

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 1, 2024

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: How are you all today? Don't answer. That's going to be a loud noise-- everybody's great. All right. Before we start our hearing, I want people to know-- what's first? Who?

DeBOER: Raybould.

WAYNE: Oh, nevermind. I'll wait till we get there then. Good afternoon. My name is Justin Wayne, and welcome to the Judiciary Chair-- Committee. I represent Legislative District 13, which is north Omaha and north Douglas County. I will start off and I'm-- I serve as Chair of Judiciary, Judiciary Committee. I will start off with self-introductions to my far right.

BOSN: To your right.

WAYNE: To my-- to-- we're working on introductions still. To my far right, to the right of the right of the right, not that far right, go ahead.

BOSN: Give it up. I'm Carolyn Bosn. I'm the senator from District 25, which is southeast Lincoln, Lancaster County, out past Bennett.

IBACH: I'm the middle right, which would be--

BOSN: I did not accept that.

IBACH: Senator Teresa Ibach. I represent District 44, which is 8 counties in southwest Nebraska.

DeBOER: Hi, everyone. Good afternoon. My name is Wendy DeBoer. I represent District 10, which is in northwest Omaha.

BLOOD: Good afternoon. Senator Carol Blood, representing District 3, which is part of Bellevue and Papillion, Nebraska. And just a reminder, everything they just said is now public record.

HOLDCROFT: Rick Holdcroft, District 36, west and south Sarpy County.

DeKAY: Barry DeKay. I'm from the far left. [LAUGHTER] I represent Cedar, Knox, Holt, Antelope County, northern part of Pierce County, and northern part of Dixon County.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: Thank you all. And also assisting us is our committee pages, Isabel Kolb from Omaha, who is a political science major and pre-law major UNL. We have not convinced her not to do pre-law yet. We will soon get there. And then we'll have also, Ethan Dunn, from Omaha, who is a political science major at UNL. This afternoon, we'll be taking up 6 bills, and we'll be taking them up in the order that is listed outside. On the side of the table or a side of that column right there, there are 2 sheets. One is a blue sheet. Please make sure you fill that out. Make sure you write legible so we can have accurate records. When you come up and testify, hand it to the page. We also have a gold sheet. I want to emphasize the gold sheet. If you don't want to come up or just keep hearing the same thing over and over of what you were going to say, you can fill out a gold sheet and list your position on a particular bill, and it'll still be included in the record. I say that to say that it's going to be a long hearings today, so coming up and just repeating what was said may do a disservice to your side, whatever that side may be. Because if we keep hearing the same things, we are still all human, and sometimes, we tune things out. Just being honest about it. Hope we don't do that, but I'm just trying to help you out. Also, it is the Legislature's policy that all letters or records by the committee must be received by 8 a.m. on the morning of the hearing. Online comments are to be submitted in lieu of personal testimony. What that means is, if you submitted it online, per our rules, you are not supposed to really testify here. So it could count against you or one of those could be stricken from the record, so think about that when you come up. In other committees, they will not let you testify. I just operate just a little differently. Any other handouts-- all handouts will be a part of the record. We ask that you have 10 copies. If you don't have 10 copies, please give it to one of the pages ahead of time, so when you come up, we have 10 copies for the committee. It's hard to understand what you're referencing if we don't have it actually in front of us. There are also no props. Let me be clear on that. I love the First Amendment. I believe in freedom of speech, but signs and those kind of things are not allowed in our hearing room. If they are present, we will ask you to leave. Testimony for each bill begins with the introducer's opening statement, followed by the proponents, those are people in-- who are in favor of the bill, then those who are opponents, which is opposition. Then we'll have those in the neutral testifier or neutral capacity testify. Then the introducer will have the ability to give a closing statement. We ask that you begin your

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

testimony by saying and spelling your first and last name for the record. We will be using a 3-minute light system. When you begin your testimony, it will be green. Yellow will come on, you have 1 minute. At the red light, I will cut you off and ask you to wrap up, because we have a lot of people testifying today. I would like to remind everyone, including senators, to please turn off your cell phones and put them on vibrate. Also today-- not just today, but any day-- there are no outbursts, no applause, no negative grunting or anything like that. Any kind of thing like that, I'll ask you to leave. This is the warning for everybody. I don't do second warnings. I just ask people to leave. With that, we will start today's hearing with LB1288. Senator Raybould is not here. So how are you doing-- welcome to your committee, Ms. Wolfe.

KATE WOLFE: Good afternoon, Chair Wayne and members of the Judiciary Committee. My name is Kate Wolfe. K-a-t-e W-o-l-f-e, appearing before you on behalf of Senator Raybould. Senator Raybould regrets that she cannot be here and asked me to introduce LB1288. LB1288 is similar to LB1247, introduced by Senator Patty Pansing Brooks in 2022. Since that time, there have been constructive conversations between the federally recognized tribes in Nebraska and the Department of Health and Human Services, regarding the issue of tribal mental health and dangerous sex offender commitment orders. Over the interim, Senator Raybould participated in several meetings and listening sessions where this issue was discussed. I will keep my introduction brief, as the committee will be hearing from several testifiers who will be able to go into detail on the issue 12-- LB1288 seeks to solve, how solutions are proposed in the bill, and what steps have been taken since 2022 to address the concerns of the department. LB1288 would amend the Nebraska Mental Health Commitment Act to include recognition of tribal mental health and dangerous sex offender commitment orders, allow for transportation of persons civilly committed under tribal law, and provide for reimbursement. Currently, emergency protective custody orders or Tribal Court mental health commitment orders are not recognized by the state of Nebraska. When state law enforcement or healthcare facilities, facilities feel they are unable to honor tribal orders, the result is a patient in crisis not receiving the care that they need. This threatens the personal safety of that individual and the safety of others. I believe you will hear from testifiers that there is inconsistency in how tribal orders are perceived in different parts of our state. LB1288 will provide consistency and clarity.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Tribal members are Nebraskans just as much as those of us who reside outside of Indian Country. They have systems in place to care for and protect people, just as the state does. It is important to ensure that emergency protective custody orders and Tribal Court mental health commitment orders are recognized in the same way as they would be from any of our counties. Senator Raybould encourages the committee to understand the urgency of this issue and advance LB1288 to General File. Thank you.

WAYNE: Thank you. Any technical questions on the bill? Seeing none, thank you for being here. Will you close?

KATE WOLFE: I can't.

WAYNE: OK. You can. I was going to let you.

KATE WOLFE: Oh. [INAUDIBLE].

WAYNE: First proponent. First proponent.

VICTORIA KITCHEYAN: Good afternoon. Chairman Wayne and members of the Judiciary Committee. My name is Victoria Kitcheyan, V-i-c-t-o-r-i-a K-i-t-c-h-e-y-a-n. Thank you for holding this hearing on LB1288. Thank you to Senator Raybould for introducing this bill on behalf of the tribes.

WAYNE: Ma'am, the hearing in here, especially with the air, is absolutely terrible, so you have to speak up really loud. Sorry. The mic-- sorry.

VICTORIA KITCHEYAN: Do you want me to start over?

DeBOER: No.

WAYNE: No. You're fine. Just speak up from here.

VICTORIA KITCHEYAN: As a tribal leader, I'm committed to elevating health issues and working towards better solutions. This work includes partnering with our federal and state partners. We're thankful for the work that the Unicameral has done for the tribes. There's a mental health crisis across the country, in Nebraska and in Indian country. In Winnebago, we, we face this burden and having-- not the necessary life-saving pathways. And Nebraska law, as we heard, does not

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

recognize the mental health commitment orders issued by the Tribal Court in Winnebago. By not acknowledging valid tribal commitment orders, the state provides a path for our federal partners to skirt their responsibility to provide and bear the financial cost for the healthcare of tribal individuals, as the Eighth Circuit has clearly laid out in *White v. Califano*. The Twelve Clans Unity Hospital is not able to provide necessary treatment for these mental health crisis. Therefore, like many other rural hospitals and emergency rooms, we're seeking care elsewhere. In Nebraska, involuntary commitment procedures and emergency protective custody procedures fall under Nebraska Mental Health Commitment Act. These procedures fall under tribal law in Winnebago, through our Tribal Court. Both jurisdictions have laws covering the same type of proceedings, but Nebraska does not allow for recognition of the same tribal court order. Nebraska does not have jurisdiction to initiate and carry out involuntary commitment procedures, including emergency protective custody for enrolled tribal citizens on the reservation. That authority, authority rightfully belongs to tribes under their inherent sovereignty and to the federal government under its trust-- legal responsibility to provide healthcare to Indians. LB1288 does not, and as made clear by the Eighth Circuit, cannot grant the authority to the state. It is under tribal law that the tribal members in crisis are protected through the federal trust responsibility that tribe-- tribal healthcare is funded. To get the patients in crisis the care is needed is of essence. Because the state does not recognize tribal law, we are losing time in seeking treatment. LB1288 provides for recognition under state law of tribal hold orders, commitment orders and EPC to the same extent as those initiated by any count-- county in the state of Nebraska. LB1288 also opens up access to transportation for individuals subject to these tribal orders, allowing for reimbursement. These individuals-- excuse me. This will facilitate critical, timely evaluation, eliminate inefficient judicial bottlenecks, and provide for cooperation between tribal and non-tribal medical facilities and law enforcement agencies. I ask you to support LB1288. Thank you.

WAYNE: Thank you. Any questions from the committee? Senator Bosn.

BOSN: Thank you. Thank you for being here. My fol-- I have a followup question for you. Is Twelve Clans Unity Hospital on tribal land?

VICTORIA KITCHEYAN: Yes. That's on the Winnebago Indian Reservation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 1, 2024

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

BOSN: OK. So if I'm understanding it, the issue is that those facilities do not have the services that would-- that you're-- some of the patients may need, is what you're saying.

VICTORIA KITCHEYAN: Yes. Twelve Clans Hospital, as well as on the reservation, we do not have psychiatric care.

BOSN: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

VICTORIA KITCHEYAN: Thank you.

WAYNE: Next proponent.

ALONZO DENNEY: Good afternoon, Senator Wayne and members of the Judiciary Committee. My name is Alonzo Denney, A-l-o-n-z-o D-e-n-n-e-y. I'm the chairman of the Santee Sioux Nation and also a volunteer fire department firefighter. I come here today in support of LB1288. As the suicide epidemic rises in Indian Country, we are facing a flawed system. Where I come from-- in the community I come from, we take our relatives an hour, an hour and a half to get to the local emergency rooms. As we get there, a member of the mental health profession shows up. That individual had time to calm down. I no longer want to hurt myself. They will beat you home. They will beat you home, and we'll be dealing with it again the next day. In LB1288-- in the language of LB1288, it gives our officers, all tribal officers, the ability to write the narrative in the commitment order, to commit our relatives and get them the proper care they need. I come here today to ask each and every one of you to support this bill, push this bill forward, and help Indian Country help us help our relatives. I'm not going to continue to use all 3 minutes of your time. I just wanted to come, give you that information, and thank you for hearing us today. Thank you.

WAYNE: Any questions from the committee? Seeing none, thank you for being here. Next proponent.

GWEN VARGAS PORTER: Greetings, members of the Judiciary, Judiciary Committee. My name is Gwen Vargas Porter, G-w-e-n V-a-r-g-a-s P-o-r-t-e-r. I'm a citizen of the Omaha Tribe of Nebraska and the state of Nebraska. I have served the Omaha people as an elected

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

official for 2 terms, and currently serve the village of Walthill municipality since 2011. With the support from the Omaha tribal governing body, Omaha Tribe Administration and Tribal Behavioral Health Department, I am providing testimony on LB1288. On February 18, 2020, the Omaha Tribe passed resolution 20-27 declaring a state of emergency on suicide, addressing the influx of the suicide cluster epidemic. Between the Omaha Tribe and the Winnebago Tribe, our relatives continue to suffer from the epidemic. Relatives from both reservations were significantly impacted by the other, which means we are in this together. Mental illness does not differentiate by race, class, economy or community. Although having limited resources in Indian Country, specifically the Omaha Indian Reservation, gives the feeling of isolation that we are alone. We have a long-standing relationship with the state of Nebraska, DHS-- DHHS in different capacities that always-- that can always be improved to better serve all citizens of the state. Our relationship is constrained when it comes to individuals needing an EPC to protect them from themselves or protecting others, and we understand that the state law requires an official warrant by state court. We have made multiple attempts to utilize this process but have been un-- unsuccessful. We have reached out to our local county attorney office to assist us in protecting our citizens. Omaha-- Omaha Tribal Court orders are not being recognized by state-operated facilities. A mental health involuntary commitment or emergency protective custody is referred to as being a civil matter. This civil matter goes untouched, for it is the tribe to manage an issue. And I want to make note, there are no restrictions when it comes to collecting debt for a debt collector. My issue-- by issuing a court order, also known as a civil matter-- and this is a life that we are talking about. Suicide is a gift that keeps on giving. Communities and families of grief-stricken, depression, anxiety, traumas, and a long list of other disparities. My personal experiences with mental health and suicide. For this hearing, I will focus on the-- on death by suicide. In 2019, I lost a nephew by suicide, who was severely depressed who overdosed on his psychiatric medications, receiving no emergency psychiatric treatment. My second nephew died by hanging. This nephew left 6 children behind, ages 2-years-old to 14-years-old, multiple brothers, sisters, aunts, uncles, nephews and nieces. Only in the past 4 years have we had 11 community members, tribal members, Nebraska citizens die by suicide. And the age range of 16 to 57 years old. The Omaha Tribe of Nebraska strongly supports LB1288 proposal. The Mental Health Commitment Act

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

closes the gap for the Nebraska Native Americans needing mental health treatment. This revised statute, revised statute will save a life of a person residing in Indian Country needing a mental health involuntary commitment or emergency protective custody. The amendments would help the Nebraska Native American citizens receive the much-needed help-- healthcare. As Nebraskans, we strong-- we are stronger together and healthier together. Thank you.

WAYNE: Questions from the committee? Seeing none, thank you for being here. Next proponent.

STEPHANIE SCHADE: Good afternoon, Chairman Wayne and members of the Judiciary Committee. Thank you for holding today's hearing on LB1288. My name is Stephanie Schade, S-c-- S-t-e-p-h-a-n-i-e S-c-h-a-d-e. I'm the emergency department case manager at Twelve Clans Unity Hospital, which is part of the Winnebago Tribe of Nebraska's healthcare system. With 13 beds and 24/7 emergency department, the hospital serves the Winnebago and Omaha tribes in Thurston County and other Native Americans in the area. LB1288 addresses a critical problem uniquely impacting Native Americans living on reservations in Nebraska. Currently, the state does not recognize EPC orders issued by tribal courts under tribal law. This, coupled with transportation issues, puts all Nebraskans but especially Native Americans at risk. In 2023, 15% of all emergency department visits were for mental health conditions. We have limited resources, and it's crucial to quickly find facilities to accept patients in crisis. Last year, 72 tribal citizens came through our emergency department with suicidal ideation. It was necessary to transfer 62 of those 72 patients to another facility so they could receive a higher level of care and ensure their safety and the safety of others. For each one who did not voluntarily submit to treatment, a tribal emergency protective custody order was required. Because the state does not rec--recognize EPC orders under tribal law, our hospital staff must expend valuable time finding a facility that will. Then staff must organize transportation to that facility that is sometimes hours away. This process delays treatment and push-- puts patients at risk, and can exacerbate their condition. I will share a recent example of the impact of this law has on our patients. A patient was brought to the emergency department after ingesting an unknown amount of analgesic drug at home. This patient had a history of depression, suicidal thoughts, and suicide attempts. The patient was placed in emergency protective custody under tribal authority, evaluated, and then determined to be in need for inpatient

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

treatment. Hospital staff called several facilities but state law did not recognize tribal EPC orders, so none would accept the patient. Staff then scrambled to create a plan which called for the patient to be evaluated a second time for admission to a mental health unit at another facility. After several hours, the patient was accepted for evaluation, but transport was not available. Ultimately, the patient spent 13-- or 15 hours waiting in the emergency department for admission and transport. If the state recognized tribal emergency protective custody orders, our patients would more quickly receive appropriate care during mental emergencies, and hospital staff to better fulfill their professional responsibilities to them. Further, if law enforcement officers could provide transportation for these patients under tribal EPC order, the time between when the patient reaches our hospital and receives appropriate care would be drastically reduced. LB1288 would address these issues. Therefore, I respectfully ask that you-- that this committee vote in favor of LB1288.

WAYNE: Thank you. Senator DeKay.

DeKAY: Thank you, Chairman Wayne. You referenced that LB1288 would be impacting Native Americans living on the reservations in Nebraska. How would this impact tribal members that aren't living on the reservations? Does it-- well, will they have the same level of care or not?

STEPHANIE SCHADE: Our, our hospital would treat any Native American, regardless of residency.

DeKAY: So, if they're not living in Winnebago, if they live in Sioux City or something, they can come back-- do they need to come to Winnebago or could they go to a hospital in Sioux City right away?

STEPHANIE SCHADE: They would typically go to Winnebago.

DeKAY: Thank you.

WAYNE: Any other questions? Seeing none, thank you. Next proponent.

RAMSEY GRIFFIN: Thank you. Good afternoon, Chairman Wayne and Judiciary Committee. I am Ramsey Griffin with Omaha Nation law enforcement as the chief of police. First name Ramsey, R-a-m-s-e-y, last name Griffin, G-r-i-f-f-i-n. I am a proponent for LB1288, being

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

that a lot of the times, our officers are dealing with suicidal ideation, things of that sort. And our current policy is that we, we give the patients-- take the patients to the highest level of care, which would be through the ambulance, being that we operate under a 638 contract. We operate on a memo from the BIA that came out in 2013, from ASAC Marcus Babbitt, at the time. We are not able to transport our, our medical patients off reservation in our vehicle. It will be the ambulance, being that the verbiage in LB1288 basically gives us the ability to commit the patients. I'm not going to take up too much of the time. I'm just here to support LB1288 and I ask that you support us, as well. Thank you.

WAYNE: Thanks. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Anybody but Mr. Rogert.

KENT ROGERT: Senator Wayne, members of the Judiciary Committee. My name is Kent Rogert, K-e-n-t, R-o-g-e-r-t, and I'm here today as a registered lobbyist for the Ponca Tribe of Nebraska. Unfortunately, our chairwoman could not be here today. She's traveling. But we want to-- want to let you know the Ponca Tribe does not have a reservation, so this doesn't necessarily apply to us on a regular basis. But we want to stand with our other tribes in support of this, this, this, this efforts. There's-- we know we're in a mental health crisis in the United States, and it happens in Indian Country as well. And it's imperative that tribal citizens are included in the, in the practices that are talked about in the bill. So, thank you very much.

WAYNE: Any question from the committee? Seeing none, thank you for being here. Next proponent, proponent. Any opponents? Opponents. Opponents. Anybody here to testify in a neutral capacity, neutral capacity? Welcome.

TONY GREEN: Good morning, Chairperson Wayne and members of the Judiciary Committee. My name is Tony Green, T-o-n-y G-r-e-e-n, and I'm the interim director for the Division of Behavioral Health at the Department of Health and Human Services. I'm here to testify in a neutral capacity. I'll spare you reading the testimony and give you the very high-level summary of our neutral testimony. We absolutely, as you heard, have been committed to engagement on this issue for the last couple of years and are, are pleased we're at the place we are today. Just want the committee to understand the complexities behind this, that this is a very complex issue legally. And I believe we are

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

well on our way to making this become a reality. The one thing we do agree on, is regardless of where folks live, we want them to receive the appropriate behavioral health treatment. A few of the complexities, just so you understand, is as the tribes indicate, the, the bill does incur-- allow the cost to be paid by the tribe. However, the mechanisms is really where the, the devil is in the details, if you will, that we've got to then engage local jurisdictions to do those arrangements through contracts, that just having the ability allows the, the contracts to happen. Now we have to work to get the local jurisdictions to actually follow through with the transportation and the cost of services. Another nuance that, again, I think we can work out, is there's discharges from the hospitals in statute. The bill reads that the facilities may discharge with the consent of the tribe. We'll need to work through that as, as clinical treatment providers generally, in all of the hospitals or the regional centers, drive discharge rates. And so, we will continue to work on that. Most of the-- of our behavioral health providers across the state do an "ability to pay" assessment that's outlined in statute. Again, through contracting processes, we'll need to work on those nuances of how that would work via the contracts directly with the tribes, for individual members accessing hospitals or the regional center's services. The final issue that I would say, is the involuntary custody and mental health commitments. Currently, Nebraska participates with the, the fed-- the Gun Control Act. And so, making a determination of whether or not behavioral health currently has the authority that when folks are involuntary committed, that excludes them from owning and, and purchasing firearms, and we'd work with Nebraska State Patrol on that. And so we need to figure out whether that would or would not apply for folks now civilly committed from tribal lands. Again, very complex issues, but we are very collaboratively working on these. And I'd be happy to answer any questions folks might have.

WAYNE: Any questions from the committee? Senator DeKay.

DeKAY: Thank you. You said the costs are incurred by the tribes, right? Where do they-- where does the tribes-- are they allocated by the federal government, by state or whatever to help offset the costs of them, or how's that worked in the past, and where do you see the path forward going on?

TONY GREEN: Yeah, I, I don't want to speak for the tribes, but I, I know that there is some funding that can support that, through Indian

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Health Services. But I think that's probably a question of how they'll pay those services to the tribes.

DeKAY: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

TONY GREEN: Thank you.

WAYNE: Anybody else in the neutral testimony? Welcome.

JUDI GAIASHKIBOS: Good afternoon. Chairman Wayne and members of Judiciary, my name is Judi Gaiashkibos. That is J-u-d-i G-a-i-a-s-h-k-i-b-o-s. I'm the executive director of the Nebraska Commission on Indian Affairs, and I'm a member of the Ponca Tribe of Nebraska, and I'm also Santee Sioux. I am here to testify, I guess, in a neutral capacity, similar to what the last-- Mr. Green from DHHS did. I wasn't going to testify today because leadership is speaking for leadership, and they did a great job. But 2 years ago, when we brought this to Judiciary, we had challenges working with DHHS. And so I'm hesitant to leave it that, in good faith, that we're going to work this out. As I know a lot of bills are simple and the devils are in the details, so I want to make sure that you all have a firm commitment to working with our tribal nations and our people. I am a dual citizen. I am living in the city of Lincoln. I'm a member of the Ponca Tribe. I would-- if I needed services, I would most likely go to the Lincoln Regional Center if I was committed. But I could go to the Winnebago Hospital or to the Ponca Tribes health clinics. So I just want everybody to recognize that our courts, our, our tribal courts are credible. We have legal counsel, we have qualified people. And it seems, in the past, that those courts haven't been recognized. And I know Governor Pillen is a very strong proponent of honoring 7 generations into the future, and so this is a way that you can do that, by moving this bill to the floor for working out the details, as I know you're doing on a lot of other big bills, Senator Wayne. It's very complex. But complex doesn't mean it can't happen for native people. It is time for our people to have proper care and attention, and our courts recognized to save lives of dual citizens. So I'm counting on you to do the right thing for Nebraska's first peoples. So I don't know if that's neutral testimony, but I'm honored to serve our

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

tribal nations and I think that this is something that we can work out and we must work out. Weblaho.

