING BROOKS:** Thank you for that.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. Thank you, Professor Wu-Smart. Senator Cavanaugh presented that this problem started in 2015 and as a farmer, I'm familiar with the colony collapse disorder and we know the "neonics" have been a large part of that problem. Did the university have bees out there in 2015 and/or how soon did you guys have the canaries out there?

**JUDY WU-SMART:** Yeah, so that's another interesting question. My predecessor, Dr. Marion, Marion Ellis, kept bees very successfully up until his retirement in 2013-14. So there was a-- two years in which they were hiring and replacing that position. I came in the fall of 2016, so there is a gap in our data. In terms of 2015 and '16, there were no hives on the site. Prior to that, there was really good honey production and really good success, so something dramatically changed within those two, three years.

**BRANDT:** OK, thank you.

**LATHROP:** What-- so is there underground water supply out there? Is there an aquifer or are they in a quick, quick recharge area from the river?

**JUDY WU-SMART:** That's a great question. The, the research property where I had my hives, it, it, it's quite large and there's continuous and intermittent streams all throughout, running the south and southwest of that property. We had one to six apiaries up-- throughout

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that property, anywhere from one mile to three miles out and bees will forage anywhere from two to six miles, typically around two miles. We were seeing complete losses of hives all the way three miles out, so I don't know--

**LATHROP:** How about, how about the water, though, the underground water supply?

**JUDY WU-SMART:** I, I don't know. I'm not familiar with the underground water wells or any of the water monitoring.

**LATHROP:** Anybody testing that, do you know?

**JUDY WU-SMART:** Yes. Yes, we--

**LATHROP:** Is it showing up in the water supply for farmers, people that have wells?

**JUDY WU-SMART:** As far as I'm aware, the, the, the monitoring testing that was occurring prior to our understanding of the pesticide results were mostly looking at nitrates and phosphates and other types of compounds that were not these specific pesticides. And so I don't know when we started-- or people started to actually specifically monitor for pesticides, but this is one of the challenges is that when we want to get bees tested for pesticides, it's \$480 per sample and if we are going with a, a, a more limited lab, it's still about \$200 to \$250 a sample. And so just to determine what potential causes or what kind of chemicals are in play, you spend tens of thousands of dollars just to determine what, what you're talking about. And so we've spent a lot of money just to rule out that it's not a nonfarm practice, that it was something, you know, greater than, than the practices going on-- the farm practice.

**LATHROP:** OK. Anybody else have a question? I see none. Thanks for being here.

**JUDY WU-SMART:** Thank you.

**LATHROP:** Appreciate hearing from you. Anyone else here to speak in a neutral capacity? Seeing none, Senator Cavanaugh, you may close. There are no position letters. We do have written testimony in opposition from Scott Merritt with the Nebraska Agri-Business.

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**J. CAVANAUGH:** Thank you, Chairman Lathrop, and thank you, members of the Judiciary Committee, for your great questions. And I really would like to thank all the testifiers here today, in particular, Dr. Wu-Smart for the, the work she's done, bringing attention to what's going on in Mead and, and the work she continues to do. I think Senator Lathrop really hit on the head when he said that the-- what's happened there is a result of just a failure of state government. There's one thing-- I don't know if anybody pointed out, but there have been-- there were 77 site visits by NDEE to this facility between 2016 and when they ultimately shut it down in February of this year. They were aware after a time about the use of these treated seeds and they continued the operation and they knew that, that it was a violation or they had not, not received a-- included that information in their application for operation, so that the, the operator was-- did not notify the state that they were using that type of input. And they knew that they had barred them from using it as a, as a soil application and they knew that they were storing it on site and did not have a plan for disposal and this was all over a period of years. It's not just-- didn't begin with the pipe bursting in February and it didn't begin since the newspaper stories. It's been going on for years and that's one of the things that Senator Brandt has questioned. How much is it going to cost? We don't know that because we don't know the extent of the contamination and that's one of the reasons ultimately for this bill, is that, as I think several folks testified to, there's the risk that the plant here is going to go bankrupt and that the state will be left holding the bag and we're going to have to pay whatever this unquantifiable damages are. And so that's-- the purpose of this bill is to make sure that we are holding responsible for what happens here, not just the folks who did this immediate action, but the people they were doing it for. And so I imagine the opposition from Agri-Business and I've had a few conversations with folks about some of their concerns. I'm certainly willing to work with people to make sure that we're not inadvertently restricting or, or hurting people who are not bad actors, but there is clearly a necessity for this bill. There's a necessity for a much broader action by this body, the Legislature, to ensure that the regulatory authority of the state is sufficient to address these issues and that that it-- that the authority that they have is taken to respond to these issues more quickly because the, the damage by this incident is exacerbated by the time. And the fact that the state refused to act and to this point is

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unclear-- as Dr. Wu-Smart pointed out, they are testing the groundwater and I think Senator Brandt pointed out they tested the, the emissions. The article I, I checked-- I think it's the same article-- that was a reference to an emissions test from July or June of last year and it did include trace amounts of clothanoids [SIC], phosalone, and neonicotinoids. I apologize for our pronunciation, but those-- they-- there were trace amounts of these materials and so the state is still not acting fast enough to remediate this situation and we don't know the full extent and so I think I've spoken enough on the issue, but if you have any questions, I'm happy to answer them.