WAYNE: Thank you. Thank you for being here. Any questions? Seeing none, thank you for being here. Anybody else in a neutral capacity? Neutral capacity? Seeing none, we had 2 letters, 1 in support and 1 in opposition. And that will close the hearing on LB288-- 12-- what did I say, 288-- LB1288. We'll now open the hearing on LB972, Senator Lippincott. Welcome to your Judiciary Comm-- actually, let's take a 30-second break while they clear out the room. All righty. Let's go ahead and you can grab a seat and calm down. Senator Lippincott, come on up and let's get your hearing underway. Welcome to your Judiciary Committee, sir.

LIPPINCOTT: Hello Chairman Wayne and Judiciary Committee. My name is Loren Lippincott, L-o-r-e-n L-i-p-p-i-n-c-o-t-t, and I'm here representing District 34. Today, I put before you LB972, which adds kratom to Nebraska's controlled substance list. Currently, there's no regulation or prohibition of kratom in Nebraska; kratom is completely legal. However, it's been made illegal in 6 states. Some states have put a restriction or other restrictions on the purchase of kratom, and you should be able to see that in document number 1. Kratom is an herbal product. It's mostly obtained as a powder and consumed as a beverage. Kratom is also known as mitragynine and hydroxymitragynine. I don't think many of us knew what kratom was even 5 years ago, but now you can't drive across town without seeing a sign for kratom outside of CBD stores in town. Kratom, as you see from the comments on this bill, can be a useful tool in helping someone to stop the use of opioids. However, kratom has similar opioid effects and withdrawal symptoms, which is why I believe we need to add kratom to the controlled substance list, like which has been done in Alabama, Arkansas, Indiana, Rhode Island, Vermont, Wisconsin have on the books, presently. I've handed out to you lots of information, one of them being a paper from the congressional district-- Congressional Research Service. That's document number 2. And I note that this paper, as it outlines federal considerations and recommendations that have been given by the FDA and the DEA on this matter. Specifically, the DEA has noted kratom as a drug and chemical of concern. Under the section titled Kratom Regulations, you can see that some of the restrictions other states have imposed, including age restriction for purpose [SIC], restriction on marketing to children, and prohibition of sale of all-- adulterated kratom products. Nebraska presently has none of

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

these restrictions. I've also handed out a few journal articles, document number 3, and please note the one titled, Natural drugs, not so natural effects: Neonatal abstinence syndrome secondary to kratom. This was published in 2019 in the Journal of Neonatal-Perinatal Medicine, and the methods and results read as such. Quote, we report a term neonate who was born to a chronic kratom user and required treatment with opioids for neonatal drug withdrawal. Conclusion: Physicians should be aware of these herbal supplements and their potential withdrawal effects in newborns, which cannot be picked up by the standard toxicology screen. As with any drug abuse-related issue, kratom and its addictive effects are harmful to babies born to addicted mothers at birth. Document number 4: In a paper labeled "Abuse potential and adverse cognitive effects of mitragynine (kratom)", which was an animal study done by the Mayo Clinic, the abstract compares acute and chronic kratom administration to that of morphine. And concludes that, all together, these findings provide evidence for an addiction potential with cognitive impairments for mitragynine, which suggests its classification as a harmful drug. Document number 5: I also have printed for you Jeremy Edens' comments on the bill. He gives personal testimony that the marketing of the drug is safe and herbal is misleading because of its addictive qualities. "Unregulation" of this drug is unclear labeling and are affecting Nebraskans negatively. I also have my own personal interaction with a kratom user, and have walked with that person on a long road to recovery from addiction. And I might just add that regarding opioid use, over the past 2 years, here in America, 32% of Americans have used opioids at some point. 32%, 1/3. And over the past 1 year, 18% of Americans have been on opioids, which in essence is a painkiller. You know, bad shoulder, shoulder surgery, you get on a pain reliever. So that's quite common. We know that. Of the individuals that have been on opioids, painkillers, 1 in 5-- only 1 in 5, 20%, will go through some type of treatment to get off of painkillers. Only 1 in 5, that means 4 out of 5 do not. It's noted that 2.5 million people in America do have an opioid use disorder. That would be like the entire population of Nebraska and Wyoming, 2.5 million people. It's also estimated by the FDA that 2.1 million people take kratom. It's widespread, more widespread than we thought. And in essence, a person normally will take about 30 grams of kratom in a day. And of course, we know a gram is about the weight of a paperclip. So about 30 grams per day, and 100 grams cost about \$35. So an average person who takes kratom regularly spends about \$350 a month. Now a

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

person that tries to get off kratom-- kratom actually works to some extent. But try getting off kratom-- you can't do it, or it's very difficult to do it. And a person that I know went through a treatment program. And it's \$12,000 and took several weeks in a facility to get off of kratom. And the medical doctor told him, he said it has properties like getting off of heroin. It's tough. Document number 6 that you have, finally, I have for you an amendment to the bill. This amendment would push the effective date to January 1, 2025. Kratom is widely sold in our state, and I want to give ample time for people to get the help they need before we add it to the controlled substance list. Please take the time to read the studies and information I've laid before you. They are in agreement that kratom is addictive. Thank you, sir. And I'll take questions.

WAYNE: Any questions from the committee? Senator McKinney.

McKINNEY: Thank you, Chair Wayne. Thank you, Senator Lippincott. Anytime there's a bill to try to ban a substance, one thing that always pops in my head is if we're going to ban substances, then why don't we ban alcohol? Because alcohol is addictive. It's harmful. People deal with many traumas and issues behind it, and I feel like if we're going to ban any substances, we shouldn't be selective.

LIPPINCOTT: Yeah. And of course, the argument to that is we did that back in the 1920s with, what was it, Amendment number 19, I believe it was. And that didn't work too well. Made the Kennedy family rich, but it didn't work very well. And we abolished that amendment with, I think it was the Twenty-first Amendment. So, that's the problem.

McKINNEY: I know. I was just saying that as something to think about, because I think-- we talk about kratom or marijuana or CBD, Delta-8, all these things, but we never have the conversation about alcohol.

LIPPINCOTT: Right.

McKINNEY: Which is just as harmful or maybe more harmful as some of these substances.

LIPPINCOTT: [INAUDIBLE].

McKINNEY: But thank you.

LIPPINCOTT: Yeah. [INAUDIBLE] true.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: Senator DeBoer.

DeBOER: Thank you, Senator Wayne. Senator Lippincott, thank you for bringing this bill and coming and testifying. Is there going to be someone behind you that will be able to speak to a little more of the, sort of, science of all of this? Because I-- because I have a question for you, because it seemed like what you're saying is it needs to be illegal because it's addictive. But, you know, sugar's addictive, caffeine's addictive, cigarettes are addictive. We've got a lot of addictive things, so I'm assuming that there's more to it than just addictive. So is there someone who is going to be able to answer those questions for us?

LIPPINCOTT: That's why we gave you a ton of handouts that do have some scientific studies to it. We know that opioids are derived from poppies, right, and that is grown naturally. And these are, these are tea leaves from the Thailand/southeast Asia area. And it's just-- it has some properties that are very similar to opioids. So to answer your question, I don't have anybody lined up behind me.

DeBOER: OK. All right. Well, thank you. I'll look at your--

WAYNE: There appears, there appears to be in the crowd who could probably answer that question. Senator Blood.

BLOOD: Thank you, Chair Wayne. And thank you for bringing this forward today. I did co-sponsor this bill because I thought it was time for a discussion, but I have a, a hard question for you here. So why prohibit and not regulate? Because, as you know, if you follow the Legislature, I've talked about why hasn't our Attorney General's Office regulated some of these things that have now just blossomed everywhere, if we're concerned about them, but the first time we actually do bring legislation, it seems to be more about prohibiting?

LIPPINCOTT: I think it's on the first handout that I gave to you. The FDA tried-- did try to regulate it and make it illegal, and it got pushback from the U.S. Congress. And so--

BLOOD: Oh, you mean the Congress that doesn't do their jobs? Yes.

LIPPINCOTT: Um-hum. Yeah. And so, they backed off on it. But the truth is and, and that's also in the handouts, that several states-- first off, I mentioned the 6 states that already banned it--

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

BLOOD: Right, I'm familiar with those.

LIPPINCOTT: --completely. But there are other states that have either regulated it to-- you can't sell it to minors or it must be tested beforehand. And just a little while ago, I was talking to the medical doctor upstairs. You know, we've got a physician on call. And I talked to him about this. And he said, what some of these agents are doing, these drug agents are doing, is they will lace them with different types of drugs like fentanyl, for instance, to make it even more addictive so that people need it more.

BLOOD: Which they do across the board for multiple types of medic-- I mean, illegal drugs, that's not unusual.

LIPPINCOTT: Correct.

BLOOD: So, so I'm gonna bring you back to the original question.

LIPPINCOTT: Yeah.

BLOOD: Why are we choosing to prohibit instead of regulate?

LIPPINCOTT: Why do what?

BLOOD: Why are we choosing, for our first attempt at this, to prohibit instead of regulate? There's a difference. That's all, that's all-- the only, the only question I'm asking. What is your opinion on that? Because we've had many opportunities through the years--

LIPPINCOTT: Why are we not regulating it instead of eliminating it? Is that your question?

BLOOD: Right. Why are we not choosing in our legislation to regulate instead of eliminate?

LIPPINCOTT: Well, some states are doing that.

BLOOD: Yes, sir. I un--

LIPPINCOTT: Some state-- yeah.

BLOOD: --I understand that, but why are we?

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

LIPPINCOTT: Well, because there's other medication that is currently regulated that also help, instead of being on an opioid. Methadone I believe, is one. You know, and I don't want to give medical advice here, obviously, but there is other medicine that is given to a person in need from a medical doctor that prescribes it so it can be measured and not abused. This, right now, there's no regulations. And so people just take more and more of it.

BLOOD: But-- and I, and I don't want to beat a dead horse. So you just said that. It's not regulated, so we should get rid of it. So why aren't we regulating instead of eliminating? I still haven't heard that answer. So maybe we could talk-- because it's going to be a long day in here. Maybe we can talk later about this.

LIPPINCOTT: That's fine. Yeah. You know, if you'd like to have an amendment for that, you know, you're certainly more than welcome. Obviously, we're in a arena of ideas here, but--

BLOOD: So you would be comfortable with that?

LIPPINCOTT: I would not.

BLOOD: All right. Thank you.

LIPPINCOTT: Thank you. And that is a good question.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here. First proponent.

LIPPINCOTT: I'm going to waive my closing to go back to my--

WAYNE: OK.

LIPPINCOTT: Is that OK?

WAYNE: Yeah. That's fine.

LIPPINCOTT: Thank you, sir.

WAYNE: No problem. Thank you. Senator Lippincott, just so you know, there's 32 record-- 32 letters, 13 in support and 19 in opposition. I usually say it at the end, but I just wanted to make sure you hear that.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

LIPPINCOTT: Thank you, sir.

WAYNE: Thank you. First proponent. First proponent. This is proponent. Welcome to your Judiciary.

MAGGIE BALLARD: Thank you, Chairman Wayne, members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I am here as a prevention specialist at Heartland Family Service. I'm here on behalf of our agency as a strong proponent of LB972, and would thank Senator Lippincott for bringing this bill forward. We feel that it's long overdue. And I must admit that I had a hard time writing this testimony because, to me, banning kratom has kind of seemed like a no-brainer. But I know that while I have heard about the bad things to kratom users since about 2015, that some people are less familiar. So, sounds like he gave you some handouts, but being sold in the pill and liquid forms in lower doses, 1 to 5g of kratom acts as a stimulant. And at the higher doses of 5 to 15g, it acts more like a depressant. The list of ailments that kratom is advertised to treat include pain, fatigue, depression, anxiety, stress, menstrual cramps, and more. Yet, the FDA does not approve using kratom for any medical purposes, and it is completely unregulated. In 2019, CNN published an article highlighting the increase in calls to poison control for kratom from 1 per day-- or I'm sorry, from 1 per month to 2 per day. Then, in March of 2023, a 48-year-old Iowa man died after becoming addicted to kratom. He had originally started taking it to help relieve his muscle pain after working out. In July of last year, a Florida woman died after taking kratom and her family was awarded \$11 million in a wrongful death lawsuit against the company that sold her that substance. Serious side effects include psychiatric, cardiovascular, gastrointestinal, and re-- respiratory problems, including weight loss, dry mouth, chills, nausea, and vomiting, changes in urination and constipation, liver damage, muscle pain, overdose, withdrawal, and addiction. Fortunately, some states have looked at the terrible experiences individuals and families have experienced, and a list of states there that have banned it from being sold. And I'm asking you to add Nebraska to that list. While many people would like to point to a number of legal substances that kill far more people than kratom, I would like to point out that when it comes to addressing the addiction epidemic here in our country, we may not be able to do everything possible to limit the harms, but you can be part of the problem or part of the solution. And I hope Nebraska

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

will be part of the solution and that you will vote LB972 out of committee. I'd be happy to answer any questions.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here today. Next proponent. Proponent. Moving to opponents. First opponent.

SARAH LINDEN: Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Sarah Linden, and I am a Nebraska native and owner of Generation V, with 15 vape shops in Nebraska. When I first learned about kratom, I was skeptical. I had a misconception that it was only used by drug addicts and would attract the wrong clientele at my stores. I couldn't have been more wrong. Over 15 million people in the United States use kratom. Surveys show that the majority of users are between ages 30-50 years old, employed, and have some college education. Kratom users are regular people: soccer moms, athletes, construction workers, and older folks looking for natural remedies where pharmaceutical prescription drugs have failed them. Kratom is commonly used for pain, anxiety, depression, focus, alertness, and to self-manage opioid and other substance abuse disorders. It is not an opioid. It is a natural remedy sourced from the mitragyna speciosa [SIC], a tropical tree in the coffee family. Kratom is much safer than opioids, acting as a partial opioid receptor agonist and binding to the same receptors in the brain as opioids without the negative respiratory or highly addictive, brain-rewarding effects. This makes kratom a much safer option than pharmaceutical opioid medications for treating pain. And because kratom acts on the same receptors, but its maximal effects reach a ceiling beyond which higher doses produce little additional effect, it has a relatively low potential to produce physical dependence and withdrawal. This makes kratom extremely effective in helping users escape the vicious cycle of opioid addiction. The National Institute on Drug Abuse has conducted 2 specific studies on animals, showing that kratom does not have abuse potential and should be explored more for its development in the treatment of opioid abuse. Having a long-standing bias against dietary supplements and herbal remedies, the FDA has made 3 attempts to move kratom to a Schedule I substance. Based on current science, leading public health officials have reviewed the evidence and vigorously disagree with the FDA's assessment of kratom's addiction and safety profile. All 3 of the FDA's recommendations for scheduling have been rejected by the DEA, the U.S. Department of Health and Human Services, and the World Health Organization. As of today, 11 states

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

have enacted the Kratom Consumer Protection Act, seeking to restrict the FDA and other government agencies from regulating kratom as a drug, new dietary ingredient, or as adulterated dietary supplement. Six states have banned, 2 have overturned and redacted and removed kratom from the Controlled Substances Act, Vermont and Wisconsin mentioned earlier. Additionally, Indiana has passed legislation through the house to remove kratom ban, and instead enact the Kratom Consumer Protection Act. This legislative bill is now making its through-- way through the senate in Indiana. In conclusion, I ask the committee to not make the same mistake I did in leaning into the stereotype. Please take time to understand and research these products so you can make an informed decision. I'm confident in so doing, you will vote no on LB972. Thank you for your time.

WAYNE: Senator Blood.

BLOOD: Thanks for coming forward. Just a quick question. So if I hear you correctly, you would be OK with regulation as opposed to elimination?

SARAH LINDEN: 100%.

BLOOD: All right. Thank you.

SARAH LINDEN: I believe that all of these products should be regulated to make sure that they're safe for consumers, but available for people who choose to use them.

WAYNE: Any question-- Senator Ibach, followed by Senator Bosn.

IBACH: Thank you, Chair Wayne. So if the FDA doesn't approve these, and we trust the FDA to do the right thing-- Food and Drug--

SARAH LINDEN: Oh, I'm so sorry. It's on vibrate.

IBACH: Why should we, as a state, go beyond what the FDA recommends?

SARAH LINDEN: Could I turn that and ask a question?

WAYNE: No.

SARAH LINDEN: OK. In my statement, I said that the FDA kind of has it out for dietary supplements. And I believe that we should be following

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

the DEA, which is the Drug Enforcement Agency's recommendation versus the FDA's, in regards to kratom. And the DEA does not believe that it's a Schedule I drug, or any kind of supp-- drug at all. It's a dietary supplement.

IBACH: Can I ask 1 followup question?

SARAH LINDEN: Um-hum.

IBACH: How is this product marketed or to who or how? Because when you list the effects of it, it sounds like one of those horrible commercials, where they say, side effects include-- and I think, why would I ever even entertain a drug like that? So how-- what's the marketing process for this product?

SARAH LINDEN: To be honest, I barely sell this product at my stores. It's a very, very, very small percentage of my business. And so, I'm not extremely well-versed on it. I did a lot of research to determine whether or not I should carry it and offer it, because I wanted to make sure that it was safe before I sold it at my stores. But we don't market it as like it's going to do this. We don't promise it's going to do anything. People come to us because they already know about it and know that it's helped friends and family members and, and other people, and they come for it. But we're not allowed to say it's going to cure anything, do anything. I also think like this is a product that is really not used by youth and marketed to youth in any way, shape or form. It's really marketed to adults. It's not really even marketed. People just know about it, and they know that it's effective.

IBACH: Do you have-- ever have anybody ask you about side effects?

SARAH LINDEN: No, I've never had anyone ask me about the side effects, nor have I heard of anyone getting sick from it.

IBACH: OK. Thank you. Thank you, Chairman.

WAYNE: Senator Bosn.

BOSN: Thank you. Ms. Linden, can you tell me what your educational background is?

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

SARAH LINDEN: Personally, I have an MBA from New York University Stern School of Business.

BOSN: OK, so nothing as it relates to science or the--

SARAH LINDEN: No. And there will be some experts in science coming up after me.

BOSN: OK. So you said this isn't marketed to youth. Does that mean that you require an age limit before you'll sell it to any youth?

SARAH LINDEN: We do. Yes. But in the absence of regulation, that would be 1 thing that I would recommend, is putting in a minimum age requirement.

BOSN: OK. And why is that?

SARAH LINDEN: Because it, it is a substance that people can take, that can affect them physically or mentally.

BOSN: What is the age that your shops restrict?

SARAH LINDEN: We use 18 and I would be comfortable with 21.

BOSN: You use 18, comfortable at 21. Is that what you said?

SARAH LINDEN: Yes.

BOSN: Does your-- are you aware of any other shops that sell to under 18?

SARAH LINDEN: I'm not.

BOSN: OK. Do you reside in Nebraska?

SARAH LINDEN: Yes.

BOSN: You said you're from Nebraska.

SARAH LINDEN: Yes. I'm in your district.

BOSN: OK. Perfect. OK. So this isn't marketed to youth. And to the best of your knowledge, it's not consumed by youth.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

SARAH LINDEN: To my knowledge, it is not. And studies show that it's actually ages, primarily 30-50 years old that use these products.

BOSN: OK. And you would agree that some of those negative side effects-- you were here for Mr.-- or for Senator Lippincott's testimony, right? You have to say "yes" on the record.

SARAH LINDEN: Yes.

BOSN: OK. So when Senator Lippincott testified-- and he was speaking to the concerns that he had and the contacts that had reached out to him with those negative experiences, we'll just call them, you have not been made aware of any of those?

SARAH LINDEN: I have not had anyone come to me or any customers at my stores mention that they've had any side effects, but I think that you should-- I'd like to refer that question to someone who has more experience on the matter.

BOSN: OK. That's it.

WAYNE: Thank you.

SARAH LINDEN: Thank you.

WAYNE: Any other questions? Guess not. Next opponent. Welcome to your Judiciary.

TODD UNDERWOOD: Welcome. It's good to be back in Nebraska. My name is Todd Underwood. I'm a former resident of Omaha, Nebraska, the good life. Came back up here to talk to you guys about this proposed ban. I own one of the larger copacking, manufacturing and extraction laboratories for kratom in the United States. There's a couple points I'd like to touch on before I go into my personal testimony that brought me here. Senator McKinney, when you talked about prohibition of alcohol and basically it didn't work. All it did was create a criminal empire. With the 15 million Americans that currently utilize this product every day, we have seen pretty much the exact same thing. Senator Blood, when you talked about why are we banning it instead of regulating it, that's a brilliant question. And I know Mac Haddow, the senior fellow from the American Kratom Association, would probably-- I might be speaking out of turn here, but he would probably want to talk to you guys about the introduction of the Kratom Consumer Protection

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Act, which would exactly that, regulate the product and keep it a safe, sustainable marketplace for the Nebraska citizens. I think there's 12 or 15 states that already have this law in place. It's worked out tremendously. I was in Washington, D.C. in the Senate subcommittee, talking about the introduction of the federal KCPA back in December. The senator that introduced this bill, when he talked about prohibiting kratom because there are medical treatments that can be utilized in lieu of that, I want to talk about one of those. I have muscular dystrophy. That's why I walk funny. I've had 3 heart attacks, quadruple bypass, and I have 1 functioning lung. February 17th of 2020, during that day, I was taking up to 90 milligrams of OxyContin every day, and up to 15-18 Percocets every day. I went to bed that night. The next day, I woke up at 4:00 in the morning, grabbed a couple grams of kratom to try it for the first time, shook it in some water, which is basically crushed up leaves at this point, and drank it. And it taste-- sounds exactly like what it-- or it tastes exactly like what it sounds. But that was the last day I ever used any pharmaceutical opioids. Moving forward, I was able to easily titrate off of kratom, and now I live naturally pain-free. Senator Bosn, is that how you pronounce it? Let me pull up my notes again. You were talking about, I think, the FDA and why don't they approve it, or-- I'm sorry. Maybe that was Ibach. You were talking about since the FDA doesn't approve it and we can trust the FDA. Keep in mind the FDA endorsed, supported, and approved OxyContin as the first non-addictive narcotic on the market. And look how tremendous that worked out for everybody. So, I also have the manufacturing facility in Kansas City, about 3 hours from here. I would like to invite any of you down to see how the product is made, distributed, marketed, and to have a more in-depth conversation with any of you. If any of you would like my contact information, I'd be more than happy to provide it prior to leaving. I thank you for your time. Any questions?

WAYNE: Can you spell your name for the record?

TODD UNDERWOOD: T-o-d-d U-n-d-e-r-w-o-o-d.

WAYNE: Thank you. Any questions? Senator Blood.

BLOOD: Thank you, Chair Wayne. Just a couple of quick questions. First of all, I should let you know that I actually get your organization's newsletter.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

TODD UNDERWOOD: OK. I--

BLOOD: So I know-- kind of knew what to expect when you guys were going to come [INAUDIBLE] today.

TODD UNDERWOOD: OK.

BLOOD: Just to be fully transparent. But I don't get it because I'm necessarily a supporter. I get it because I like to see all sides of, of every topic, and it makes me a better senator. But here-- here's the issue and the trouble that I'm having. And I'm hoping that whoever comes after you-- and there's a question that I'm leading to, is that-- first of all, I want to make sure that whatever we do is something that law enforcement can get behind.

TODD UNDERWOOD: Um-hum.

BLOOD: Because that's important, especially in my community. We're by Offutt Air Force Base. And we have a lot of people that come from other states and they have different values. And I want to make sure it's, it's safe in our community. And when I get my medical information, I go places like the Mayo Clinic--

TODD UNDERWOOD: Um-hum.

BLOOD: --who I believe puts out truthful, effective information. And it tells me that there is documentation on things like brain-- and I know there are for many other medications, but there are things like brain lesions that have happened and other types of not good effects, but we know that it happens with alcohol; we know that it happens with nicotine. So we have to be careful, also, when we say things like that. But the question that I have, based on your newsletter, is that would you guys really be OK if we regulated it? And would you help us make sure that it was only sold to adults, and that there was some system in place to put out appropriate information, because the marketing information, because you have a product to sell, is always going to be positive.

TODD UNDERWOOD: Um-hum.

BLOOD: And I think we need to find that middle ground and be a little bit, I think, more truthful about. Just like we, on alcohol and cigarettes, there's a warning on the side. Would you be open to that?

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 1, 2024

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

TODD UNDERWOOD: To answer your question, Mac Haddow is the senior fellow from the American Kratom Association. I represent my own individual company.

BLOOD: OK.

TODD UNDERWOOD: We also have a professor from Johns Hopkins University that will testify more on the pharmacokinetics and the other things that you're speaking of.

BLOOD: But you all work together when it comes to stuff like this, yeah?

TODD UNDERWOOD: Yes. Now, now, would I be open to regulation? I would encourage it. I would encourage commonsense, safe regulations that everybody can get behind, so we not only protect the consumer, we protect the industry and protect the people that actually need the product. So yes, we would love to explore regulation.

BLOOD: And sorry for the long questions.

TODD UNDERWOOD: You're fine.

BLOOD: Sometimes, I have to put it all out there on the table, so.

TODD UNDERWOOD: Hey, that's why we're here.

BLOOD: Thank you.

TODD UNDERWOOD: All right.

WAYNE: Any other questions from the committee? Senator DeKay.

DeKAY: Thank you, Chairman Wayne. In your place of business, you process and package it, and it's ready to go to the distributor.

TODD UNDERWOOD: Correct.

DeKAY: Are those in pre-sealed packages so that they're not opened and something else mixed with them, ready to go at the counter of the next business?

TODD UNDERWOOD: Absolutely. We are what's called an industry-certified GMP, a good manufacturing process that follows 111 and 117 of the FDA.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

It basically holds us accountable to make sure we have a safe, sustainable product, fit for human consumption. There's vigorous lab testing. We have 2 full-time chemists, a doctor that supervises our formulation. We actually bring in the raw plant material. We extract it and refine it. We get rid of anything that could possibly adversely affect you. We-- it's made with a high degree of precision. Everything is safety sealed. Appropriate labelings and guidelines and disclosures are associated with all of our packaging. We are one of what you'd call a "good actor" in the community, trying to do things with truth and transparency and with integrity. And those are the values that we hold our-- hold ourselves accountable to.

DeKAY: You might be the wrong person to ask this, but is there a street product that could have the properties that could be mixed with, say, fentanyl or some other drug like that, that's-- would still, would still be distributed through a store?

TODD UNDERWOOD: You know, I, I couldn't see why anybody would add fentanyl to kratom. I, I think it's a bit of a, a witch hunt to make an accusation that somebody-- I don't think it's ever been discovered of somebody taking a very expensive street drug and putting it in a very cheap herb. It wouldn't be a good business decision from the, from the drug dealer. I think there's better ways for them to make a profit. That's my personal opinion. Not been in their shoes.

DeKAY: OK. Thank you.

TODD UNDERWOOD: You're welcome.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

TODD UNDERWOOD: Thank you.

WAYNE: Next opponent. Welcome to your Judiciary.

MAC HADDOW: Thank you, Mr. Chairman, members of the committee. My name is Mac Haddow, M-a-c H-a-d-d-o-w. I'm the senior fellow on the-- on public policy with the American Kratom Association, and we thank you for this opportunity to be here today. I wanted to make 3 points to you, and certainly would welcome any detailed questions. First is that kratom is not scheduled as a controlled substance under federal law. If the FDA could do it, in the past, up until just recently, they

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

would have, would have done so and in fact, have tried. You've heard that in 2016, the FDA made an application to the Drug Enforcement Administration to schedule kratom. The DEA rejected that, asking for a full 8-factor analysis, meaning a full scientific dossier. That was provided in 2017, and then summarily rejected by the Assistant Secretary for Health, Dr. Giroir, in a scathing rebuttal letter, which should be in your inboxes if you haven't had a chance to look at it yet. But Dr. Giroir made some very important points. First, he said that the dossier of scientific evidence provided by the FDA was embarrassingly poor evidence and data, and not fitting for this kind of application. And then he pointed out, very importantly, that if a ban were enacted, it would have an impact on millions of Americans who are currently using kratom, to force them to other medications that have far more dangerous side effects than kratom does. And his argument was, you should not do that, given the crisis that we're in. And we all know last year, over 107,000 overdose deaths from drugs in the United States today. It is a public health crisis. And then in December of 2023-- I'm sorry, Jan-- December 2021, the Expert Committee on Drug Dependence, where the FDA then went and tried to get kratom scheduled internationally at a lower standard, determined that it was not sufficient evidence and did not meet even their lower standard. The Nebraska standard is, is this a hazardous substance? And I can tell you the science doesn't document that. You have, in the handout that I just gave you, a recent document in a federal court case in California on an import alert on kratom, where the FDA was called by the judge to testify about their view on the danger of kratom. And the stunning admission by the FDA was they have not yet come to that determination that kratom is dangerous. And that's true. There's a dose-finding study they just completed with humans, determined you can safely dose them, and they're going to proceed with a-- with what's known as a human-abuse potential study. The second point I would make, that kratom is not dangerously addictive. The science proves that. You have a scientific update in your inboxes that you should read. Most people use it, as been described, for health beneficial purposes, and we'd ask you to look at that science update. The third is there is a better option for Nebraska and to protect the citizens of Nebraska than a ban, and that is the Kratom Consumer Protection Act. There have been, there have been 11 states that have passed it. It does put specific regulations on it, including an age limit. The 6 states that banned it are now all, with the exception of Arkansas, unwinding that ban because of this particular situation the

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

FDA is in now, that they cannot speak to the hazards or the danger levels of kratom. Glad to answer any questions. Thank you.

WAYNE: Thank you. Any questions? Thank you for being here.

MAC HADDOW: Thank you.

WAYNE: Any other opponents?

SPIKE EICKHOLT: Good afternoon, Chair and members of the committee. My name is Spike Eickholt, S-p-i-k-e, last name is spelled E-i-c-k-h-o-l-t. I'm appearing on behalf of the Nebraska Criminal Defense Attorneys Association as their registered lobbyist. We are opposed to the bill. What this bill would do is it would add kratom and the definition that's provided in LB972 to the list of controlled substances. Specifically, it would make it a Schedule I controlled substance. That would make it a felony to have it, and it would make a greater felony for you to sell it or possess with intent to sell to somebody. If it's possession of any amount, and you've heard talk about residue amount, any detectable amount of whatever this chemical described would make it a felony. Someone testified earlier, I think it was either Mr. Underwood or Mr. Haddow, talked about how under the federal law, under the federal Controlled Substances Act, that kratom is not a controlled substance. Obviously, Nebraska is free to criminalize whatever it wants to criminalize. But generally speaking, when it comes to controlled substances, Nebraska, like other states, models their criminal codes, their controlled substances, based on the federal law. When there's an update to the federal Controlled Substances Act, the states follow. I think Senator Bosn has got a bill that does that being heard today. There's some utility and some purpose of that. One, it lets people know what's legal and what's not. Even the introducer of the bill acknowledged that he wants to delay the implementation of this bill moved back to January because he recognizes that people are able to buy this stuff. People have it in their homes, people are using it, and you're going to make it a felony for them to have it. So even Senator Lippincott recognizes that there are some sort of consequence that people may not be aware of. I don't think any of the states that criminalized this or have somehow tried to criminalize it, are any of our bordering states. That's our-- sort of the crux of the position that we have. Criminal laws ought to be clear, to let people know what's permitted and what's not. It is sold everywhere. Apparently-- and the-- I'm not going to speak to the

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

scientific, the pharmacological material or anything like that, but there is apparently a disagreement in the profession as to the value of this. And I would strongly urge this community not to simply make this a felony because someone doesn't like it or someone has chosen a side in that scientific debate. I would answer any questions if anyone has any.

WAYNE: Senator DeBoer.

DeBOER: Thank you, Senator Wayne. So I was thinking about this very thing that you're saying. Is there any substance in Nebraska that is illegal as a-- like a Schedule I illegal-- that is not illegal federally? I couldn't [INAUDIBLE].

SPIKE EICKHOLT: Well, I suppose if we don't pass Senator Bosn's bill, that'll be the case. Because that's what we-- I mean, every year or so-- you've been on the committee for a while. That's where we have that bill.

DeBOER: Sure. Yes. OK. And for the record, because I see the Attorney General sitting over there, I want to bring that bill sometime. But yes, other than if we're lagging behind the feds because we haven't passed our harmonizing bill yet. Is there any-- like I think they're always--

SPIKE EICKHOLT: They're generally-- I remember that we did not have tramadol listed as a controlled substance. I remember someone in my office won a case based on that, at prelim.

DeBOER: So we may be deficient, but we don't ever extra make things illegal if the feds don't.

SPIKE EICKHOLT: I, I don't think so. I mean, I wouldn't be surprised if we were leading the pack, so to speak, to make things felonies, because that's sometimes something that we do.

DeBOER: All right. Now that seems like an editorial comment.

SPIKE EICKHOLT: Well, I think, generally speaking, that's-- I mean, all of you been on the committee-- most you have been on the committee for a while. You have that sort of update every year or every other year--

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Yeah.

SPIKE EICKHOLT: --that is sort of presented to somebody on the committee [INAUDIBLE] to introduce. And that's generally the process that we do. And admittedly, the defense bar doesn't necessarily like it, but we recognize other states have made this a crime, and the federal law makes it a crime. We ought to have some sort of uniformity we can tell clients and represent people in court who get caught up in it.

DeBOER: OK. Thank you.

WAYNE: Thank you. Any other questions? So just a-- maybe this isn't a question for you, but it is what it is. We use plenty of things that the FDA hasn't approved, off-label, for the state of Nebraska.

SPIKE EICKHOLT: That's right.

WAYNE: In fact, the state of Nebraska, particularly DHHS, uses off-label for almost-- well, I wouldn't say almost, but a lot of the kids in juvenile. So we don't follow FDA guidelines on everything.

SPIKE EICKHOLT: Not always, no. Not in that context, you're right.

WAYNE: Thank you. Any other questions from the committee? Seeing none, thank you. Next opponent.

JACK HENNINGFIELD: I guess I'm kind of the science guy. I'm Jack Henningfield. I've, I've been doing research in this area for half a century. And I feel--

WAYNE: State and spell your name.

JACK HENNINGFIELD: --a little upstaged, like, in December, I was giving a briefing before Congress with the director of the National Institute on Drug Abuse, Nora Volkow. She was first, I was second. After she finished, I said, well, she basically gave all the science I was going to do. And so I'll tell you some of my studies. So the young lady that started out today, she's covered the science really nicely, and she said it better than I could. Everything she said about brain receptors, reward, et cetera, is spot on. There are more than 450 articles in the last 6 or 7 years on kratom science. By, by the way, I am a vice president of research and health policy at Pinney

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Associates, and what my group mainly does is drug scheduling for pharmaceutical companies. And before that, I've been at Johns Hopkins for 40-some years, as an adjunct professor at this point. And I started doing drug scheduling in 1980 at the National Institute on Drug Abuse while [INAUDIBLE] the group that did drug scheduling, and I worked with [INAUDIBLE].

WAYNE: Can you speak up a little bit?

BOSN: Can you speak up a little bit? I can't hear you.

JACK HENNINGFIELD: Oh. I'm sorry.

WAYNE: It's weird in this room.

JACK HENNINGFIELD: Can you hear me now? OK. I'm sorry. Usually it's me--

BOSN: It's not your fault.

JACK HENNINGFIELD: --because I wear these hearing gadgets. So I started doing drug scheduling in 1980 because the National Institute on Drug Abuse has input, and the fed-- Food and Drug Administration, they make recommendations. DEA gets the final call. DEA rejected FDA's recommendation. Nora Volkow, the director of NIDA said they oppose it. The World Health Organization considered it, as they often do when FDA says consider this, and they rejected it. They rejected it because the science wasn't there. And as the Admiral Giroir, secre-- Assistant Secretary, Secretary of Health said, there would be adverse consequences with a ban. And you've already heard some of that. Instead of pregnant women talking to their doctor about their use, which they should-- and now, it's a Schedule I. That's a serious offense. And there are other problems. The other thing is creating a black market, which currently doesn't really exist. We need safe, regulated kratom. What-- I love science. So just-- some of my colleagues at NIDA, Johns Hopkins, and the University of Florida just last week had a new study published in JAMA. And let me just summarize-- I can quote their main highlighted finding. They used the methods of clinical trial assessment of adverse effects and efficacy. Among the 357 kratom consumers surveyed using the ecological momentary assessment in this study, most reported using kratom daily to relieve pain, improve mood, or increase productivity. Some used it as an

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

opioid substitute. Most participants reported improvements in daily living and productivity. More frequent use was associated with tolerance, some withdrawal, and craving, but not social and functional impairment. So anybody that uses caffeine every day, you meet 2 or 3 criteria most likely for use disorder. But unless it's impairing your daily life, use in the face of serious harm, causing accidents, we don't consider that a serious use disorder. And kratom looks more like that. Why is this important in, in Nebraska? Nebraska also has drug overdose-- fewer than a lot of states, about 200 in 2021. Most of them due to opioids. [INAUDIBLE]--

WAYNE: Thank you for your-- I got to cut you off, sir.

JACK HENNINGFIELD: --always concerned like a lot of us [INAUDIBLE]--

WAYNE: I got to cut you off, sir.

JACK HENNINGFIELD: --take away something that could help people. So I oppose--

WAYNE: Thank you.

JACK HENNINGFIELD: --the bill, and hope you'll regulate it.

WAYNE: Any questions for-- Senator DeKay, followed by Senator DeBoer.

DeKAY: Thank you, Chairman Wayne. Within your studies, what are the effects of, of this? Is it for pain reliever?

JACK HENNINGFIELD: So with the studies-- there's many different types of studies, field studies in southeast Asia, surveys in the United States, and this recent one using the, the clinical trial methodology, where people report questions just about every hour during the day. They answer it on their cell phone. And that's what FDA now requires for most drug studies. And there will be people that are-- in that study, this was on people that have been using kratom regularly, and there were very few adverse events. What people report is I took 2 more than I should have and I felt a little nausea. That's an adverse event. In terms of serious adverse events, there weren't any. In terms of people that are using it several times per day, because they had a broad spectrum, if somebody is using 3 times per day, then it's likely that they might say, I feel a little bit of withdrawal. I need some kratom. They self-manage it. So ironically, people are using kratom to

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

self-manage opioid withdrawal. It helps them get off opioids. And if you want the science, go to NIDA's website. That's my old institute. And they, they don't take the FDA position. They just say, it's not FDA-approved, however, people use it to manage opioid withdrawal. So the withdrawal was more-- I hate using caffeine as an example because then, people say, well, you're just saying it's the same as caffeine. It's not. But guess what? The tree is in the caffeine family, in the coffee family. And unlike opioids, people use it to enhance their productivity, and social, and get their job done, and get their family activity and responsibilities done. But like with caffeine, there can be some withdrawal. There are some people that have-- that meet criteria for what we would consider a, a kratom problem, or they're reporting that. They should get help, just like people that have serious problems with caffeine or anything.

DeKAY: Thank you.

JACK HENNINGFIELD: The NIDA director said that's relatively rare.

DeKAY: Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Thank you for your testimony. Let me see if I can put a very fine point on it. Would we consider this an addictive substance?

JACK HENNINGFIELD: You know, for addictive substances, it's rarely all-or-nothing. So in--

DeBOER: OK.

JACK HENNINGFIELD: --the filing I just did for FDA for a new drug earlier this week, we said the abuse-related effects, effects are not meaningful.

DeBOER: OK.

JACK HENNINGFIELD: What does [INAUDIBLE] mean? And that's FDA language for the fact that, well, caffeine produces a lot of addictive effects. A lot of cough medicines, antihistamines, nicotine gum, that are over-the-counter, produce addicting effects, and there is warning. So the simple answer is yes, there are some. And I'll go with the NIDA

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

director. Addiction in the sense of opioid addiction, for example, or amphetamine addiction, is relatively rare and manageable.

DeBOER: OK. And then, is there any effect when operating heavy machinery or when driving or anything like that, for kratom use?

JACK HENNINGFIELD: I'm glad you asked. This is fun. It's one of the most recent NIDA studies in conjunction with Johns Hopkins, is using the highly-sophisticated driving simulators. And some of those data were pre-- presented by the NIDA investigator at the briefing in Congress. And I'll give the same disclosure. She said the results are preliminary. However, they gave a wide range of kratom doses, and they did not see disruption in performance, as you would expect with alcohol or even cannabis, which is a little tougher. So can you, at a very high dose-- at a very high dose-- you can get groggy at extremely high doses. It doesn't last long, but that's not how people use it. The same way if you smoke three cigarettes before you drive, you might throw up and have an accident.

DeBOER: OK.

JACK HENNINGFIELD: I've done most of those studies, by the way. I've done-- I guess, published around 500 studies on just about every drug you can think of, and don't want to think of.

DeBOER: OK. Thank you.

WAYNE: Can you spell your name for the record? Can you spell your name for the record? Spell your name? Spell it?

JACK HENNINGFIELD: Spell--

WAYNE: Your name.

JACK HENNINGFIELD: Oh. I'm sorry. H-e-n-n-i-n-g-f-i-e-l-d.

WAYNE: Senator Ibach.

IBACH: Thank you, Mr. Chair. How long has kratom been studied or researched or--

JACK HENNINGFIELD: Wow. The earlier research began, really, in the beginning of the 20th century.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: Can you speak up in just a little bit? Can you speak up just a little bit?

JACK HENNINGFIELD: OK. Earlier research began early in the 20th century, southeast Asia, in Japan. And the FDA pretty much ignored that in their initial assessment. And it was studied by pharmaceutical companies as potential new pain medicine. Ironically, one of them said, well, it seems to work for pain. It doesn't have respiratory depression like opioids. It's a lot safer, but we're going to go for a novel opioid. And I won't mention the name of the company or the product, but it was a product that does cause problems. I wish they would have stuck with kratom. And anyway, in this country, it's been studied increasingly over the last 20 years. At this point, NIDA is pouring, gosh, \$20, \$30, \$40 million into it. And the pipeline is-- it's hard to keep up with the research, more than 450 studies. And I think you received a Kratom Science Update, that was by me and 3 other leading kratom researchers in the world, and we did it as something for policymakers. That cites probably 30 studies that I considered to be sentinel, top-line studies. This study that just came out was in JAMA, which is a, a big time review process. My most recent study, we-- OK. This will be blunt. We tried to kill rats with it using the FDA model, comparing it to oxycodone. We followed FDA study to the letter, and we presented it to FDA and NIDA before we shared it publicly with anyone. Oxycodone produced the [INAUDIBLE] respiratory depressant effects on animals-- in the rats, and killed some of them at higher doses. With kratom, we went to the highest dose we could pump into the animals. The respiratory effects were flat as a pancake. There were no life-threatening effects. We failed. And that's not the first study. There's been more, more than 10 studies in 5 species of animals. It's not an opioid, in terms of respiratory depression or addiction potential. And it's not an opioid by nature, chemistry, botany, or law, or we wouldn't be here.

IBACH: OK. Thank you.

WAYNE: Senator Bosn.

BOSN: Thank you. Dr. Henningfield, thank you for being here. You probably didn't receive a copy of it, but we got a letter earlier from the first testifier, Ms. Ballard. And one of the stats in her letter says, in 2019, CNN published an article highlighting the increase in calls to poison control for kratom, kratom, excuse me, from 1 per

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

month to 2 per day. OK, so what you're telling me, though, is that's not true.

JACK HENNINGFIELD: Well, no. That-- the-- there has been increasing calls to poison control. Most of those are what we call reports. My kid ate this. What do I do? So most of them weren't actual adverse event. Some of them were adverse event calls. Again, somebody saying, my-- calling, saying my kid ate my bag of kratom and is throwing up. What do I do? In term-- and what I monitor is CDC poison control, in all of the surveys. And what we're not seeing is serious adverse events that are life-threatening. And I-- again, I'll take the NIDA position, because I've looked at all of the data with all of the associated kratom deaths. Virtually all involve other substances, and it's really hard to disentangle. Also, a lot of the cases where people say, I'm addicted to kratom-- in the majority, they were already addicted to opioids. And it's a little like saying, well, I'm addicted to buprenorphine or methadone. By the way, I helped develop buprenorphine. I'm proud of it, but it doesn't reach everybody. And a lot of people on buprenorphine aren't as, as functional as they would like to be, and they switch to kratom.

BOSN: OK. Well, let me, let me bring you back. So you would agree, though, that that increase in calls, those are concerned consumers of kratom reporting an overdose concern?

JACK HENNINGFIELD: Yes. So there is-- there are definitely--

BOSN: Just-- OK.

JACK HENNINGFIELD: --increased calls to CDC. That is a flat-out fact.

BOSN: And that if a child accesses this, you would agree that's a problem.

JACK HENNINGFIELD: Yep. We shouldn't minimize every room for error ever. We should minimize access to children. And it is a problem. I'm a parent. The good thing is that it's not like an opioid sitting around, where the child is likely to overdose and die. Again, you can't say it's impossible. You can overdose on too much water, cough medicines, a lot of things. So that's part of the reason we need labeling. We need balanced labeling like states can do and hopefully,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

FDA will do, that says just because it's natural, don't think you can use as much as you want. That doesn't mean it doesn't carry risk.

BOSN: OK. So-- but to that end, you would agree right now, there's nothing that prohibits the distributors of kratom from putting that label on their product, as it sits, right now, today. Nothing prohibits that.

JACK HENNINGFIELD: There, there is nothing to prevent them, and different marketers do different things. I work on labeling, and I've been working on it for decades. And labeling is really tricky. You don't want to overwarn. You don't want to say, well, it might cause this, when we don't really know. And at this point, we don't even know what the mechanism of lethality might be, if there is a mechanism. And for some substances like caffeine, THC, for that matter, it's very difficult to figure that out because it's so rare. So, so what most companies do, not just in this category, is they wait for FDA. Because FDA is really good at that when they decide they're going to do it. They look at the evidence, they get consumer input, they get science input, they get public health input. When we got nicotine gum approved and I, I was involved in that, too, it was an X warning for pregnant women. So pregnant women would get off of cigarettes, get-- women would get off cigarettes, get pregnant, and their doctor would take them off the nicotine gum. That was crazy. So what does the new warning say on nicotine gum? If you're pregnant or have heart disease or if you're under 18, talk to your health professional. Why?

BOSN: But doc-- Dr. Hammerling [SIC], so my question is directly related to labeling. Right now, they could label this and say, this is not good for children, and children should not consume kratom. It has adverse effects.

JACK HENNINGFIELD: That's the kind of labeling that the state could do on any legally mandated-- and on any legal product. And I think it would be great.

BOSN: OK. Aside from the state, an individual business could do that. Right. And they're not doing it. You would agree with that?

JACK HENNINGFIELD: Well, I haven't followed what all the companies are doing. I know that some companies are taking-- do have warnings, but I, but I can understand why companies are waiting for the federal

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

government to get it right and make sure it's level playing field. Because otherwise, people say don't use that product. It says it's bad for your kids. I'm going to use this product that doesn't have any labeling. That seems crazy, but that's the real world. That's why it's-- in the state, at least, you can make sure that any consumer in Nebraska will get all of the products that are legal. They'll have the labeling that you think is reasonable.