**LATHROP:** Senator Brandt.

**BRANDT:** Thank you, Chairman Lathrop. One quick question, Senator Cavanaugh, have you contacted and worked with the Nebraska Corn Growers?

**J. CAVANAUGH:** I did have a meeting with the Nebraska Corn Growers and-- where we discussed this issue yesterday.

**BRANDT:** And that was productive?

**J. CAVANAUGH:** Very productive, I think.

**BRANDT:** OK.

**J. CAVANAUGH:** I don't think they wrote a letter in opposition and I told them that I would be OK with it if they did.

**BRANDT:** Thank you.

**LATHROP:** You know, were these guys ordered to shut down and they continued to operate?

**J. CAVANAUGH:** My understanding is that there were a number of-- I can't remember the terminology, but they send them in action basically and say do X, Y, and Z by this date. And most of the time, they didn't do any of those things.

**LATHROP:** So is there, to your knowledge, a crime that they committed in not doing what they were told to do by the environmental people?

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**J. CAVANAUGH:** Well, the, the Department of Environment and Energy would say, I believe, that they do not have criminal enforcement authority and that they can make reference-- refer cases to the Attorney General's Office-- which they ultimately did do-- which the Attorney General's Office is undertaking a civil action at this point in time for money damages--

**LATHROP:** But did he commit a crime? The guy who's running the plan didn't do what he was told to do by the environment people from the state. Did that guy commit a crime or do we not have a crime for not shutting down when you've been told to by the,, the Department of Environment, whoever that is?

**J. CAVANAUGH:** Well-- and to be clear, I don't think they were ever ordered to shut down until February of this year. I think they were told to take remediation action and that they would be ordered to shut down if they didn't take that action and I don't think they were ever specifically ordered to shut down, but I'd have to check--

**LATHROP:** Let me ask a different question. Do we need to have a criminal sanction for not doing what you're told when the environmental people come out and tell you to do something or stop doing something?

**J. CAVANAUGH:** I think that--

**LATHROP:** Do you know that as a member of the Natural Resources Committee?

**J. CAVANAUGH:** That-- I think that's a fair question and I think when it comes to these sorts of things, having a, a that kind of penalty associated may get-- motivate people to act more. However, that doesn't solve the problem that is caused, which is the damages monetarily to--

**LATHROP:** No question about it, no question about it, but when they come out and tell somebody to do something or stop doing something, it's to stop the bleeding, right?

**J. CAVANAUGH:** Right.

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**LATHROP:** They have already dumped a bunch of stuff, but if, if they tell them to stop doing something and then they don't-- I'd like you to tell me and you have to tell me today, but I'd like you to tell me if we have teeth in whatever enforcement mechanism we have or if we need a criminal sanction. Because while I always appreciate a new cause of action, right, I'm looking at your bill and if I'm disposing of seed, I take it and I carefully place it in a bin near or in a garage or a warehouse and the guy at the alcohol plant carefully takes it out of there, runs it through his plant and turns it into something that's not seed anymore, your bill won't help us, right? Because it's not seed once it ends up in one of those piles and the guy who brought it to the distiller did it carefully, did it safely, and then it turned into something that isn't even seed. And I'm not sure your bill gets where you want to go, but I am fully engaged in trying to figure out why our environmental people from the state can tell them to do something or not do something and they don't respond and no one's being charged with criminal activity.

**J. CAVANAUGH:** I would agree with you that we need to put more teeth into the process. I guess I don't know-- I don't have a specific answer to you and I'm happy to look at it and get back to you and work on you-- with you.

**LATHROP:** I will just make one more comment, which is the Attorney General has worn a path into this committee to try to get crimes. Enhanced crimes do all kinds of things with crimes and I'm a little surprised that somebody isn't being charged with something or they're not here telling us that there's a hole in our criminal statutes where we can't get to bad actors in this space.

**J. CAVANAUGH:** I, I think I would, would choose not to comment on why the Attorney General chooses to prosecute or enhance charges on the people they seek to enhance charges on and not the people that you're talking about here. I do think that there is a policy decision that is made there in that regard.

**LATHROP:** It's a business.

**J. CAVANAUGH:** It, it is a business.

**LATHROP:** It's a business.

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**J. CAVANAUGH:** I-- personally, what I'm trying to accomplish is, one, to stop the bleeding, as you pointed out, and two, to try to make people whole so that we can fix problems that we've caused through our lack of action. And so I'm happy to, to do both of those things and I'm happy to work with the committee to find ways that we can put teeth into this bill and put teeth into other sections of--

**LATHROP:** OK, well, we're happy to have somebody from the Natural Resources Committee that has a little background in criminal law that can enlighten us.

**J. CAVANAUGH:** I'd be happy to help.

**LATHROP:** OK, any other questions or sermons? I see none. Thanks for being here today. That will close our hearings for today.