BOSN: Thank you. I don't have any other questions.

JACK HENNINGFIELD: You can't do that if it's banned.

WAYNE: Any other questions? Senator Blood.

BLOOD: Thank you, Chair Wayne. Just, just a quick question. So one thing that I learned a long time ago is that when I watched morning television, and they'll have a new study that says milk will make you live 10 years longer than if you don't drink milk. And my first question I've always been taught is, who paid for that study? Was it the American Milk Association or was it a, a-- the Med Center, we'll say.

JACK HENNINGFIELD: In science--

BLOOD: And so, the question that I, I have for you, since you talked about these studies, is who paid for these studies?

JACK HENNINGFIELD: Sure. The vast majority of the research is the National Institute on Drug Abuse in this country. The respiratory study that I did, I went to the American Kratom Association, and I said, I want to do a study using the FDA model, and I don't want to wait for a grant from NIDA. I said, if you can raise the funds, we will do the study 100% independent. We will have it done and you will not see the results. You will have zero input, and you will not see the results until we present it to FDA and NI-- and NIDA. And that's what we did. So--

BLOOD: But they were the ones that paid for that study.

JACK HENNINGFIELD: --so they, they paid for it. And you can ask Mr. Haddow here, because he was the one that said that's fine with us. And, and we-- he did not see the slides. He did not see the results until the FDA saw it in a webinar. And the FDA then wanted to have a

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

second one, because we used their model. We were the first ones that used their model. And the NIDA director personally attended our briefing. So, answer is yes. But when I do a study that is funded by a company or whatever, it's got to be under those kind of conditions.

BLOOD: I am not questioning your skills or, or your-- yeah. It's a--

JACK HENNINGFIELD: No, but it's a, it's a legitimate question.

BLOOD: Right. I always like to know because, to me, it makes a difference.

JACK HENNINGFIELD: The strength of the science is on the convergence of science from many sources and many laboratories. And in this area, we've got a puzzle that's come together with lots of pieces. And that's why NIDA, I think, is willing to take a pretty strong stand. FDA will get there. I don't want to beat up on FDA. They're good on-- at most things.

BLOOD: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

JACK HENNINGFIELD: Thank you.

WAYNE: Next opponent, opponent. Welcome.

KADE KENWORTHY: Thank you. Hi, Chairman Wayne and Judiciary Committee. My name is Kade Kenworthy, and spelling is K-a-d-e K-e-n-w-o-r-t-h-y. I'm here on behalf of myself and the shop that I own in Omaha, Nebraska. And we also sell this substance. I'm not going to repeat anything you guys have already heard, because I don't think that's necessary. And they did a great job explaining to you guys about what it is, but what I will say is there's been a lot of questions about regulations. We regulate ourselves. So before we bring a kratom product into our store, we make sure that it's either AKA-certified or we made sure that it's lab-tested for foreign materials, heavy metals, and pesticides. As far as age goes, we would welcome regulations on age. Right now, we do the same thing as Generation V. We have 18, but we make sure it's an adult product, right? There are kratom products out there that do directly advertise to children, and we do not carry those in our store because that's not our target market. When I first

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

heard about this, I thought it would be wonderful if I can have video representation of all the customers that have come into my store and given their personal testimonies of how much kratom has helped them get off of heroin, get off of opioids, get off of hard drugs. And now they're taking kratom, and they can function with their families, they have a productive job, they're productive members of society, and they are no longer using those substances. I would welcome any one of you guys and gals to come to my store and sit for a few hours, and meet some of these people whose lives will be directly affected by this decision to ban kratom. Thank you for your time.

WAYNE: Thank you. Any questions from the committee? Senator Ibach.

IBACH: Thank you, Mr. Chair. I've not been into one of your shops--

KADE KENWORTHY: Sure.

IBACH: --or similar shop. What-- tell me about the packaging on--

KADE KENWORTHY: OK. So our packaging on the product-- we don't manufacture products.

IBACH: OK.

KADE KENWORTHY: But we do carry pre-manufactured products. And the packaging is usually either containers that are sealed, or mylar bags that have to be ripped open, similar to-- the best way that I can describe it without using an industry term is like a beef jerky package, where it's sealed with a zip lock, and then you have to rip open a seal to actually open the, the final package, so that there would be no way of me tampering with it or my employees tampering with it.

IBACH: OK, let me be a little bit more clear.

KADE KENWORTHY: Sure.

IBACH: So, so on the front of the package, does it say kratom?

KADE KENWORTHY: Some of them do, yeah. The majority of them do say kratom. Some of them just use it by its species name, mitragyna speciosa, or some of them have other names, like Gold Shot, or their brand name and then, what it is.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

IBACH: And so typically, when you buy things at the supermarket, they have a packaging label on the back.

KADE KENWORTHY: Sure.

IBACH: What does-- do, do these come with a label on the back--

KADE KENWORTHY: They do not have a label on the back.

IBACH: --that says what's in it, or--

KADE KENWORTHY: Some of them-- some of them do. Some of them will say mitragyna speciosa, and then they will have like mitragy--mitragynine or 7-OH mitragynine. They will have labeling such as that, and it tells you what contents it is and the milligram level of the contents that's inside of the package.

IBACH: And in your estimation, how many processing locations are there in the United States? Like--

KADE KENWORTHY: Processing location--

IBACH: Yeah.

KADE KENWORTHY: --like actual manufacturers--

IBACH: Yeah.

KADE KENWORTHY: --of the product?

IBACH: Um-hum.

KADE KENWORTHY: Currently, I couldn't give you an accurate number. I know a lot of people do white labeling manufacture. Yeah. He would be better at answering that question than I would be.

IBACH: OK.

DeBOER: Sorry. We can't have other people answering questions. Just one right now.

KADE KENWORTHY: Sure.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

IBACH: OK. Thank you. You've cleared that up for me because I'm not familiar with it, so thank you. Back to you.

DeBOER: Thank you, Senator Ibach. Are there other questions from the committee? I just have one for you, sir.

KADE KENWORTHY: Yes.

DeBOER: What did you say-- I, I missed it. I was writing something out. What did you say was the name of your company?

KADE KENWORTHY: Remedies, in Omaha, Nebraska.

DeBOER: Remedies. OK. Thank you.

KADE KENWORTHY: You're welcome.

DeBOER: Any other questions? OK.

KADE KENWORTHY: Thank you.

DeBOER: Thank you very much. Let's have our next opponent. Sorry. We just can't have more than one person.

_____: No, I understand. It's that she, she gave me a nod and I nodded back.

DeBOER: Welcome.

CORY BARNES: Thank you. Thank you for having me here.

DeBOER: Since--

CORY BARNES: To be honest with you--

DeBOER: Can you lean real close to that microphone? Thank you very much.

CORY BARNES: Absolutely.

DeBOER: Thank you.

CORY BARNES: Chairman Wayne and members of the Judiciary Committee, my name is Corey Barnes. It's C-o-r-y, B in Bravo, a-r-n-e-s. I'm an

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

opponent of LB972. I thought it was important for me to come before you today, as my expectation has kind of been expressed, with many subject-matter experts, I would call them, business owners; but I'm an actual kratom user. And I thought it was important that you actually heard from a kratom user. I have-- which is-- it's embarrassing for me to talk about, but I have a diagnosis of bipolar disorder. And I take approximately 6 different types of pharmaceutical medication that has been prescribed to me. Approximately 5 years ago, I had severe inability to control my racing thoughts. So I started doing holistic due diligence, to see if I could find something that could potentially help with what was happening. I came across this topic or this item, kratom. I've read the, the various research, the stories, the pros and the cons. I made a conscious decision to actually take it. I take approximately 4 tables-- or excuse me, 4 teaspoons of kratom a day. What that has essentially has done is decreased my racing thoughts by about 70%. It's changed my life. I do not use drugs. I do not drink alcohol. I do not use marijuana. I'm a functioning member, I am a homeowner, I pay my taxes, and I am able to hold a full-time job. So I believe-- in my heart, I believe that kratom has the potential of changing people's lives, more than what the experts are testifying about. With that said, I just want to say thank you for allowing me the opportunity to speak before you.

DeBOER: Thank, thank you for being here. Are there questions from the committee? I don't see any. Thank you so much.

CORY BARNES: OK. Thank you, guys.

DeBOER: Let's have our next opponent. Welcome.

J.R. KNOPP: Hello, guys. My name is J.R. Knopp, here representing myself. And also, I'm a manufacturer. I own Blissful Botanicals. We are a local kratom manufacturer and distributor here, out of Lincoln. I-- these guys have done a great job of saying a lot of what the goods and the pros and the cons are. Kind of where I can interject or add some value to this situation, is I know you guys have had a lot of questions about labeling and how it's presented and how it's packaging. I could potentially help you out with that, or at least explain how we do it and how-- what we follow is just kind of the industry standards, which is a lot of what the AKA has set forth out there. So with that being said, I'll just leave it open for some questions right now.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: All right. Thank you. Are there questions from the committee? Senator Holdcroft.

HOLDCROFT: [INAUDIBLE] he spelled your name as J.R.?

J.R. KNOPP: J.R. K-n-o-p-p.

DeBOER: Thank you, Senator Holdcroft. Senator Ibach, followed by Senator Bosn.

IBACH: Thank you, Vice Chair DeBoer. So, just to follow up with the marketing or the labeling, can you give us a better idea of how it's labeled, and if there are any warnings, if there are any, dosages? How would we know?

J.R. KNOPP: Sure. We've-- the way I packaged all of our kratom, it's our basic logo up front, and then we use the mitragyna speciosas on the bottom line. Now on the back of ours, we have a supplemental facts label. We have a dosing of about 1-2 grams, is a nice little starting point, but we also have a warning on the back of there to say, you need to talk to your physician. And then there's also an age warning restriction on there. In the states, that is 18 or 21 and above. But we do put that it is not FDA-approved, and that it-- you need to follow what your physician is saying before taking it.

IBACH: So if you put on there "see your physician"-- no physician has ever prescribed kratom as a remedy?

J.R. KNOPP: It's not, it's not classified as that.

IBACH: Because it's not FDA-approved. OK. Thank you.

DeBOER: Thank you, Senator Ibach. Senator Bosn.

BOSN: Thank you. You were present for some of the earlier testifiers. Is that fair to say? One of, one of the questions that Senator Blood has kind of gone back to is the issue of regulation. And certainly, my questions are going to relate to regulating it as it relates to minors.

J.R. KNOPP: Um-hum.

BOSN: Do you agree with the need for that?

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

J.R. KNOPP: Oh, yes. Yes. I'm, I'm full-- fully behind the American Kratom Protection Act and regulating it, and making sure that anybody under 18 doesn't need to-- need to be using it unless, you know, they can come up with that on their own. But I believe no minor really under 18 should be taking anything, in my opinion. It needs to be approved through their parents and whatnot. So I'd--

BOSN: OK.

J.R. KNOPP: --be definitely for enforcing and putting something on the books to say, hey, these are our regulations. These are guidelines we want you to follow.

BOSN: Thank you. So you said Blissful Botanicals, manufacturer and distributor. Do you sell the product then, directly to consumers?

J.R. KNOPP: No.

BOSN: You sell-- OK.

J.R. KNOPP: We are strictly a business-to-business wholesaler.

BOSN: OK. So you wouldn't be in the market of making a decision as to whether or not they-- if they're in Nebraska, sell to someone under 18?

J.R. KNOPP: Sure. We-- I mean, like I said, we put that warning label on the back of all of our products and it comes labeled that way. And it's all sealed and, and, and packaged that way. Most of the literature that we do put out, we don't really say that it's against-- we don't advertise to minors. And we make sure our packaging definitely doesn't appeal to minors, as well. It's more of a-- like what they've said before. It's-- our, our target market group is somewhere between 30 and 50-year-old, mostly professionals. Young, young adults, not so much.

BOSN: Thank you.

DeBOER: Thank you Senator Bosn. Any other questions from the committee? I don't see any. Thank you so much for being here.

J.R. KNOPP: Thank you.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Anyone else who would like to speak in opposition to this bill? Welcome.

BROCK JONES: Good morning, Chairman and Judiciary Committee. My name is Brock Jones. That is B-r-o-c-k J-o-n-e-s. I would also like to testify on just behalf of being a kratom user myself, and a little bit of the things that have happened in my life. I have been a long-time opioid addict myself for many years. And about 6 years ago is when I discovered a little bit more of the holistic nature behind some of these products. Now, kratom came into my life, and it seemed like to me, it had everything that I was looking for, because I had been attempted to be put onto other replacement drugs that someone could be put on to get off of said opioids. I've been through many rehab stints myself. Thankfully, I haven't had to go back to any of these things. But something that I want to make sure that is known is at least, in my community-- I come from Madison County, right. So out there, there's a lot of-- you have a lot of blue collar workers, a lot of factory workers, same thing that I did before, as well. Now, I go through tons of different body aches, body pains. I understand everybody does. But something that I think that gets lost in the fold is that this gets looked at as this, this existential drug that it, it really shouldn't be classified as. I think that this is more so damaging to a lot of the people-- much has been said before. Like I don't want to beat a dead horse, but a lot of the people that I personally know are in that 30-50 age range, people who are actively working these 12-hour shifts, 15-hour shifts. And I think that it's a lot harder for a lot of these people to go to a doctor to be able to try to get on one of these replacement medications, because they've seen the damaging evidence that's happened to all of the things before, and after-effects. So honestly, in, in my eyes, I do believe that much like everybody else said, I think that a regulation would be fantastic, as a user myself. Now, a, a complete ban, I believe, would, would fall by the wayside because it's much like it was stated before. I mean, we have alcohol. We have other things like that, that I think are also eternally damning. But just as it, as it goes for myself and many of the other people that I'm around and people that I came to speak on behalf of, I, I do strongly oppose this. But I do think that regulations are a strong necessity, and that if it could be put into place, I think that it makes much more logical sense than a full-blown banning. That's all I have.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Thank you. Are there questions from the committee? I don't see any. Thank you for being here.

BROCK JONES: Thank you, my friends.

DeBOER: Next opponent testifier. Is there anyone else who would like to testify in opposition to this bill? All right. Neutral testimony we will now take. Anyone testifying in the neutral position? I don't see any. I will announce for the record that there are 32 letters, 13 in support, 19 in opposition. That will end our hearing on LB972, since Senator Lippincott waived his closing. And that will move us to LB892, with our own Senator Bosn. This is usually a good sign. All right. Let's start with the next hearing. Senator Bosn, welcome to your own Judiciary Committee.

BOSN: Thank you, Vice Chair and members of the Judiciary Committee. Good afternoon. For the record, my name is Carolyn Bosn. C-a-r-o-l-y-n B-o-s-n, and I represent District 25, which consists of southeast Lincoln, Lancaster County, including Bennett. LB892 updates the Nebraska Uniform Controlled Substances Act to conform to the state Controlled Substances Schedule-- to conform the state Controlled Substances Schedule to the federal Controlled Substances Schedule. Every time-- as was talked about earlier so some of this will be a repeat, but I wrote it before I got here-- the federal government makes updates to their Controlled Substance Schedule, the state of Nebraska also updates their schedule with a bill the following session, and that is LB892 this year. This bill will make updates to the Schedule I, Schedule III, and Schedule IV controlled substances. For clarification, Schedule I controlled substances currently have no accepted medical use in the United States, and a high potential for abuse. Schedules II, III, and IV also have a potential for abuse. This bill includes the outline of a synthetic opioid substance, as well as 3 other drugs. These are non FDA-approved drugs, which include designer or street drugs, which have no medicinal use. Xylazine has been added to the Schedule III update. It is not intended for human use. However, veterinarians do use it on animals. The Schedule IV update will remove Fenfluramine from the Schedule IV list. By way of comment, you should have received an amendment that I worked on. OK, so that's been passed around. I would like to thank the Nebraska Veterinary Medical Association for working with me on this amendment. You will hear a representative testifying, to share that we worked out the concerns that they had with this bill, specifically that it's used

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

to treat large animals, as-- livestock, as well as like zoo animals. And so if we outlawed it, we might create some issues there. I want to thank you all for your time and attention. And I'm happy to answer any questions. Haley Pertzborn, a-- from the Nebraska Pharmacists Association, will be following me. And she may have better answers to some of the detailed questions, if I cannot.

DeBOER: Thank you, Senator Bosn. Any questions from the committee? I should ask you just so you have to pronounce some of the things, but I won't.

BOSN: You can. I practiced before I got here.

DeBOER: Thank you, Senator Bosn. Let's have our first proponent. First proponent.

HALEY PERTZBORN: Members of the Judiciary Committee, my name is Haley Pertzborn, H-a-l-e-y P-e-r-t-z-b-o-r-n. I'm a licensed pharmacist and the executive fellow of the Nebraska Pharmacists Association. I won't mention-- we already know what this bill does, so I won't go over that. I'll start with Schedule I, page 6, line 22-- or 24, adds Metonitazene, which is a street drug that is opioid-like. Page 10, line 10 is a street drug similar to MDMA. It is also known as psychoactive bath salts. Page 20, line 16 adds Mesocarb, which is a street drug and a central nervous system stimulant. Page 20, line 18 adds a street drug structurally similar to methamphetamine and amphetamine. Going on to Schedule III. Page 26, line 18 adds Xylazine, which is only FDA-approved for use in animals, specifically large animals like horses, for sedation. The NPA does support the amendment the vets had brought forward. And Schedule IV, page 34, lines 9-13, removes Fenfluramine, per the DEA final rule. This drug is used for rare seizures. The Nebraska Pharmacists Association would respectfully request that the committee advance LB892 for consideration by the full Legislature. Thank you for your time. And I will be happy to answer any questions you may have.

DeBOER: Thank you so much. Are there any questions from the committee? I don't see any. Thank you so much.

HALEY PERTZBORN: Oh, easy enough. Thanks, guys.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: We'll take our next proponent testifier. Next person in favor of this bill. Seeing none, we'll switch to opponents. Is there anyone in opposition to this bill? I don't see any. Anyone in neutral capacity?

JESSIKA BENES: Good afternoon, Senators. My name is Jessika Benes, J-e-s-s-i-k-a B-e-n-e-s. I am a doctor of veterinary medicine and I own a mixed animal practice in Juniata. I'm here today on behalf of the Nebraska Veterinary Medical Association. We are providing neutral testimony today, because NVMA opposed LB892, as introduced, because of the restrictions that it placed on Xylazine. But the amendment removes our opposition and provides for access to Xylazine for legitimate veterinary uses. Our association would like to thank Senator Bosn, her staff, and the proponents of the bill for working with us on an amendment that addresses our concerns. Xylazine is an important prescription animal sedative used to facilitate safe medical evaluation, treatment, and surgical care of many species, and is critical when working with livestock, zoo, laboratory and wildlife species. In cattle, Xylazine is the only safe and effective sedative drug. Xylazine can be reversed in veterinary patients, which prevent secondary injuries and allows the animals to quickly and safely reenter the herd or the wild. Xylazine is an FDA-approved prescription animal drug that restrict-- that is restricted to use under the professional supervision of a licensed veterinarian, and can only be dispensed by or on the lawful order of a licensed veterinarian in the course of a veterinarians professional practice. This amendment strikes right balance of protecting communities from illicit Xylazine while maintaining crucial veterinary access. Thank you.

DeBOER: Thank you. Are there any questions from the committee? Senator Blood.

BLOOD: Thanks for coming forward. I just got a quick question for you. I grew up in that area. Where's your clinic located in Juniata?

JESSIKA BENES: So I actually have an ambulatory practice. So I go to people's homes and farms and see their animals at their location.

BLOOD: OK. Which is much needed in that area. All right. Thanks.

DeBOER: Thanks, Senator Blood. Other questions from the committee? Senator DeKay.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeKAY: Thank you, Senator DeBoer. The drug and I'm not going to try to pronounce it, is-- that can only be distributed by a licensed veterinarian. Or can you prescribe it and give it to an owner of livestock to use it on a farm or ranch themselves?

JESSIKA BENES: So it's, it's under the control of the veterinarian. And so because of its sedative nature, we would not just dispense a bottle for you to use on your farm or ranch. Certainly, if there's an animal condition, we would likely be there to administer it, because also, we want the reversal there. So if they become too sedate or there are health concerns, then we can do that reversal so that the animal will recover from sedation quicker.

DeKAY: Thank you.

DeBOER: Thank you, Senator DeKay. Any other questions? I don't see any. We'll take our next neutral testifier. Anyone else in the neutral capacity? Welcome.

BEN BURAS: Thank you. Yeah, I actually wanted to testify in opposition, but I guess I missed my window, so-- but I'll explain. Ben, B-e-n B-u-r-a-s. Last year, jurors in Florida-- so basically, John-- Johns Hopkins University awarded \$220 million-- was found to be-- the-- a jury awarded \$220 million to a 17-year old-plaintiff. This was featured in the Netflix documentary, Take Care of Maya. So the plaintiff was 10 and suffered from a chronic pain condition when her mother brought her into the hospital and told doctors she needed ketamine treatments, which are considered risky, especially for children. The girl had reportedly been given such treatment initially in Mexico, and the mother said it significantly improved her condition. Johns Hopkins Hospital staff considered her to have Munchausen by proxy syndrome. Basically, she was-- Johns Hopkins was convicted of false imprisonment because she was separated from her mother, who ended up committing suicide. And so I don't know, I don't understand why certain things are considered controlled substances. I know I have-- I was diagnosed with panic disorder in 2004, and Ativan is a controlled substance which has been useful to me in helping with panic attacks. So, I mean, if Johns Hopkins, a renowned university, lost a court case where the mother committed suicide and they were found guilty of false imprisonment because they-- she was denied, denied ketamine, and was accused of having Munchausen by proxy, so. Yeah, I guess I'm opposed to drug classifications in general. I mean,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

everybody's biology is different, so I don't see why, you know, one, one medication can affect somebody differently. And a lot of these are based on clinical trials which can affect people differently, so that's fine. I'm actually opposed, but I guess I missed the, the opposition window, so.

WAYNE: Thank you. Do you want me to put you down as opposition, or do you want to stay neutral?

BEN BURAS: Opposition, please.

WAYNE: OK.

BEN BURAS: Thank you.

WAYNE: No problem. Thank you. Any questions? Seeing none, thank you for being here.

BEN BURAS: Thank you.

WAYNE: Any other neutral testifiers? Seeing none, Senator Bosn, you are here to close? Waive closing. There are two letters, two in opposition, and one in support. OK, so before I close this hearing, there are-- hold on, hold on. There is an ADA comment of Lacy Smith in support.

***LACY SMITH:** Good afternoon Senators, I support LB892. Thank you, Lacy Smith, LD 21.

WAYNE: That is L-a-c-y S-m-i-t-h in support. And that'll close the hearing on LB892. We will now open the hearing on LB1167. Senators DeBoer.

DeBOER: Thank you, Senator Wayne, members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r. I'm here to bring before you LB1167. I have a very lovely introduction written, but I'm not going to read it because this is a matter that is really near and dear to me now. Apparently in all the years that I've been sitting in this Judiciary Committee and people have been saying something was going on in Nebraska, I heard that it was not, and I believed that. But, recently I discovered that it was. Here in Nebraska, we have people who are sitting in jail who were picked up on a warrantless arrest, who are sitting in jail, not charged for six weeks. I thought

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

that was insane. When it happened to, to a friend of mine, I assumed that within 48 hours they would be arraigned. When I couldn't figure out what their arraignment was going to be, we called around, and we eventually found out that their first appearance in court was set for six weeks later. And not only that, but that that was routinely happening in that county. As I've talked to others about this, I know many of you who I talked to were just as shocked as I was. This doesn't seem like the kind of thing that should be happening in Nebraska, or for that matter in America: that someone is sitting in jail, doesn't know what they're charged with. And they're sitting in jail, losing their job, their kids, their house, whatever, without even being charged. So, when I found out about that, I was-- we were still in bill introduction, so I brought a bill. And it seems to me that everybody would like to solve this problem, because I don't think anybody wants to be a place where we have people sitting in jail, can just be sent to jail without even being charged. And we can talk about the schedule bonds and-- the bond schedule, sorry, and how that was too expensive or whatever. That's a different question. Right now, let's solve one, one problem at a time. And the problem is, I think somebody ought to have a first appearance in front of a judge to be told why they're even there, to be told that they can have an attorney in a relatively short period of time. Now, I understand that there are exigencies in some counties in our state that say, maybe we can't do this in 48 hours. So I have written a bill that I think is relatively workable. I have an amendment that I meant to pass out before, sorry. I've been working with folks on this. But I guess my main thing to ask this committee is to help me solve this problem. We can all identify, I think, that this is a problem. And if it's a matter of we don't have enough judicial resources-- I don't think it is, but if that were the pro-- the situation, I would say, let's get more judicial resources, because I don't think we want to be a state where people-- where our counties-- I mean, this is a property tax [INAUDIBLE], right? Like, people who are sitting in jail are sitting in jail on the taxpayer's dime. If they're doing so, and eventually they're only charged with a misdemeanor that can't even go to jail, that's not one of the, the things that is envisioned by that crime. It doesn't make sense that we're housing them for weeks at a time. So probably should have read my introduction. I get that. But I'm very passionate about this. So what I have here is an amendment that says if you are put in jail because of a warrantless arrest-- not because there's a crime, they look for you, they find you-- but a warrantless arrest. This typically

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

would be something like a traffic stop where you're stopped for swerving in the lane or something like that, and they discover you have some other thing going on and you're still in custody. So this is not somebody who bonds out after, you know, a few hours, they're out of custody. This is somebody who's sitting in custody, and then folks said, OK, what about-- can the first appearance, which originally was an arraignment bill that says first appearance, because that understands that there are problems with binding over between district and county court. Fine. It says that the first appearance has to happen, I have now, within ten days because it can happen via video conference. So if you want to do video conference court, this amendment in front of you, envisions that that's a possibility. That will help with some of those small, small districts in the state. So if what I have here is not the answer, if there is something that needs to happen to solve this problem that is not what I have envisioned here, I would ask for you all to help me find the answer. And I am really appreciative of everyone who is going to testify in this hearing, both for and against this bill, or in neutral capacity, or whatever capacity they come. Because all I care about is finding a solution to this problem. So I'm happy to answer any questions you might have. I almost called on you.

WAYNE: Out of all the introductions I've heard you say, that was probably one of your better-- best ones, actually, because it came from you and from the heart. So I appreciate that. Any questions? Senator McKinney.

McKINNEY: Thank you, Chairman Wayne. Thank you, Senator DeBoer. I don't know, I'm just sitting here. How did you get to ten? And I ask this because somebody gets arrested on a warrant, and they sit for ten days and not charged or going to court, there could be a loss of job, loss of home, a loss of a lot of things. How did you get to ten days?

DeBOER: 100% honestly? I had 14 in the green copy because I thought, well, if you do-- only do court every other week in some counties, maybe that needs to be the case. Once we added in the video, video conferencing piece, I thought it should be shorter than that. I'm hearing that there are places that do them once a week. And so I want to give them three extra days. But you're right, it probably should be shorter. Frankly, frankly, I think it should be much shorter. But I said ten days to just try and-- I guess I was compromising with myself.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

McKINNEY: OK.

DeBOER: But you're, you're probably right. It should be shorter. I would hope that everyone in this state would want it to be shorter, because certainly we know in this committee that in ten days you're going to lose your job, you might lose your housing, you're going to lose your ability to pay for things. The number of problems that this will escalate in someone's life, maybe for the first time they've had any interaction with the judicial system, like my friend.

McKINNEY: Yeah. All right. Thank you.

WAYNE: So I don't like the word arrested. I don't like to use the word detained. I'm just giving you some I-- you said, if we can help with a solution--

DeBOER: Yeah.

WAYNE: --throw it out there. And I think 72 hours from detainment. We do that right now with juveniles across the state. And if we can do it for a juvenile, we can do it for somebody who has a job, who could lose their job. And so, the county attorneys and others would have to explain to me why 72 hours doesn't work. Because if it was somebody under 18, they would have to, if they detained them, within 72 hours have a court appearance. The other issue that would resolve-- and I can talk to you off the record, but just in case I forget this, the reason why I'm saying it. The other reason-- the other thing that it would resolve regarding detainment is it's unclear when an individual is arrested and the first appearance, if charges have been filed. So that's why if they're detained for 72 hours-- within 72 hours, they have to make their first court appearance. Because that would force the county attorneys to charge [INAUDIBLE] judge. That would be my only two suggestions, and that's all I got off the top of my head in listening to you talk. It just made me think about county attorneys. And within juvenile, they have to do 72 hours, so it isn't a foreign item to them in all these counties across the state. I don't know.

DeBOER: Well, that wasn't a question, but I'm going to answer anyway.

WAYNE: Go ahead.

DeBOER: I'm open to figuring out how we do this. If, if it-- if we have to use language about charging, I'm open to that. And I hope that

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

everyone who comes to talk could speak to that issue, speak to every issue about how we would do this, because, again, this is, this is not something that should be happening in America, much less Nebraska.

WAYNE: Thank you. Any other questions, comments, feedback? Seeing none, thank you. We'll start with proponents. Proponents. Except for Spike.

SPIKE EICKHOLT: Good afternoon, Chair Wayne and members of the committee. My name is Spike Eickholt, S-p-i-k-e. Last name is E-i-c-k-h-o-l-t, appearing on behalf of the Nebraska Criminal Defense Attorneys Association in support of the bill. And we want to thank Senator DeBoer for introducing the bill. This issue has been before the committee, even for some of the relatively newer members, in a variety of different forms. I think that our association is in support of bills looking at bond reform, we support bills try to do away with the bond schedule that exists. But what Senator DeBoer has is sort of elevated or isolated or illustrated is a problem that happens really in some parts of our state. And embarrassingly so. When Senator DeBoer mentioned this to me, I just sort of said yeah, that happens. I just sort of agreed to it. I'm not going to dispute it. At some point you sort of realize just how things are. I sent an email out early this morning to our members-- we have about 350 members-- asking them if they had any examples of this. And I've got a whole series of people emailing me back with case numbers and dates and so on. But what was really helpful was actually in Sarpy County, for whatever reason, my members there were sort of tracking this information. And that's what you've got here as an illustration. So this does happen, not just in, like, Dodge County, which I think is perhaps a county that a lot of members contact me about. There's one from Cherry County, one from Saline County. But actually one of our larger county, Sarpy County. And if you look at this one page breakdown, it has the case name, case number, the date that the person was incarcerated, which means the date that they were arrested, the date that the case was filed, which means when the charges were filed, and then it's got the date where they first appear in court. Now, the US Constitution, the US Supreme Court, essentially requires a state to-- if someone is arrested on a warrantless arrest, the person is entitled to have a bond set or a court to at least review the probable cause of that arrest. There's a case from 1991, County of Riverside v. McLaughlin, where the court essentially said that 48 hours is a fair standard. That does not necessarily mean you're going to be in front of the judge. That just

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

means when an officer pulls you over for a traffic stop, sees a crack pipe or a meth pipe in the car, does that field test, he's got a felony probable cause, they can arrest you and take you to the jail. At some point, the judge has to sort of sign off on that factual narrative, but that's not the same as you being in front of the judge. That's not the same as you being formally charged. So I think what Senator DeBoer has, has isolated here and illustrated is really a problem in this state, and I encourage the committee to look at some form-- I think what she's got is, it's a real reasonable process, and not only in the original bill, but also in the amendment. And I'll answer any questions if anyone has any.

WAYNE: Any questions from the committee?

BOSN: I have some questions.

WAYNE: Yes, Senator Bosn.

BOSN: Thank you. I had not seen this. So for those who probably aren't as familiar with these as some of us. "Date incarcerated" means the date they were arrested.

SPIKE EICKHOLT: Right.

Booked in. Case was filed. It doesn't really have any impact on their incarceration date. And date of first court appearance doesn't really have any impact on their first court date. It's whether they bonded or not.

SPIKE EICKHOLT: That's correct.

BOSN: And so does this include individuals who may be bonded starting with the first [INAUDIBLE] 6/14 or 6/6. You don't know the answer to that.

SPIKE EICKHOLT: I do. Because if you look at-- I can say the name, State v. Weaver and State v. Jackson, both of those defendants did bond during this time period. All others are either were in Sarpy County Jail or still are.

BOSN: Through this whole time.

SPIKE EICKHOLT: Through this whole time period.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

BOSN: OK. So that's what my question was. OK.

SPIKE EICKHOLT: I specifically asked that when I was contacted by my member in Sarpy County Public Defender's office. If this includes everyone, just the timeline? Because you are right. In my private practice, I'll have someone who's arrested, bond will be set, my client will make the bond. And I'm trying to negotiate with you or someone in your office about let's not charge high. Let's charge something different. Let's come back and talk about it for a few weeks. That's different than this. And it's different than what Senator DeBoer has in the amendment. We're talking about people detained on bond in jail.

BOSN: I see, that was important to clarify. Thank you.

WAYNE: What are the remedies?

SPIKE EICKHOLT: Well, I mean, our Supreme Court said you might be able to bring a habeas case if you can't make a bond. One other thing you got, you can file a bond review. One of them, one of them I emailed, and I had a back and forth with some of my members, they talk about cases in which someone was arrested, charged. Since they don't have their first court appearance, they're not necessarily appointed counsel.

WAYNE: That's right.

SPIKE EICKHOLT: The judge determines probable cause, so they-- and they set a bond. Right? But if you don't know how to file your own pro se request for a bond review, and contact whoever you need to contact if you were held in Saunders County Jail to be in Dodge County Court, to get that zoom set up, you're just gonna sit there until your next court date. Now, some of my members said, well, I had a guy that his family finally got some money together and hired me, and he'd been in the jail for 12 days. He'd been in the jail for three weeks. I had a couple of those scenarios. So the remedy is you sit there.

WAYNE: So explain that for those who are not in the legal world and who might be reading this transcript, the first appearance, what happens?

SPIKE EICKHOLT: Generally with the first appearance you're brought in there, they ask you, are you Spike Eickholt? Yes. OK. Mr. Eickholt,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

the prosecutor's going to tell you what the charges are. I want you to listen up. And they say, Senator Bosn charges you with disorderly conduct.

BOSN: Sounds about right.

SPIKE EICKHOLT: Resisting arrest. Obstructing government operations. The possible penalties are zero to a year in jail, up to \$1,000 fine, or both. The court usually will say, I'm going to enter a not guilty plea for you. Are you going to hire an attorney or can you afford to-- are you going to hire one, or do you want to ask for court-appointed counsel? And then if the person says, I can't afford one, I've been in jail for-- I can't even make my bond. Then the judge will ask them the questions, do you work? Do you own any property? Do you have any dependents? And the judge will find them indigent, and then appoint then the public defender, or a private lawyer that does the representation for that county.

WAYNE: So looking at a random list here, so if you're sitting for a month, that individual probably doesn't know that they-- well, they don't have counsel for that first month.

SPIKE EICKHOLT: Yeah.

WAYNE: So the only way for them to get in front of a court to request a bond reduction is to file themselves.

SPIKE EICKHOLT: That's right. File the request themselves. And the judges will do that, I remember-- sometimes you can get a bond set, and somebody will say, my family's going to hire a lawyer, and that doesn't happen, the family's done hiring lawyers, and they'll sit there for a while, and then they'll send a request. Admittedly, I practice mostly in Lancaster County, and I know that, Senator Bosn, this isn't really an issue. You got people in court pretty quickly, and if they didn't have a lawyer at the jail, they'll start calling around trying to get people a lawyer to get going on the case. But--

WAYNE: Yeah, ours are standard. We got-- If you get arrested, you're coming in within 48 hours. Maybe if it's a felony, you're coming in within 72 hours. But we have a court in the jail that we're doing it. This is alarming to-- Anyway, any other questions? Thank you. Maybe we need a class action attorney. Next proponent? I'm, I'm not going. Any

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

other proponent? Turning to opponents. Opponents. Anybody testifying in a neutral capacity?

BEN BURAS: Ben, B-e-n B-u-r-a-s. Yeah, I don't know the specifics of this bill. I didn't have a chance to read it. But I know-- I think the Nebraska Supreme Court has ruled that if you're arrested, you are seized. So that means a peace officer has to have a warrant or probable cause to handcuff you. And I was told that you can perform a citizen's arrest on somebody if they're violating the law, but you can't handcuff them. You can call 9-1-1, and you can hold them down, but you can't handcuff them. I've been incarcerated both in Douglas and Lancaster County. I was incarcerated for about six months in 2019 in Douglas County on a trespassing charge where the bond was set at \$100,000. So you're required to pay 10% to bond out, which would have been \$10,000. My vehicle was towed from a parking lot after I was arrested, and my dog was taken to the Humane Society, where they sent me a letter in the mail saying I had seven days to pick him up or find somebody to pick him up. So that didn't work. I know that's when the flooding was really bad, and, you know, they're putting-- they're putting three guys in two-man cells, so that's, you know, if it's-- if it's bean day, that's-- it's just extra farts that you have to smell, and. Yeah, for six months, occasionally I had to fight for my life. I was punched in the face. I know at Lancaster, the, the booking area-- the, the cells are really small, so some of them, the air doesn't circulate correctly, so it-- they don't-- some of them are too hot, so they're not actually removing heat. It's just circulating hot air. And then some other ones, you know, they'll, they'll put you in there with three other guys in a tiny little cell where somebody is sleeping on the toilet paper. So you don't even have soap or toilet paper if you need to go number two. And then they're using this ICSolutions where you have to say, United States of America three times the same way, just to, to verify your voice so that you can make a call, and you don't even get a free phone call anymore. So, I think we need to look at ICSolutions. And if it's a three day weekend, you're not going to see a judge until Tuesday. There's a-- there are a lot of, a lot of problems. That's why I'm testifying in the neutral.

WAYNE: Thank you. Any questions? Seeing none, as always, thank you for being here.

BEN BURAS: Thank you.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: Next neutral testifier. Welcome.

DAN ZIEG: Good afternoon, Chairperson Wayne. My name is Dan Zieg, D-a-n Z-i-e-g. I'm here on behalf of the Nebraska County Attorney Association. I had typed out some things I wanted to say, but about an hour before I came over here, I did receive Senator DeBoer's amendment, and that alleviated our concern about the need to distinguish between people who are in custody and people who are out of custody. So I deleted all that, started to type again, but after I sat here. I felt there may be a number of questions for me. And so before I open that up, we do want to thank Senator DeBoer, though, for bringing this bill. And we are sincere about that. We were somewhat shocked when we heard about this problem as well. I can't speak for all counties, but I can tell you that in Lancaster it's 48 hours and they're in there on a first appearance. We think the time-- I want to thank her for taking the time to listen to our concerns, and bring that amendment. With that, I will open myself up to questions.

WAYNE: Any questions from the committee?

BOSN: So many questions.

WAYNE: No, I mean-- you-- I know you-- I practice down here too, you guys do 48 hours? I don't know that I have a lot of questions about that, because I think it's good practice.

DAN ZIEG: If I may, can I address the question--

WAYNE: Sure.

DAN ZIEG: --you asked earlier about kind of the 72-hour rule? The one concern that may be out there is in some of the rural communities. Sometimes they have county court one day a week. And so if you implement that, we could get it charged, but there's no guarantee that we may have a judge that's available to hear that. And that shouldn't necessarily be pushed off on the defendant, saying, well, sorry, you have to sit because there's not a judge, but that is one thing that we did kind of identify that how we can do it in Lancaster could be quite a bit different than the way it's handled in, you know, Colfax or Cherry or a county level like that. I think that we are very much open to working towards improving this because, you know, certainly I

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

haven't seen the list, but it seems like there are some concerning things on there. But yeah, that's kind of an issue with the 72 hour.

WAYNE: No, I know we thought it was, we do it with juveniles right now, so it's, it's already in practice. And even in countries that are smaller, because if there's a juvenile, we still got to do it 72 hours. And then the second thought was with her amendment that allows for video conferencing, it's kind of-- I mean that's a lot of flexibility.

DAN ZIEG: I don't disagree. Just from what I've heard, some courts aren't as open to that as others. So I know-- you know, certainly in Lancaster and a lot of bigger counties like that is a fairly common thing. But I know I've had to drive out to even York County for a hearing one time. And that's not to, you know, to say you've got to do better or anything like that. But again, even we are somewhat at the mercy of what the court is willing to do.

WAYNE: I agree. I agree. Any questions? Seeing none, thank you for being here.

DAN ZIEG: Thank you.

WAYNE: Next neutral testifier. Seeing none, Senator DeBoer comes back up to close. We have two letters, one in support and one in opposition. Thank you. Go ahead, Senator DeBoer.

DeBOER: Thank you. So I was-- you might have seen me shaking over there. For some reason, this one's really near and dear to my heart. And it's not even about the person that I know, because I've just-- so many people have been coming to me with more people that this is happening about. It's one of those things where you think the world is one way and you discover that it's not, and it's just sort of shocking. So I will say, one of the things I forgot to mention before is if you're waiting for six weeks for your first appearance to get appointed your attorney, that means one side has six weeks-- the best six weeks for gathering information, the first six weeks after something has happened-- and the other side doesn't get to even start collecting information to put up their defense for six weeks because they don't have an attorney that's appointed till that point. I mean, memories are not as fresh after six weeks as they are the next day. I, I just, I find this insane. So, in case someone might be thinking, oh,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

these are just bad people; these are just people who've gotten in trouble with the law; these are just people that we should have in jail anyway. I mean, these are people whose-- this is their first interaction. This is part of the problem; it's their first interaction with the justice system, so they don't know they can-- how to get an attorney. They don't know what a bond hearing even is, or how to get their own bond hearing. So, there are a lot of these cases that end up being misdemeanors. So you got someone in there who's in a jail who did something that even if you can prove they did it, they wouldn't go to jail for. So that's the reason why I think this has upset me so much. But, you know, if we can make it a week, if that will work for all the counties-- I was trying to be as accommodating as possible so that we could do something so that there was at least some line in the sand on this issue for us, because I feel like we shouldn't be a place where you can just throw someone in jail and then forget about them for six weeks and not tell them why you're doing it. I-- that's-- I-- I'm sorry I'm not more eloquent about this. I'm sorry I'm shaking. I'm just upset.

WAYNE: I understand. Any questions from the committee? Seeing none. Thank you for being here. That'll close the hearing on LB1167. And next we'll open the hearing on LB1044. Senator McKinney, welcome to your Judiciary hearing.

McKINNEY: Ready?

WAYNE: Wait a second. You can start now. Go ahead, Senator McKinney.

McKINNEY: All right. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Terrell McKinney, T-e-r-r-e-l-l M-c-K-i-n-n-e-y. I represent District 11, which is in north Omaha. We're here to discuss LB1044, which creates a task force to study reparations for slavery and change permitted uses of taxes imposed on marijuana. LB1044 is a prelude to the possibility of reparations in Nebraska. The call for reparations, as in many other states, stems from historical injustices, injustices, injustices that Nebraska has its own unique set up. I know many would like to believe and not acknowledge Nebraska's role in the enslavement of Africans due to the transatlantic slave trade. But history indeed showcases there were enslaved Africans in Nebraska. Nebraska also benefited, benefited from being a member of the United States of America, which was built on the black-- on the backs of enslaved Africans. Enslaved Africans in

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Nebraska are a lesser known aspect of the state's history due to its geographic location and historical context. Nebraska's role in the institution of slavery primarily revolved around its status as a free territory, and later as a state after the passage of the Kansas-Nebraska Act in 1854, which allowed for popular sovereignty regarding the issue of slavery. Furthermore, I make the case for reparations, starting with the history and examples of slavery in Nebraska. The first black person in Nebraska was an explorer enslaved by the Spanish, who went by the name of Este-- Esteban, and he was also a Moor. After the U.S. made the Louisiana Purchase in 1803, it was legal to have slaves in Nebraska until 1861. Another enslaved African, York, who came to Nebraska with the Lewis and Clark Expedition in 1804. After that, there were enslaved people at Fort Lisa near, near present-day North Omaha during its existence from 1812 to 1820. Some antebellum Army officers in the Nebraska Territory were enslavers. They were at the Missouri encampment near North Omaha from 1819 to 1820, and the subsequent Fort Atkinson from 1820 to 1827, near present-day Fort Calhoun. There were enslaved people at Fort Kearny near, near Nebraska City from 1844 to 1848, and then when the base was moved to the present-day city of Kearney, there continued to be enslaved people there from 1848 to 1863. They were owned by officers at the fort who were assumed to be southern. Slavery there ended in 1861, when it became illegal in Nebraska. In the 1860 US census, census, there were several enslaved people at the second Fort Kearny. Bringing his family and at least five enslaved people to the territory in eight-- in early 1854, businessman Steven Nuckolls founded Nebraska City on July 10th, 1854. In 1855, a census recorded 13 enslaved people statewide, mostly in Nebraska City. According to the U.S. census in 1860, there were ten enslaved people in the territory and 71 free black people. However, counting the known enslaved people living in military forts in this territory, Nebraska had far more enslaved people than Kansas at the time. Early newspapers reported that in Omaha, nearly all federal officeholders were from the South, and they brought with them a Negro slave or two as servants. A Southerner named Edward K. [SIC] Harden was appointed as one of the United States judges for the territory, and came to Omaha in 1854, with his "colored body servant," as he stated, a euphemism for an enslaved person. As early as 1857, enslaved people in Nebraska became freedom seekers, escaping their kidnapers and enslavers. These people traveled to Iowa, Iowa, where slavery was illegal, and either stayed there or continued north and often to Canada. On December 5th, 1860, despite a law

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

against it, Otoe County Sheriff -- an Otoe County Sheriff auctioned two enslaved people called Uncle Hercules and Martha or Aunt Dinah in front of the county courthouse in Nebraska. They were owned by Judge Holly, who fell behind on payments on a credit, and the sheriff seized his property. Auctioning enslaved people there were taken to the-- to Missouri to continue their captivity. There were no repercussions for this public sale, which was technically illegal at the time. It was 1861 before the Nebraska Territorial Legislature voted to make slavery illegal. President Abraham Lincoln made the Emancipation Proclamation in 1863 to free all enslaved people in the United States, and two years later, the 11 rebel states were forced to do the same by losing the Civil War. But it took six years for Nebraska to become an anti-slave state. Before that, there were no fewer than ten votes on anti-slavery legislation that passed in the territory. Here's a quote. But the fact is undisputable African slavery does practically exist in Nebraska. Our eyes cannot deceive us. And if slavery is wrong morally, socially and politically, it is wrong to hold one slave. There is no distinction in principle to hold one human being in bondage and 10,000. This was from William H. Taylor, a legislature-- a legislator from Otoe County in 1855. Then we talk about history after that. We have the Omaha race riot in 1919 that erupted due to Will Brown being falsely accused of assaulting a white woman. He was killed by the mob in front of the courthouse and burned-- and burned alive. The effects of this mental trauma for black residents still affects the community today. And just recently, there was a marker put up outside the courthouse. Riots after the death of Vivian Strong in Omaha in 1969 due to a policeman killing her unjustly and not being held accountable. The result was north Oma-- was a lot of damage and north Omaha has yet to recover. And until recently, the Legislature stepped up to help with economic recovery in north Omaha. Still, that investment went to nonprofit development, contrary to the vision and intent of the legislation. So it's still not helping the people who are righting the wrongs. Then we think about redlining and segregation. Like many other American cities, Omaha experienced redlining, racial segregation in housing, education, and employment opportunities throughout the 20th century. For example, the Interstate highway ran through North Omaha and destroyed the community. And as a result, it, it divided the community and lowered home ownership, depleting the overall wealth of the community. Then we have discriminatory, discriminatory practices, and systematic racism in education, including unequal access to quality education in segregated

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

schools for African American and even Native American children in the state. To date, if you reside in North Omaha, it's a good chance that the educational outcomes for your children would be the worst in the state, and it's been that way for over three decades. And then we have mass incarceration. Black Nebraskans are disproportionately represented in the, in the adult and juvenile criminal justice systems in Nebraska, resulting in two jails, one that was recently built for juveniles in downtown Omaha that will house a majority of black kids, and one for adults that is set to be constructed that will house a majority of black-- a disproportionate amount of black individuals. It is an unarguable fact that in Nebraska, a systematic depression and racial inequalities impact the communities in various ways, including disparities in education access and outcomes, and in employment, access to health care, and in the criminal justice system. These issues can manifest in unequal funding for schools, higher unemployment rates among minority populations, limited access to quality health care services, racial profiling by law enforcement, and even housing segregation practices. These are just a few examples, but they highlight the broader pattern of racial injustice that has affected black communities in the state. Through the study of potential reparations, we will address the past wrongs, and create a more equitable, equitable society by providing restitution, acknowledgment, and redress for the harms inflicted on marginalized and disenfranchised communities. Addressing these challenges requires a comprehensive effort to promote equity and inclusion across all sectors of society. A task force for reparations is necessary to thoroughly examine the historical, social, and economic implications of reparations, and to propose fair and effective strategies for past injustices and inequalities. It would allow for a comprehensive understanding of the complexities involved, and help ensure that any reparations initiatives are well informed and justly implemented. I know some have questions about the marijuana tax stamp. The uses of the marijuana tax stamp to fund the task force is due to, in my opinion, the disproportionate amount of black people who have been and continue to be targeted due to racial discrimination in policing, and the over-incarceration of individuals in this state that are black due to marijuana possession, although compared to our white counterparts, usage is not that much different. In the last three years, Nebraska has collected over \$1.4 million in revenue generated from marijuana, a controlled substance, and it's not even legal. But we collect revenue yearly on a drug that's not illegal [SIC], which is crazy. And I just

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

believe if we're collecting money for it, then it should be put to use to help right wrongs of the past. In conclusion, today I sit before you to emphasize the critical need for, for a reparations task force in the state of Nebraska. Acknowledging historical injustices is not only a moral imperative, but a-- but a also a crucial step towards fostering a more equitable society. Establishing a task force dedicated to reparations will allow us to confront the past and not run from it. The lega-- the legacy of systematic oppression and work towards a future where-- can work towards a future where we have a more equitable opportunity to thrive and live the good life. And it's time to take a meaningful action to ensure that for all citizens. And I welcome any questions.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you. First proponent. Welcome.

JOY KATHURIMA: Thank you. [INAUDIBLE]. Sorry. Good afternoon, Chairman Wayne and members of the Judiciary Committee. My name is Joy Kathurima, J-o-y K-a-t-h-u-r-i-m as in Mary, -a. I'm Legal and Policy Counsel at the ACLU of Nebraska, and I'm here in support of LB1044. LB1044 would create a task force to study and develop reparation proposals for African-Americans. This bill seeks to understand the implications of chattel slavery and continuing negative effects on African Americans who are descendants of enslaved people. The legacy of slavery is embedded in systemic racism, economic disparities, and social inequalities that continue to affect African Americans disproportionately. LB1044 will help ensure that a targeted and comprehensive reparations program is created that would provide much-needed resources to empower African Amer-- African American communities, foster economic stability and generational progress, and address a grave historical injustice. We thank Senator McKinney for introducing LB1044 and urge the committee to advance LB1044 to General File. Thank you, and I'm happy to answer any questions.

WAYNE: Any questions from the committee? Seeing none, thank you. Next proponent? Next proponent? First opponent? First opponent? Anybody testifying in a neutral capacity? Welcome.

BILL HAWKINS: Chairman Wayne, members of the Judiciary Committee. My name is Bill Hawkins, B-i-l-l H-a-w-k-i-n-s. I'm coming and testifying with the Nebraska Hemp Company, which is a nonprofit's been working here in the capital to educate people on reforming unjust cannabis

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

laws. So I fully support and thank Senator McKinney and his staff for the historic representation of what I would say the nation, and-- the United States, the world, and Nebraska should be addressing is years and years of oppression with this minority group. Because I represent cannabis, the prohibition of cannabis, the term marijuana is a derogatory, racist, prohibition-era term that was used to demonize that plant, and to control the black and brown and poor minority communities in this country. And it has continued to this day. I greatly appreciate Senator DeBoer's warrant issue. It is a real issue in here. We need to build a new county sheriff's jail. We need to build a new prison. We keep putting people in prison instead of treating the issue. They're not criminals. And so with this task force, I think it is something that Nebraska needs to step up and do. In funding for it, I would highly recommend, as Senator McKinney already has, a tax-and-regulate cannabis bill. That this Legislature look at a tax-and-regulate cannabis system where we have a social equity problem-- issue that addresses the minority communities that the prohibition of cannabis has created. So, again, I, I think that this proposal of a task force is very important, and it's something that Nebraska needs to look at. And so I thank you very much for your time. And I would have be happy, happy to take any questions.

WAYNE: Any questions from the committee? Seeing none, thank you being here.

BILL HAWKINS: Thank you.

WAYNE: Any other neutral testifiers? Senator McKinney to close. And while he closes, we have, 56 letters of-- 56 letters, 4 in support, 52 in opposition, and one comment by Lacy Smith, L-a-c-y S-m-i-t-h in support.

***LACY SMITH:** Good afternoon Senators, I support this bill. Lacy Smith LD 21.

McKINNEY: Thank you, Chair Wayne and members of the Judiciary Committee. I decided to bring this bill because I think it's a conversation that we should have. We're living in a society where we're banning books, and we're trying to ban the teaching of actual history of the United States and the state of Nebraska. Enslaved Africans were brought to the America-- brought to the Americas because there were also enslaved Africans in South America involuntarily. And

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

then when they were emancipated, they were giving nothing. They were used for years for free labor to build this country, and they were never given anything. They were continued to be brutalized and treated unjustly. There was a lot of laws created to try to control them. You know, the police come from slave catchers. And, and, and I could go all day, but the reality is that until America, until the state of Nebraska, quite frankly, decides to step up and actually face the reality and look at history for what it is, I don't know if this country could ever be great, and I don't know if we could ever obtain the good life if we don't try to right the wrongs of the past. And I know-- I know some people say, oh, I wasn't alive or my parents wasn't alive, but what they fail to realize is what happened then, a lot of people are still benefiting from today. And just because you weren't a part of it doesn't mean that we shouldn't find a way to right the wrongs and do better as a society. You know, there's people that's riding in cars with people today, not, you know, having a gun on them and being charged with crimes. And it's just-- and I read the comments online. Honestly, I wish those people showed up and not hide behind, the keyboards and actually come, come in front of the public and say how they feel. If you feel that way, why, why are you hiding? You know, and that's just it. And I know we shouldn't have props, but I wanted to suggest, you know, the 1619 Project for those who think I'm lying and I'm crazy and I'm an extremist, and we should forget the past and ignore it. This kind of like those who are on those comments that said, oh, I think slavery was bad, but we shouldn't figure out a way to rec-- get some reconciliation from it. It's the same people that say, I'm not racist, but I got a black family member. To me, that's the same person. So I thank the committee for the time. I wish the opposition showed up and I wish more people showed up to support as well. But I'll leave it there. Thank you.

WAYNE: Thank you. Any questions from the committee? I'll talk to you off-line about it. Thank you. And that will close the hearing on LB1044. And we will-- What's next? We'll take a 45 minute break-- no, I'm joking [LAUGHTER]. Next up is LB999, Senator Ibach. We'll let people clear out a little bit or move around. Maybe not. All right, we're gonna open the hearing on LB999. Go ahead.

IBACH: Ready. Thank you, Chairman Wayne. So good afternoon, Chairman Wayne and fellow members of the Judiciary Committee. My name is Senator Teresa Ibach, I-b-a-c-h, and I'm here presenting LB999 for your consideration. Before I begin with the introduction of LB999, I

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

would like to offer a very brief history of the Hemp Farming Act in Nebraska. In 2018, the United States Congress passed the Farm Bill, which opened the door for states to implement their own industrial hemp programs based upon the USDA guidelines. In 2019, the Nebraska Legislature passed LB657, introduced by our own Senator Wayne, on a vote of 43 to 4. After being signed into law, Nebraska adopted the Nebraska Hemp Farming Act. According to the statement of intent, LB657 was to permit the growth and cultivation of industrial hemp in Nebraska to be processed into products such as decking, twine, fiber, fabric, and animal bedding. LB999 seeks to achieve two goals. First, LB999 amends the Nebraska Hemp Farming Act to cede regulatory authority back to the United States Department of Agriculture, or the USDA. This shift would affect approximately 30 producers today. While I have handed out the list explaining the benefits to hemp farmers if the regulatory authority is shifted back to the federal government, I'd like to go over just a couple of these major points. First of all, the application and site registration fees are eliminated. Currently, the applicant-- application fee here in Nebraska is \$150 per producer, \$600 per cultivator site, and \$1,200 per processor-handler site. Second, the harvest window is increased from 15 days to 30 days post sampling. Third, the compliance negligence violation thresh-- threshold would be increased from 0.5% THC to 1% total THC. Fourth, the crop testing above the compliance threshold for crop-- for crops testing above the compliance threshold, the crops would be eligible for remediation and retesting rather than the current mandatory destruction of the crop. Fifth, the license term would be increased to three years rather than the current calendar year license. And lastly, licensees have greater flexibility in testing, instead of being limited to just one laboratory. Until the authority is ceded back to the USDA, the Nebraska Department of Agriculture will continue to facilitate the program until the operative date of this bill. If this bill passes, the Director of Agriculture will send a formal letter to the federal government which would rescind the state hemp plan. After this plan is rescinded, hemp producers in Nebraska may apply for a license to produce hemp under the USDA and NDA staff, and they will assist these producers through the transition process. To me, moving regulatory authority from the Nebraska Department of Agriculture to the USDA makes perfect sense. In this case, federal regulations are actually less burdensome than state regulations, and the ceding of this regulatory authority will actually benefit the industry. I have distributed a letter from Director of Agriculture Sherry Vinton,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

further explaining the benefits of USDA's oversight and the department's supportive-- support of this move. Secondly, as drafted, LB999 would clarify that CBD and other products which contain any amount or concentration of THC, or any isomers, acids, salts, and salts of isomers of THC would be prohibited. The intent of this was to make it clear that products which contain Delta-8 and similar derivatives from hemp are illegal. After bill introduction, it was determined that this language was too restrictive, as some true hemp products, which could contain a very small trace of THC, would be illegal. I have drafted and presented for your consideration AM2198. I fully expect additional changes may be needed, but AM2198 is based upon feedback that I received in my office regarding this. AM2198 is based upon a New York state of cannabis management regulations adopted last November, prohibiting the sale of products we are seeking to eliminate. If adopted, AM2198 would allow the sale of CBD products which do not contain synthetic cannabinoids. As defined, a synthetic cannabinoid means any synthetic cannabinoid and artificially-derived cannabinoid, Delta-8 THC, or Delta-10 THC, created through isomer-- isomerization. T-- OK, here's the chemist in me, not in me-- tetrahydrocannabin-- tetrahydrocannabiphorol, which I practiced; hexahydrocannabinol; or Delta-9 THC made in the extraction of manufacturing of any cannabinoid product. While Delta-8 and Delta-10 THC does naturally occur in hemp products, the amount in the plant is such a minuscule amount, an isomerization process is needed to artificially transform other molecules into the Delta-8 or Delta-10 molecule. If not for this isomerization process, it wouldn't be economical to produce these products. In researching how the isomerization process occurs, Hemp and Barrel-- which is a producer in North Carolina-- explains this process best. First, CBD is extracted from the hemp plant by using a solvent such as carbon dioxide or ethanol. After CBD has been extracted, the molecular structure of the compound is rearranged into Delta-8 by using a chemical reaction using an acid or a metal catalyst. The website explains that there are several methods of isomerization-- isomerizing CBD. But the most common one uses-- involves using an acidic catalyst such as hydrochloric acid. After this, the final step is to refine and purify the extract to remove any unwanted substances. This producer also says that the process of making Delta-8 THC can be hazardous if proper-- if proper safety precautions are not taken due to the use of flammable solvents and other chemicals, which can create risk of a fire or explosion if not handled correctly. In addition, NORML, N-O-R-M-L,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

which is a pro-marijuana group, warns that Delta-8 substances have not been studied enough in humans, stating, quote, little is known about its long-term safety, its consumption at high dosages, and its medicinal effects, unquote. And that, quote, Delta-8 THC extracts often contain high levels of Delta-9 THC, which is hard to separate out, end quote. And that, quote, the chemical conversion process can produce high levels of other impurities, especially in products derived from CBD, end quote. They also warn that most Delta-8 THC products are manufactured from hemp-derived CBD, and sold through unregulated gray market sources like convenience stores, smoke shops, and gas stations. These products are not reliably tested and have been found to contain many impurities. And in bold on this NORML website, it says: NORML, therefore, strongly advises consumers to obtain Delta-8 THC products only from state-regulated cannabis manufactured, not from unregulated hemp market. While Nebraska regulates hemp production, we do not have a regulated hemp market. Nebraska does not have state-regulated cannabis dispensaries. And these products, being sold to people of all ages, are not subject to state-regulated testing and purity requirements. As such, consumers do not necessarily know what is actually in these products that they are consuming. While a product could be advertised as Delta-8 or Delta-10, these products could and most likely do, contain chemicals, compounds, and other impurities that are not listed on the label. I have also provided you printouts of these websites for your review. Prohibitions on these derivatives are not new. There are 17 states which have banned Delta-8 THC products, and those are: Alaska, Colorado, Delaware, Idaho, Massachusetts, Mississippi, Montana, Nevada, New York, North Dakota, Oregon, Utah, Rhode Island, Vermont, Washington, and West Virginia. Seven other states severely limit this product, and those are Iowa, Kansas, Louisiana, Michigan, Minnesota, New Hampshire, and Virginia. How these products are banned or restricted, restricted depends on the state, but this is a national issue, and efforts are underway around the nation to fix this perceived loophole in the 2018 Farm Bill. I've spoken with numerous state senators, both current and former, and when the 2019 legislation originally passed-- which many of you that are here today were here-- the idea was to allow for production of industrial hemp in Nebraska, an alternative crop for farmers. None of those who I spoke to had the faintest idea that a result of this legislation would result in the proliferation of products, such as the ones I've mentioned. As I indicated earlier, a vast-- LB999 will give the Legislature the ability to rectify this loophole, which few, if

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

any, saw coming. Testifiers following me will be able to further explain the, the need for LB999. Since I do not have a chemistry background, and I do not have a legal background, I hope you will reserve your scientific questions, should you have any, to those who follow me. Otherwise, I want to thank you for your time, and I truly appreciate your consideration of LB999.

WAYNE: Thank you. Any questions from the committee? Senator DeBoer.

DeBOER: Thank you. So I also-- chemistry was not my-- was actually my least good class maybe in all of my years of classes. So you said a lot of words that had multi-syllable chemistry things, and my brain, kind of-- what are you trying to get done here? Do you want CBD cream that my mom uses on her knee to be gone?

IBACH: My mom uses it too. And when I told her that I was bringing this bill, she said, please don't get rid of CBD lotion. And so that is not the intent. Anything that is legal under, under the law, I do not want to compromise. I think what we're-- our intention is to take any illegal products that are, that are processed using chemical or using chemical processes to not be allowed on the market.

DeBOER: But if-- that's, that's, somewhat confusing to me. Because if it's illegal, why do we need a law to make it illegal?

IBACH: Well, I think by giving the hemp program-- first of all, the first goal which I outlined is to give the hemp program back to USDA.

DeBOER: OK.

IBACH: Fewer restrictions, and that accomplishes the goal. Currently, the Department of Ag doesn't even make enough money off of the fees to cover a full time person to monitor it. So, so in their mind and in my mind, it makes perfect sense for USDA to regulate the program, which they do across the United States. The second part of it is, hemp is being processed into products that are harmful by using harmful chemicals and harmful production practices. And I don't think that-- because there's no labeling, and I, I use that loosely because the labeling is so loose, we don't know what process some of the products are-- that are on the market right now in the dispensaries. We don't know what processes were used. We don't know what chemicals were used. And those are harmful to people. So I, I realize that-- I mean CBD is

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

a legal crop, and I don't want to take away from farmers that produce it legally. And I have a, a gentleman from western Nebraska that produces decking and twine, and I don't want to do anything which the original bill intended. I just-- I think there's a separation between legal production and harmful production.

DeBOER: OK.

WAYNE: Any other questions? Senator McKinney.

McKINNEY: Thank you. And this is similar to the question I asked earlier. If we want to limit harmful substances, why don't we also limit alcohol?

IBACH: I-- and like we discussed earlier, I think that's interpretation. And I think those are laws that are already on the books that we allow. And so I, I completely understand your question and I, I understand that perspective because in many instances alcohol is addictive or there are addictive devices out there.

McKINNEY: Yeah. And when you say "interpretation," I think it could be interpreted for, for some people that some of these substances are, are helpful. And it helps them sleep at night, deal with pain and not having to use prescription drugs and those type of things. So I'm not saying that it can't cause harm or people have, have not been harmed, but I think-- we-- and this is not-- this is not you, but I think-- what I-- what always kind of, like, rack my brain in this place is that I feel like there's like a selection process of what, what harmful things should we allow, or what harmful things we shouldn't. And it's kind of confusing, because many people could probably make a strong argument that alcohol does more harm on society than anything that's illegal. But we don't prohibit it, because it was prohibited it created a black market and all these other things. And because of that, it's not illegal. But there is things that have black markers that are illegal still that we refuse to legalize. So-- and it's not you, it's just confusion.

IBACH: I think some of the testimony that follows me will explain some of that and speak to your concern.

McKINNEY: All right. Thank you.

IBACH: Thank you. [KNOCKING SOUND]

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: Any other questions? Fucking knock.

BOSN: Come in. [KNOCKING SOUND]

WAYNE: I don't know why they knock. I'm stopping to see what's going on. Didn't know if I ought to call Brewer down here or not. Any other questions? Seeing none, thank you for being here.

IBACH: Thank you.

WAYNE: Normally we don't do this, but our Attorney General is up next. Y'all know if he's a proponent, so. Welcome to your Judiciary. I've been waiting for this cross-examination for two years.

MIKE HILGERS: Thank you. Chairman Wayne, members of the Judiciary Committee. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s . I currently serve as Nebraska's Attorney General. I'm here in support of LB999. I want to thank Senator Ibach for bringing the bill. I look forward to hopefully a robust conversation today. I think I only have three minutes. Is that right, Chairman Wayne?

WAYNE: Yes. Two-- 2:10.

MIKE HILGERS: 2:10 now. All right. So, let me, let me sort of take big-picture. There's probably three aspects of this bill. The first aspect of this bill is what Senator Ibach described, taking the regulatory structure from the state to the federal government. That's one piece. The second piece, I think, is preserving the core of what we-- I voted for in the Legislature from Senator Wayne's bill protecting hemp as a commodity with all these non-psychoactive drugs as products, as well as things like CBD, or other things that we discussed at the time when the legisla-- when the bill was passed. That-- we want to preserve that. The extent of the bill, by the way, doesn't quite do that. Senator Ibach alluded to an amendment she brought. Certainly any changes that preserve that core, I'd be supportive of. The third piece is to ensure that what is already legal under the bill, things we never-- this Legislature or that Legislature-- never intended or did by the letter of the law, legalize what you might consider to be sort of recreational THC, or what I'll talk about as synthetic cannanib-- cannabinoids. It's hard for me to say. I'll refer to that as Delta-8, and that includes a lot of different things. It includes Delta-6, it includes Delta-10, it

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

includes things like THC-JD, THCP, all sorts of different compounds, some we know of, some we don't, none of which have been tested in any form. In many cases, though, those do exist naturally in hemp, but at such minuscule levels that they're not psychotropic. So it might tell-- our experts tell us it could take tens of thousands of pounds of hemp to extract enough Delta-8 to make one lollipop a psychotropic. So the original bill did not legalize those, they're not legal. But they're being sold, and so you might ask-- as you did, Senator DeBoer-- why do we need a bill to see-- I'm already at a minute. Well, why do we need a bill to legalize-- or make illegal what is already illegal? Well, our office started investigating when I-- shortly after I took office, we started investigating. And it's very clear that there are-- there are, across the state of Nebraska, a number of stores that are selling products that are clearly legal-- illegal. And, they're making, I think, a number of mistaken assumptions about the law, and they're making a little bit of a bet that authorities like my office or others won't be able to tab the time, the energy, or the money to go to enforce the law as it exists on the books. And so what we're asking as part of this legislation is to make clear to those, those, those individuals that, no, we-- it was never legalized. The bill didn't legalize these types of products, these synthetic products. And, and so, otherwise the option for us is to continue our litigation strategy. There's a lot that I've got to unpack. I only have maybe 30 seconds left, Madam Clerk, is that about right? So I'll stop there. And, I'm happy to answer any questions that the committee might have.

WAYNE: Any questions from the committee? We'll start with Senator Bosn to my far right.

BOSN: The audience laughed. Thank you, Attorney General Hilgers. So to kind of piggyback on that, since I wasn't here and you were and the Chairman was when this bill initially passed, did anyone ever come in and testify that they were looking to sell this as a product for purposes of lollipops, chips, things of that nature.

MIKE HILGERS: The psychoac-- Thank you, Senator Bosn. This sort of synthetic psychoactive series of THC or canna-- cannabinoids? Absolutely not. And had they, had they done so-- because, by the way, this stuff is worse than even recreational marijuana. And had they done so, I don't believe it would have gotten anywhere near pass-- it passed with what, about 45 votes? No, that never, that never came up.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

It didn't come up on the floor. The purpose of this, the bill and the language, most importantly-- the language, but then also the testimony, also the, the argument on the floor was all about creating a commodity, a market for hemp as a commodity, which I support and still do.

BOSN: And so my second question is, one of the things you talked about was Delta-8. I think you said Delta-6. Is there a reason we're doing it this way instead of just regulating or making illegal Delta-8 or Delta-6.

MIKE HILGERS: What was-- that's a good-- thank you, Senator Bosn. So these are currently illegal. We-- but there are so many different-- the way we're doing it in the bill is to ensure that all of these various-- that it's clear to those who would sell it that all of these THC-based-- synthetic-THC based products are illegal. Because that-- unfortunately, what we're seeing is that's not the case. We, we Investigated and we purchased and test about 150 different products over about a four month period, which ultimately led to ten different lawsuits being filed across the state of Nebraska. We found, just to give you a flavor of what we found, about 85% of the products we found were mislabeled. To give you a sense of the harm that just Delta-8 can do, 2 to 3mg of Delta-8 can send a child to the hospital. We found products that said they didn't have Delta-8 in them, or low levels of Delta-8 that had hundreds of milligrams, in some cases almost 800 milligrams of Delta-8. We-- after we started our investigation, and since we filed those lawsuits in October, we have, we've received reports of children in various counties in Nebraska, including Lancaster, Lincoln, Cuming, and Hall going to the hospital because of these products. We know, and I've got stories from, from people who've contacted our office about the, the harm that these products have caused, have caused them. So we-- the, the, the-- it's not just Delta-8, I think that's the focus. But to your question, it is Delta-6, Delta-JD or Delta-- I'm sorry, TCHp is approximate-- early reports are it's approximately 30 times more potent than Delta-9. Delta-9 of course is what is the active ingredient in marijuana. Psychoactive, psychoactive ingredient in marijuana.

BOSN: So a follow up question based on some of the things that you said, 95% were mislabeled children and--

MIKE HILGERS: Eighty-five. I'm sorry.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

BOSN: Eighty-five, I'm, I'm sorry, I wrote it down wrong then. You had several reports of kids in counties across Nebraska overdosing. I asked a testifier earlier this today: is there any regulation on the sale of this product to children?

MIKE HILGERS: There is, there is none. Absolutely not today. And of course, it is illegal. And I wouldn't support regulation on these types of products. You look at, though, to Senator McKinney, I mean, you have your line of questioning on these different bills, I think is, is right on. And I would say I don't know how to do it for all products. Alcohol-- in the context of alcohol, we had a constitutional amendment, a debate on it. But on this one I would say, can we weigh the, the pros and cons? Well, there's no evidence of any, of any pro of this-- of-- not CBD; I want to make sure I'm not conflating these things. Of these Delta-8 products. And Senator Blood's not here, but she asked a question earlier about, you know, studies that are paid for by industry. I'm not aware of even a study that exists at all on Delta-8 that is paid for by industry or otherwise that suggests that it's helpful for people. We know people have died from use, with at least as Delta-8 being a factor. That Federal Adverse Events Reporting System reports 183 adverse events in their system over about a year period. 22 of those are deaths, and of those 22, two only listed Delta-8 as a cofactor. We know that there have been thousands of reports to the National Poison Control Center. And on the other side of it, what's the benefit? There's, there's no, there's no study, there's no suggestion that there is any benefit from these particular products.

BOSN: Thank you.

WAYNE: Senator McKinney.

McKINNEY: Thank you. And thank you, Attorney General Hilgers. You mentioned that you filed a series of lawsuits last year. Do you plan to file more? Or are you considering it?

MIKE HILGERS: That's a great question, Senator McKinney, thank you. So we filed the ten in October. We did more investi-- we investigated a number of other stores, and unfortunately none of them, by the way-- every store we went to had problems with what they were selling. We thought that we had basically two paths. One was to go down a litigation path, which we're prepared to do. We're prepared-- we've,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

we've hired the experts, we paid the money to do the testing, we have the facts to be able to show these are synthetic, not under the bill. But we realize, hey, you know what? The Legislature never intended to do this. It didn't do this. It didn't legalize it. So let's go-- but let's go back and let's see if it is-- if, if there is some mistaken assumption in the industry that, hey, they, they thought that this was legal. Let's just make clear that, hey, no, we never legalized this. And then maybe we wouldn't have to do the lawsuits. So if the bill passes, we would hope that there wouldn't be any need for any further lawsuits because people would comply with the law. If the bill doesn't pass, Senator McKinney, we will absolutely proceed with the lawsuits that we have filed, and we will file more.

McKINNEY: So if it doesn't pass, is that an assumption that the Legislature deems it not as-- not illegal?

MIKE HILGERS: No, I don't think so. I think that the legislative intent that would matter is the bill that was passed a couple of years ago. It very well-- I don't, I don't think there's a doctrine that would sug-- that you could infer that because the Legislature didn't pass this, that meant that this Legislature had a chance to make it illegal and decided not to, therefore it's legal, I think that's maybe your argument. Because what I'm saying is the option is either the Legislature determines, yeah, we'll make it clear and hopefully everyone will follow the law so that the Attorney General doesn't have to go file these lawsuits. But if the Legislature doesn't pass it, maybe the Legislature is just like, yeah, we'd actually rather see this be a multi-year, very costly process.

McKINNEY: And all of the stores that you investigated, how easy was it for a kid to go inside and purchase any of these products?

MIKE HILGERS: It's a, it's a good question. To be-- so our investigators were all adults, so none of our folks were kids. We didn't use the children or underage to purchase. So I don't have direct evidence of a child or underage, from our investigation, purchasing. But to answer your question, here's what I do know. I do know that, there were-- none of the stores we had had any, any age verification, any ID checks of any kind. I do know, as I mentioned to Senator Bosn, that there are number of young children that are being-- that have taken this, have gone to the hospital. I also know-- again, anecdotal-- I don't know of any store that does ID checks on this, not

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

to-- I haven't checked them all, so maybe they do. But I also know as of just a couple days ago we received yet another report of an underage individual-- and I want to be protective of their privacy-- who had a psychotic break after taking this, this material underage, had a punch card to a particular shop where it was very clear they, they were like a frequent customer, and was in the hospital for several days and they think it's-- the, the kid is in a pretty bad way.

McKINNEY: How many reports a year do you get about negative, negative or adverse effects from the consumption of alcohol?

MIKE HILGERS: Oh.

McKINNEY: Adults and kids.

MIKE HILGERS: Tens of thou-- meaning how many, how many deaths are there for DWIs? How many domestic violence cases are there? A lot. More than Delta-8, certainly.

McKINNEY: What-- so what's the benefit of keeping alcohol legalized?

MIKE HILGERS: Well, I'd say two things, Senator McKinney. One, I think in some ways alcohol-- because they put it in the Constitution to prohibit it. And then, that-- they realized that didn't work and repealed the prohibition, I think in some ways, alcohol does sit on a, on a, on a, on its own. But at the same time, it's a question I struggle with. And I might flip the question and say, if we see drugs like this causing so much harm-- and by the way, we also know that this, that we see cases of people taking Delta-8 and having psychotic breaks. I mean, I've got evidence here in front of me on that. Would we not then maybe be more careful to open up the Pandora's box on these other drugs? I mean, look at Oregon. Oregon actually did-- went all the way; they, they have passed a bill to legalize all sorts of drugs, I think LSD, maybe heroin. And they're looking to repeal it. So I think alcohol is a great piece of this conversation. But I might take a different, I'd take a different inference from that, from the fact that alcohol is legal and say, maybe we ought to be more careful about these.

McKINNEY: All right. Thank you.

WAYNE: Senator DeBoer.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Thank you. Attorney General Hilgers, I think that's the first time I've officially addressed you as such. I, I'm still like wondering if it's already illegal, why we're doing something to make it illegal. So that's the premise. Why would you not just do some sort of, like, elaborate, you know, educational campaign to go out there to, you know, send information to the folks that you think are distributing something that they shouldn't be and say, you know, here's a fact sheet from the Attorney General's Office.

MIKE HILGERS: Yeah.

DeBOER: You know, why, why, why would we take this action as opposed to that action? And I'll couple that, since I'm asking a multi-part question-- which you have done yourself, so I don't feel guilty about.

MIKE HILGERS: I'll write it down here.

DeBOER: And then the other part is, I know you were in Approps asking for money for litigation for consumer protection. Would that be part of this? Are you filing these cases under a kind of a consumer protec-- protection boat, a boat of-- I don't know what the word. Is it under that category? And so, are we doing both? Like kind of asking--

MIKE HILGERS: A great question, question series. It's a great set of questions, Sen-- Senator--

DeBOER: Thank you, I knew you would think so.

MIKE HILGERS: --Senator DeBoer. So we did send a fact sheet. We sent a, let's see how many, almost 30-page fact sheet in the form of a complaint to ten different stores, who not only were selling this material, and-- if I can get the page, I've got, I've got-- this is about our investigation and some of the lawsuits. Not only selling this material-- so, so there's a question of just Delta-8: is it legal or not? It's not legal. If you're selling that, but you're, but you're at, but you're-- you actually, you know, marketing the right way, maybe selling it just to grown-ups. That's one question. We found, and put in our complaints, people selling copycat products marketed to children-- Nerd Rope, which, by the way, the individual that I reference to underage who was in the hospital had Nerd Rope-- selling these kinds of products, and we put together complaints and said, hey,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

you might think Delta-8's legal. We could maybe debate that, it's not. But what you are doing is absolutely wrong under a whole series of laws. And you know how much res-- how much change we got? Like zero. So we are using the tools in front of us. Now, the cases are in there, are there and you can see. But no one said, oh my gosh, this is so bad. I'm so glad you pointed this out. We will do something about it. Either we've, we've gotten-- people have grabbed their-- which is litigation, so I understand people want to fight, but I don't have-- I have a fairly dim view that a fact sheet to some of these-- by the way, you're going to probably hear from some companies today who have said, hey, look, we're doing our best. Like let's regulate it, all those things. The vast majority of people who are operating in this space, given our investigation, are not the good actors, they're not here. So the idea of sending them fact sheets, or something like that-- I don't want to minimize the suggestion. I, I don't have a lot of hope because our lawsuits have so far. Now we're going to have to litigate them, and we will litigate them. To the other question, these do cost money. For the most part, our requested appropriations went to some other cases in the consumer field, not, not here. But they will absolutely, the experts-- to win these cases-- here's like the bet. I think the other side, whether they, they're explicit or not, I'm not saying they would agree with this, but the bet, it seems to me is, hey, you know what? There's enough potential fog on the battlefield. Like a lot of people drive by these shops, and they see CBD, it must be legal. It's being sold in public, so people just sort of infer it must be legal. We'll do that. Plus, it-- in order to really win these cases, you got to go get the experts, get the consultants, got to do the scientific testing, do all the things. Like there's kind of an inherent bet of like, yeah, what are the odds you're going to do all of that, and you're going to do all that for me? That's kind of the bet that seems to be out there in the marketplace. And we're, you know, we're not bluffing. We're going to bring these cases, we have spent the money on the tests. And we'll have to continue to spend money, and if that's the Legislature's-- ultimately the Legislature determines that, that it is better to enforce the current law by filing these suits, and paying money for the experts, and doing all the consultants, and filing those, might be a 4 or 5 year process versus this, this, this approach. I mean, we'll go down that road.

DeBOER: So if we-- but if we passed this LB999 as it's amended-- I haven't had a chance to read the amendment because you've seen the

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

amount of time I've had to look at it. But if we pass this bill, wouldn't we still have to try and do enforcement on it?

MIKE HILGERS: Yes, but--

DeBOER: Wouldn't it still cost money?

MIKE HILGERS: Well, I think if the bill passes, it'll be clear that, like, that the emperor will have no clothes. I mean, I think right now, people-- again, they're sort of out there, there's like some smoke on the battlefield nationally. There's a couple of cases you could point to, which, by the way, have nothing to do with Nebraska, nothing to do with our law, nothing to do with the facts, are not on point. Then they'd be like, oh, maybe, you know? But if this passes, it's-- it should be made very clear that that's not the case. So would there still be some bad ac-- I mean, then you're-- if this passes and people are still selling it, then that should put themselves a little bit more directly in the realm of criminal liability. Which is not the direction we're trying to go down, we just want people to stop selling this stuff to people. It's hurting them.

WAYNE: Senator DeKay.

DeKAY: Thank you, Chairman Wayne. On the investigation of the stores that you saw problems, were they statewide, or were they localized, or where do those--

MIKE HILGERS: Statewide. Statewide, Senator DeKay. And our lawsuits are all the way, I think, and Dawes County is our furthest west, and we've got some in Madison County and we've got some up and down I-80.

DeKAY: And with the handout that you had, these are all copycats that aren't safe and are illegal?

MIKE HILGERS: The examples in there, yeah. And when we did the press conference on that, we had, we had grown ups who can read, the press, so they were there and they were-- they could not choose which one was the legal, which one was the medicated, and I use that in air quotes, let the record reflect, or those that were regular. And so if you take like a four year old or a five year old who has-- maybe can't read, it doesn't offer a lot of protection. But yeah, anything with Delta-8-- synthetically-produced Delta-8 is illegal.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeKAY: OK. I, I-- and this is just a comment. I find it kind of interesting that on the map where everything's in dark red or red is along the I-80 and I-29 corridors. I don't know if there's any correlation here or not with these products.

MIKE HILGERS: Yeah, I would say-- so when I went and visited communities around the s-- which is really where this came from; I started going up to northeast Nebraska and I just said, hey, what are your-- what are the big issues? And I was aware of these kinds of shops that existed, but they would say, this is the number one issue. We got kids taking this stuff, we got the kids getting sick. We have a child going to the hospital. In most community, not everyone, but most communities in Nebraska have been touched by this product, these products, one way or the other, either through a retail store or someone using the product.

DeKAY: Thank you.

WAYNE: Senator McKinney, followed by Senator DeBoer.

McKINNEY: Thank you. One other question. I know you mentioned how the packaging is marketed or whatever. What if there was a regulation just to require them to do as like the cigarette industry to market to adults and change their packaging?

MIKE HILGERS: I appreciate the question, Senator McKinney. Part of the reason I didn't hand out that packet initially is because I don't want to make this bill about the packaging, because the packaging does suggest, well, if you just do an ID and you do, you know, you make sure it's not directed towards children and those types of things. I don't want to imply that that's OK. I've wanted to pass that around because of just the-- of the bad actors that are out there. But let me give you a couple of examples of people who have called our office just in the last two months who are not getting enticed by packaging. So we had-- we had someone who was in their mid 20s, went to, again, I'm trying to protect their privacy, so I'm not naming names or locations. Went to, went to one of these stores for knee pain. They had knee pain. So this is not someone who's getting enticed by Nerds. Asked the store clerk what to have. They got some Delta-8 gummies. Within an hour, they were dizzy, in and out of consciousness, unable to walk. Their wife had to call an ambulance because they were, they were losing consciousness. They were vomiting, nausea, all sorts of, I

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

mean, some people that were reported to have had hallucinations, paralysis, delusional, threatened violence. We had another person, middle-aged, went in for back pain. Again, not Nerds, not the packaging, not someone if you had an ID that you'd be concerned about. They had intense and horrifying-- these are their words-- psychological reaction. They were unable to speak or move. They thought they were dying. They thought the nurses were trying to kill this person, these-- they tried to attack the nurses in the hospital. We have a number of other people in their 20s and 30s who, again, would be above-- aren't being enticed by the package. I just wanted to point that out because it's prevalent all around the state. And the people who are doing this in general are-- don't have Nebraskans' best interests in mind. I mean, if you're selling Nerds Rope with mislabeled Delta-8 quantities, like, that's not being a good citizen in our community, in my opinion.

McKINNEY: So two things. If this passes and this is banned, will you-- do you foresee a increase in individuals ending up getting charged and tried in court because of this? And also, what are we going to do when everybody around us legalizes marijuana, or all of these products, and we're just sitting in the middle, not even trying to regulate it?

MIKE HILGERS: So the first question, Senator McKinney. No, I don't-- this isn't about additional criminalization or trying to go and arrest a bunch of people. Now, if you have a retail store that this passes and they're flaunting the law, that's a little bit different. But this is not about going out and getting people for marijuana and putting them in jail. So from a criminal pers-- and in fact, we have generally, this session, as the LB50 committee and the task force, try to work through, we try to stay away from any bills that would help increase penalties. So that's your, that's the first question. The second, the second-- the answer to your second question is, I, I think Nebraska-- I think the tide is starting to turn slightly on marijuana and these issues, because as more data comes out about the bad experiences in a lot of these states-- the mental health-- we hear "mental health" all the time. We know, we hear it everywhere around the state, lack of mental health resources. And I think our society's going to have a reckoning on mental health-- on things that are causing mental health. It's not all marijuana-related. I don't mean to suggest that, there's social media, there's all sorts of things that are causing it. But the increased tie that you're seeing from use of marijuana or THC, these Delta-8 products to mental health, psychotic

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

breaks and things like that. I think Nebraska, if we are the last state, good, because I think we'll be an oasis for people who want to get away from some of the, the negative impacts that a lot of these states, who have been well-meaning have, have actually not experienced. I'll give you two examples. You know, California-- in California, they legalized everything-- they legalized marijuana recreation and everything else. In Oklahoma, same, same thing. And in both cases, the cartels have come in, violence has come in. The mom-and-pop and the stores that are selling marijuana have been undercut and taken off-- offline. So I hope we're-- I hope-- I hope we remain, we prohibit those drugs. And I think it'll make us more of a beacon for people who want to get away from the damage that it's causing other places.

McKINNEY: But isn't the issue in California more based in, not just the cartels, but it's overtaxed, and those dispensaries or wholes-- or distributors can't really put their money in a bank, so they're just leaving them out on an island, which is an issue. And also, aren't the feds considering rescheduling marijuana anyway?

MIKE HILGERS: Yes, Senator McKinney. I think you-- I think you're right in California, certainly the, the taxes are high there. But I think when you're talking about black market that don't pay any taxes, they'll always be undercut any taxing regime. So I do think that's probably true, but, but I don't think it would matter, even in Nebraska, if you had any taxes or regulations, because the cartels could always undercut. The second thing on the banking-- you're right, absolutely; that's a big part of it also. I would say the federal government, if there's anyone to blame here, it's the federal government. Like, it-- this is a Schedule I drug. If you think it's not a Schedule I drug, if you think there's medicinal purposes, do what we do with everything else. Go test it, go get studies, allow for research to be done and allow for prescriptions where you know the dosage, you know how it can impact people. They haven't done that, and I think it's a total dereliction of duty. I-- so to the extent that your question implied that, I totally, totally agree. And then, yes, there is, at least, I think the FDA, I think it was the FDA, might have been the DEA, I'm getting them backwards, has at least issued some suggestion that they think it could be a Schedule III drugs-- III, III drug. If you look at the data and the methodology for why they're doing that, they base-- they usually have a five-factor test for how they look at Schedule I versus Schedule III, and I can get you

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

that test for you. They basically ignored their entire test when they decided that they were going to recommend that it could be Schedule III. I don't have that in front of me, but I can get that information for you.

McKINNEY: All right. Thank you.

WAYNE: Senator DeBoer.

DeBOER: Thank you. Sorry. I thought of a couple of other things when you were talking to someone else. I saw that there's an E-clause on this.

MIKE HILGERS: Um-hum.

DeBOER: So what happens if we pass that there's an E-clause? People have Delta-8 in their house, are they felons now? How does that-- how is that going to-- how are they going to be affected by the E-clause of this? How are we going to let people know all of the kinds of things we worry about with E-clauses on any kind of criminal activity?

MIKE HILGERS: No, it's a, it's a very fair, it's a very fair question, and something I've thought about coming into this hearing. Where I am, if you look for areas, zones of compromise or where we could work, I wouldn't necessarily-- you know, Senator McKinney's asked about reg-- what about regulating it, could you do that? That, that is-- I'm fairly binary on this. I think it's illegal. It should stay illegal. I'm not in support of regulation. But I certainly do understand-- even though part of me says, hey, look, if you went into this world, there's nothing explicit saying that you can sell Delta-8, synthetic Delta-8 to anybody. And you, you're out there, you assume the risk. So on the one hand, you know, E-clause or not, like it's still-- it's illegal today, so you shouldn't be doing it. On the other hand, I certainly understand that giving some off-ramp to this ma-- does-- would make some sense. Now the question is, what does that off-ramp look like? Timing? What do you do? I'm open to discussion and thought on that. But I certainly-- I, I'm not, I am not wedded to the E-clause. I think there could be other ways to accommodate your concern.

DeBOER: And that would also include the consumers, right? Because the consumers have less information, I think you would even say-- and so

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

if I'm a consumer, I go in, I buy some Delta-8, I have it in my house, now I'm in possession of a controlled substance all of a sudden if this passes with the E-clause. What happens to me? So that's, that's a big concern, and I think it would be something that we would have to address.

MIKE HILGERS: Yeah. And I would say, Senator DeBoer, the consumers are victims here. I mean, the quotes I have from one person, it ruined my life. Another person, this-- and I won't-- I'll-- had, it has a stronger word. This ruined my life, and it's made me fully understand why Nebraska stood up to everyone else and kept itself a safe state away from the THC legalization. It changed my brain, I feel dumber. All these people are victims. Like, the point of this is not to say, well, you, you were misled. You were given something that you thought was legal that might help your knee pain, might help your back pain. And now we're going to make you have a felon. Like these-- they're are vic-- they are victims in this. And the point of, of this bill is not to penalize them. So that's an area I would absolutely welcome a conversation with you to see how we can ensure that that's they are not--

DeBOER: Because we probably have to do something about the consumer, because the consumer-- I mean, under the way the bill is written now, it seems like the consumer would be a felon.

MIKE HILGERS: Yeah. You're right. Because the way that it modifies the exception to controlled substances. But I'm open to working with you or others on that particular piece, because that's not the goal for, for us.

DeBOER: OK. So then the next question I have is I'm thinking about 2024 election. Strong probability that there will be a ballot initiative push, and perhaps it will be successful. Probably. Maybe. Who knows? To make marijuana legal. How would that interact with this bill at that point? If the voters vote-- if that becomes on the ballot initiative, voters vote it through, how does that interact with this bill then, at that point?

MIKE HILGERS: I don't recall the, the ballot language.

DeBOER: I don't know it.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

MIKE HILGERS: So I don't, I don't-- it's a cons--

DeBOER: I think, I think it's a legal right. I think it makes it a constitutional right.

MIKE HILGERS: I would have to look to see how it's drafted.

DeBOER: Anyway, that's something to put on your radar because we certainly would want to think about that. Thank you.

MIKE HILGERS: Yeah.

WAYNE: Any other questions from the committee? So [INAUDIBLE] for me, we're, we're going to have to figure something out, and we're gonna have to figure this out for sure. But where I'm confused-- and you kind of danced around the question-- is if it's illegal, it's illegal. I'm just gonna give you a-- Senator Bosn sells me this, has gummies in it, to my headphones. I get pulled over. I get charged. Why aren't we just charging people?

MIKE HILGERS: Your-- so your hypothetical is Delta-8? Well, because--

WAYNE: Why, why-- if it's illegal, why aren't we charging people?

MIKE HILGERS: Why aren't we?

WAYNE: Yeah. Why aren't we charging me, and then I turn on Bosn and say I bought it from her. Why aren't we charging the store owners with selling a controlled substance?

MIKE HILGERS: Well, let me take your first example, when Senator Bosn sells it to you. So you, you know, you-- you're possessing something that's illegal.

WAYNE: Sure.

MIKE HILGERS: Well, this has kind of happened relat-- in the last couple of years. And I think, I think a lot of law enforcement agencies around this-- not my position, by the way, Senator Wayne, because, because-- and I'll tell you why. Well let me tell you what I think some think. They think, like, look, if I'm going to prosecute you, Senator Wayne, in order to show that that's not hemp, I have to go and test. Well, for me to test, I got to go to the State Patrol lab

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

potentially. And they're, they're not even in many cases taking these kinds of tests, so you can't get those tests. Or I got to go out of state and that's going to cost me a ton of money. So the cost-benefit of me charging you for possession like that is pretty low, or the cost is high and the benefit's low. So you're not seeing a lot of charging decisions. Now, my view-- and we, we've held off because we want to see how this goes-- is that actually if you want to have a certain exception to the Controlled Substances Act, which is what it says in Chapter, Chapter 28, you have to say, you have to go and show that what you had was actually legal. So the burden isn't on the state, it's on the defendant. So that hasn't really happened in the last couple of years, I think in part because people are just-- this is so new, people are grappling with how to deal with it.

WAYNE: I mean, we do that with residue, though. Right? Residue you have to send to a test, and you have to get it tested, and it's a residue that, if State Patrol was behind, you got to send it out of state if you're going to do speedy. So they're still charging for people with residue in these two counties. I mean, I guess to me, if it's illegal, it's illegal, right? I guess that's where I'm--

MIKE HILGERS: Well, then I would, I would say-- and so we-- our office hasn't made that prosecutorial dec-- either of those two choices, so I can't speak to that. But I think we've got a law enforcement agency following me, they might be able to help.

WAYNE: So why have I--

MIKE HILGERS: That's what I've heard, anyway.

WAYNE: I guess you filed lawsuits underneath the consumer protection, why didn't you charge the store owners with possession and possession to control-- to, to distribute a controlled substance?

MIKE HILGERS: Two reasons. One, one the consumer stuff was very blatant, we wanted to get attention on this. And two, more importantly, is we, we're so close to the legislative session, let's give this an opportunity to see if it can get resolved. But if it's not, then we have to look at every one of the other tools we have.

WAYNE: Wow. No. I'm going to take that transcript and go to all the prosecutors and say, hey, we're so close, we got some marijuana

Transcript Prepared by Clerk of the Legislature Transcribers Office
Judiciary Committee February 1, 2024

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

[INAUDIBLE] drop my-- drop my client's charges, and let's see if we can get it worked out.

MIKE HILGERS: I think, I think this a little, a little sui generis I might say.

BOSN: Denied.

MIKE HILGERS: I mean, this, this whole thing, the way it's popped up, the speed, the statewide nature, this is a little different in my view-- is it's different in kind than some of these other things.

WAYNE: Well, I'm, I'm committed to working with you, and I think-- I don't-- the, the turn-over to the, the regulation part, on the farming part. Not a-- from what I'm hearing, not a big deal. We got to figure out the consumer protection. And I agree with you-- not that I have tried everything personally. There are some things I'm questioning about how it's legal. I think we should figure that out. I don't have a problem with that and I look forward to working with you on it. Any--

BOSN: I also never sold you anything illegal.

WAYNE: Huh?

BOSN: I also never sold you anything illegal.

WAYNE: Oh, for the record, who might read this ten years later, she has never sold me-- [LAUGHTER]

BOSN: It's only a felony.

MIKE HILGERS: Well, I'm grateful for the time and opportunity to dialog with you.

WAYNE: Any other questions from the committee? Seeing none, thank you.

MIKE HILGERS: Thank you, Chairman.

WAYNE: Next proponent. I have to run to Revenue and present.

DeBOER: Welcome.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

JEFFREY DAVIS: Good afternoon. Or evening, I think, I'm not sure yet. My name is Jeffrey L. Davis, J-e-f-f-r-e-y D-a-v-i-s, Sarpy County Sheriff. I want you to know that I also represent a host of other police chiefs, and mayors in our general vicinity, Douglas, Sarpy County. Sometime in early 2023, I was contacted by an employee of our community corrections division in Sarpy County who was putting together a Pre-Sentence Investigation, or PSI, for someone who was found guilty of a criminal offense. While doing this, it was discovered that the offender, while waiting for his sentencing hearing, had tested positive for marijuana, THC, in a recent drug screen. The employee stated the offender emphatically claimed he only consumed gummy bears purchased from a local CBD shop. The employee also went on to say that the offender seemed believable, and wondered if we had ever checked items that were being sold by these shops. At this point, I spoke with our investigative captain, and he sent our narcotics unit out, and made several drug purchases over the county at several different CBD locations located in Bellevue, Papillion, and Gretna. Initially, these items were purchased and sent to a lab for testing for quantif-- quantified legal, or excuse me, the level of THC. That proved to be a lengthy process, but in a few months later we were notified that several products had tested positive for Delta-9 with a THC content that was 30 or 40 times greater than what was allowed by law, which is 3/10 of 1% in the state of Nebraska. This information was shared with Sarpy County Attorney and several law enforcement agencies throughout the state, the Attorney General's Office. Subsequently, other CBD shops in Omaha, Lincoln, Grand Island, and as far west as Ogallala were checked with similar results. I do not-- I, I don't know if this bill before you is a fix for this problem. However, I do know these products are being marketed to our youth and even through shops that are supposed to be checking ID, 18 years or older. Very few of them have checked IDs, by the way, at least in our presence while we were there. In addition, they are being marketed to the elderly for ailments such as rheumatoid arthritis. The real problem here is consumer protection, where the people buying these products are unaware of their inability to drive a vehicle, operate heavy equipment, or even operate a riding lawnmower and might be under the influence. I'm asking you to do something today to protect our constituents, your constituents, from needless harm. Currently, there are no regulations on the products that are being shipped to these CBD shops, including 50 Shades of Green, Cannabis Factory, and a host of other CBD dispensaries which are located

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

throughout the state of Nebraska. There are no licensing requirements on the CBD owner and/or for the employees who sell them across the counter. I urge you to move forward with some additional rules and regulations before more people take these substances and experience a high which is not expected. I will tell you, my testimony today includes all of the police chiefs in Sarpy County, as well as the City of Omaha police chief and the sheriff in Douglas County. If you have any questions, I'd be glad to answer.

DeBOER: Thank you. Are there questions for this testifier? Senator Bosn.

BOSN: Thank you. Sheriff Davis, how long have you been the Sheriff of Sarpy County?

JEFFREY DAVIS: I've been sheriff since 2005, and a law enforcement officer for 51 years.

BOSN: And have you, in the course, have you-- when you were-- before you were sheriff, I assume you worked several street investigations, patrol.

JEFFREY DAVIS: I did. Yes.

BOSN: Have you had the opportunity to see individuals who are under the influence of Delta-8?

JEFFREY DAVIS: I have not.

BOSN: You have not?

JEFFREY DAVIS: I have not personally. I've been sheriff since 2005, and so. But my people on the street have encountered them.

BOSN: So it would be safe to say that since 2005, you probably haven't been running--

JEFFREY DAVIS: Yes.

BOSN: --[INAUDIBLE]. OK. Fair enough. So that was-- you're aware that there are officers who have seen or have observed individuals who are under the influence of CBD--

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

JEFFREY DAVIS: That is correct.

BOSN: Excuse me, of Delta-8.

JEFFREY DAVIS: Correct.

BOSN: OK. And have they had the opportunity to tell you about their observations?

JEFFREY DAVIS: Last night at 10:05 p.m., we got a rescue call in the city of Gretna, Nebraska. A 30-year-old female had consumed what she said was one gummy bear purchased in Gretna at a cannabis shop. She was paranoid, felt sick, called a rescue squad. The squad responded. Recorded a very irregular heartbeat. I can tell you that that is happening more often. And I think the problem here-- and again, I'm not here to tell you whether marijuana should be legal or not legal. In fact, I'll go on to tell you that I think I'm the only law enforcement officer in the state of Nebraska that's ever testified for medical marijuana. LB390. It was Senator Sue Crawford. That bill was passed. As a result, dozens of children that suffered from different ailments, including grand mal seizures repeatedly were tested, and a positive outcome came from that bill. That's not what this about. This is about a consumer protection problem where people like myself, who are elderly, are told you can go in there and buy a product that's legal that'll help your arthritis and walking out with something that's going to put them under the influence.

BOSN: I didn't call you old, just for the record.

JEFFREY DAVIS: That's OK.

BOSN: I have nothing further.

DeBOER: Any other questions? Thank you very much for being here.

JEFFREY DAVIS: Thank you.

DeBOER: Next proponent testifier. Welcome.

MAGGIE BALLARD: Thank you. Good afternoon, Vice Chairperson DeBoer and members of the Judiciary Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, still a prevent-- prevention specialist at Heartland Family Service. And a strong proponent of LB999, thanking

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Senator Ibach for bringing this bill forward. Last year when I was testifying on another marijuana bill, I pointed out that it did seem strange and redundant to me for so much effort to be placed on commercializing or decriminalizing just one strain of marijuana, Delta-90 [SIC] THC, when our state is overwhelmed with shops that sell derivatives like the Delta-8, Delta-10, Delta-0, and more. I stated that I was surprised more people that day did not bring up the fact that we are already inundated with marijuana. This is, of course, thanks to the 2018 federal Farm Bill. I've had conversations with our federal legislators about the federal Farm Bill, but unfortunately they had to extend it to September of 2024 because of things happening in Washington, DC. So I want to talk about the worst problems Nebraskans are experiencing with these THC derivative, derivatives being sold across our state. The first issue is what I said before, we are inundated. And when I say "inundated," I mean inundated. I have yet to hear of any of my friends, family members, colleagues, social media friends, anyone who expresses anything but concern or complete irritation at how many of these shops are in our towns and cities. For example, when I leave church on Sundays, when I'm able to go to church on Sundays, I drive just six miles to my parents' house for Sunday dinner. And between church and their home-- like I said, six miles-- I pass 11 shops advertising federally legal cannabis, or Delta-8, or those other derivatives, whereas in comparison I only pass four grocery stores and seven gas stations. The second and most concerning part is the form that these products take. Like the AG already talked about, the candy, the chips, the snacks that look identical to those products without THC in them. This is obviously a strategy to target our youth and children. And no matter what your opinion is on these shops, we should all be able to agree that advertising to people whose brains are nowhere close to being fully developed is irresponsible, dangerous, and unethical. Last week, I spoke to two school resource officers who told me that every other vape a middle schooler or a high-- or high schooler gets caught with is Delta-8. While some of these shops might be carding people when they come in, most of those students say that shops will sell any of those products to a 12-year-old. They're affordable enough to be purchased with allowance or babysitting money. But one event I want you to read over, I'm not going to read out loud, is something that happened when money was not involved. I don't want to really put that on the record. I know it will be in writing, but I'm not going to share it out loud today. So

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

make no mistake, this is what happens when you invite a for-profit industry based on addiction into our state. And I see my light is red.

WAYNE: Thank you. Any questions from the committee? Seeing none, thank you for being here. Had a false alarm. Revenue's not ready for me. Next proponent. Proponent. Proponent. All right, moving on to opponents. First opponent. Who? Go ahead. Thank you. Ma'am.

ANDREA HOLMES: Good afternoon. I'm doctor Andrea Holmes, A-n-d-r-e-a H-o-l-m-e-s. I am a PhD organic chemist, a professor, a recipient of a National Health Institute fellowship, and the Presidential Early Career Award by the National Science Foundation. I have built several hemp companies in the US, and served as the global head at KD Pharma in Germany, that specializes on the approved pharmaceutical cannabinoid ingredients. After almost 25 years of academic and industry research, including the pharmacology of hemp-derived cannabinoids, and millions of dollars of federal grant funding, I can assure the Judiciary Committee that cannabinoids derived from hemp have a lot of benefits for humans' and animals' health and wellness. They interact with the central nervous system, and consumers rely on these products for various therapeutic conditions. I am here today as the president of the Nebraska Healthy Alternatives Association, or NEHAA for short. We advocate for hemp. We are dedicated to protecting every Nebraskan's legal right to have access to all hemp products. Let me start by saying that I understand why a bill like LB99 [SIC] is considered today. In the last couple of years, there has been a phenomenal growth in this industry, resulting in more commerce and more stores opening up to accommodate a growing demand from consumers. As of right now, there is little to no regulation governing these actions of the sellers. LB999 would seek to eliminate overnight the entire industry in response to the action of only a few. It is critical for the members of this committee to understand that there are businesses who self-regulate, offering clean, professional products that have been sourced from trusted manufacturers, and are properly packaged in child-resistant containers, labeled with ingredients and warnings, accompanied by certificates of analyses demonstrating concentrations of cannabinoids with compliant levels of Delta-9 THC. A ban on hemp products would not only put these reputable businesses out of commission, but also prevent adults in Nebraska access to safe and tested products that they freely choose to use in their daily lives. At NEHAA, we are the industry experts. We are scientists, attorneys, business professionals, researchers, and we

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

have worked in this industry for many years all over the US. Instead of banning the industry, it is time for Nebraska to adopt an evidence-based approach to hemp policy and regulation. I urge you to work with NEHAA's expert to strike a balance between consumer protection and a thriving small business economy. Thank you for your attention.

WAYNE: Any questions from the committee? Seeing none, thank you. Thank you for being here.

SEAN NORRIS: Hello, my name is Doctor Sean Norris and I am the Director of Chemistry with MC Neutraceuticals, the world's largest minor cannabinoid distributor in the world. We're based in Golden, Colorado, and I have a doctorate in organic chemistry from Iowa State University. An estimated 40 million U.S. adults tried Delta-8 products in the last year based on a recent study. Every day, thousands of people use these products for a variety of reasons, from businessmen to factory workers, veterans to monks. There is a concern that Delta-8 may be unsafe for consumers based on it being derived from CBD, and I want to try and clarify that that risk is almost nonexistent. The same methods that are used for the conversion of CBD to Delta-8 are the same methods used to fortify children's cereal with vitamins. The B vitamins, vitamin C, D, E are all naturally-occurring, but there is not enough supply to meet the demand needed to fortify cereal. These vitamins are produced using solvents and acids, distillation and procedures nearly identical to that of the conversion of CBD to Delta-8. A common solvent that is used in that conversion has been shown as a better solvent for extraction of cottonseed oil. The catalyst used for the conversion requires such a low amount that the amount in a salt packet will convert over 100 times the amount into Delta-8. The Canadian Environmental Protection Act has also declared that same catalyst non-toxic. By using the correct methods and procedures, we can generate safe, legal products according to the Farm Bill. These products have been shown to be safe and therapeutic through a multitude of, of studies and surveys. People using these products report that the therapeutic benefits outweigh those of traditional medicines and painkillers, including opioids. Veterans and people with living, living with PTSD have found relief from symptoms that plague them. People like my wife, who use these products nightly to help fall asleep. There are thousands of people like me; after four spinal surgeries, I am in constant pain and use these products as a safer and more effective method than over-the-counter products.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

WAYNE: I need you to wrap up.

SEAN NORRIS: The processes used in industry today are tried and true. They're pulled from many sources, including food and beverage. We don't want to ban this industry. What that is going to do is hurt small business, farmers, employees and the people who use these for therapeutic benefit.

WAYNE: All right. Thank you. Any questions from the committee? I have one. So I have-- in Omaha, we have a Kellogg's plant; they make Frosted Flakes. Are you telling me they use the same thing, a similar process to, to make hemp?

SEAN NORRIS: So when they're doing the vitamin fortification of flour and wheat in the United States, the vitamins that they are adding are synthetic. They are added from processes-- created from processes that could convert CBD to D-8.

WAYNE: So if the process for hemp-- to create hemp is too dangerous, then it's too dangerous for Kellogg's to operate. Is that what I'm hearing?

SEAN NORRIS: That's my idea, is if we can use these for the creation of vitamins, how is it any different than creating D-8?

WAYNE: Thank you. And thank you for the memo with the-- on the-- on the products. I appreciate that. Oh, can you spell your name?

SEAN NORRIS: Oh, Sean Norris, S-e-a-n N-o-r-r-i-s.

WAYNE: Thank you. Any other questions? Seeing none, thank you for being here. Welcome back.

SARAH LINDEN: Yes. Hello again. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and I am the owner of Generation V and Grateful Green Dispensary with 21 locations in Nebraska. Passing LB999 bans Delta-8 and 99% of CBD or hemp products. With the amendment, it's still 97% of products used by hundreds of thousands of Nebraskans to treat various medical conditions. This bill is devastating not only for the consumers who rely on these products for relief, but also for our local economy. If this bill passes, hundreds of small businesses in Nebraska would be forced to shutter. An impact study conducted by Whitney Economics in 2023 shows Nebraska's hemp industry is

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

contributing \$139 million to our local economy, 1,600 jobs, \$65 million in wages and \$7.7 million in sales tax. My business alone provides 135 jobs, \$4.3 million in wages to Nebraskans, and collects \$947,000 in sales tax annually for the state. We pay an additional \$51,000 in property taxes for properties we own, and \$769,000 a year in rent. I would be forced to close at least 6 of my retail stores and lay off 31 employees immediately upon the passage of this bill. Most of the small business owners in the hemp industry here in Nebraska would lose everything. This bill would hand the Nebraska hemp industry over to out-of-state retail and e-commerce companies or criminals willing to bend the law. 80% of Nebraskans live within a one-hour drive from one of its borders, where there are already legal cannabis dispensaries strategically located to take advantage of Nebraska's restrictive cannabis laws. Additionally, the state will not be able to enforce e-commerce retailers selling federally legal hemp products to Nebraskans online. Passing LB999 will also create a burgeoning illicit market for unregulated and unsafe hemp-derived products, posing public health risks and undermining legitimate businesses. The black market has no age requirements nor certificates of analysis to ensure the safety of the products being sold, whereas our business is self-regulating, imposing minimum age requirements, packaging and labeling restrictions and proper testing. I care about the health and safety of Nebraskans, which is why I support reasonable regulations on these products and even reached out to several state senators last year with offers to collaborate on a regulatory bill. Rather than an all-out ban on these products, I kindly request that you oppose this bill and allow us to work with legislators on positive regulations that ensure the safety of consumers while maintaining the revenue, jobs, wages and taxes derived from the hemp industry in the state. Voting no on LB999 will allow Nebraskans the freedom to continue to choose what is best for their own health, maintain jobs, and save local small businesses. Thank you for your time.

DeBOER: Thank you very much. Are there questions? Senator McKinney.

McKINNEY: Thank you. When the Attorney General was up speaking, he was saying that Delta-8 is already illegal. Have-- has anyone ever told you that it's illegal or that you shouldn't sell it?

SARAH LINDEN: To be honest, when the lawsuits were filed and, and stores were raided, I questioned it myself because I had read the law, and that is not how I interpreted it. So I hired and consulted with

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

attorneys who told me that that is not the case. Additionally, there's articles and articles and legal opinion letters all over the place saying that that is not the case. Delta-8 is federally legal, and Nebraska adopted the federal Farm Bill.

McKINNEY: All right. Thank you.

SARAH LINDEN: Mmhmm. No problem.

DeBOER: Thank you, Senator McKinney. Any other questions from the committee? I have one question for you.

SARAH LINDEN: Sure.

DeBOER: You mentioned online. Can you tell me a little bit more about that? So can you order some of these Delta-8 proj-- products online?

SARAH LINDEN: 100%, because they are federally legal products. So they can be sold in e-commerce just as easy as someone can buy Tide laundry detergent. I do believe that these products should be regulated to ensure their safety. And I believe that, you know, the Attorney General Hilgers mentioned many different issues with these products, and I believe that we can answer every single one of those issues to protect consumers with regulation.

DeBOER: Great. That might-- let's see if it generated any other questions.

SARAH LINDEN: Thank you for your time.

DeBOER: Thank you. Next opponent.

AMANDA McKINNEY: My name is Dr. Amanda McKinney, A-m-a-n-d-a M-c-K-i-n-n-e-y, and I'm a practicing triple board-certified physician, and I have taught or currently am teaching medical cannabis for Doane University, Bellevue University, and Little Priest Tribal College. I have also educated physician groups in Omaha and Brazil on the use of CBD and other hemp-derived cannabinoids in their patient practices. Thank you for allowing me to testify in opposition of LB999. The safety and medical benefit of CBD and other hemp-derived cannabinoids is well-documented in the medical literature. I routinely recommend CBD and other hemp products to my patients for anxiety, pain relief from conditions like endometriosis and fibromyalgia,

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

Parkinson's disease, cancer, and sleep disorders because they are far safer and often more effective than the alternative manufactured pharmaceuticals. Many of my patients also use hemp products as a safer alternative to alcohol. LB999 would deprive patients of this opportunity. Binge drinking is the most common substance use disorder in Nebraska by far, with one news article stating bluntly that Nebraska is America's 9th drunkest state. Fortunately in Nebraska, we have some really good actors in the hemp space, meaning that they produce or the-- meaning that the products they produce or source are reputable and free from harmful contaminants. But this is something that I'm always concerned about. As such, I would encourage this Legislature to work with the hemp industry in Nebraska to provide a commonsense regulatory framework to ensure safety for patients and consumers. Thank you for your time, and I'll be happy to take questions. But I would also like to add that the statement made earlier by AG Hilgers that Delta-8 has not been studied or been found to have any medical benefit is not true. There are studies that have shown Delta-8 to be effective in pediatric populations, and it is currently being used. And I'd be happy to supply you with those studies. Thank you.

DeBOER: Thank you. Let me see if there's any questions from the committee. Does anyone have any questions?

BOSN: I'd like to see those studies. So if you'll email those--

AMANDA MCKINNEY: I'd be happy to.

BOSN: --the Chair and I would assume he'll disseminate that.

AMANDA MCKINNEY: Yes, I'd be happy to do so.

BOSN: Thanks.

DeBOER: Thanks, Senator Bosn. So let me ask you a question myself. I'm thinking about these various toxic-- toxicity levels of the sort of various substances. How would you compare the toxicity level of Delta-8 to, let's say, marijuana?

AMANDA MCKINNEY: So Delta-8 is not toxic nor is marijuana. So I would say maybe a better term is-- I guess I'm not-- I'm not really sure what term to use, but I guess I'll, I'll try to explain. Marijuana is a, you know, is a-- is a whole plant. Right? So there are multiple

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

different cannabinoids in there, including CBD, including Delta-8 THC, Delta-9, et cetera. Delta-8 THC, as an isolated cannabinoid, works on the same receptors as the Delta-8 and the Delta-9 that's in regular marijuana; it works on the same receptors, and it has the same effect. The primary difference between Delta-8 and Delta-9 physiologically in the body, they both interact with the same receptor, the CB1 receptor in the brain. However, Delta-9 binds at basically 100%, whereas Delta-8 THC only binds at about a 65% capacity, which means that it's, it's 65% as potent as Delta-9 THC. The other thing to remember, too, is that the-- these cannabinoids are fluid, so they don't stay in their same form, you know, in, even in the plant. So there's really-- so, so if you-- if you consider, like if you have a 10 milligram Delta-9 gummy versus a 25 milligram Delta-8 THC gummy, those are essentially equivalent in terms of dosage, if that makes sense.

DeBOER: Yes.

AMANDA MCKINNEY: OK. But I'm not sure if I-- I guess I'm not sure if I'm answering your question.

DeBOER: No, no, no. So I-- we've had a lot of discussion today about alcohol and the various substances and all of these sorts of things. So I'm just trying to kind of like put it within all the substances in our society and kind of understand how it fits in--

AMANDA MCKINNEY: Gotcha.

DeBOER: --versus coffee, versus alcohol--

AMANDA MCKINNEY: Gotcha.

DeBOER: --versus, you know, all of these things. Where does something like marijuana, Delta-8, where does that fit in?

AMANDA MCKINNEY: Fit in? Gotcha. So, so alcohol is a toxin, OK? Pure and simple. There-- it has no medical value whatsoever. OK? Cannabis or, you know, marijuana, hemp, whatever, does have medical benefit. Because we have an endocannabinoid system in the body that is actually-- and we make similar chemicals in our own body, that are like-- that are-- we call them endocannabinoids, and they're very similar to the cannabinoids we find in the plant, the phytocannabinoids. So it's not a-- it's not a toxin in any way. But when we talk about substance use disorders or addiction, the rates of

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

addiction are-- or, or dependence, essentially-- lifetime dependence risk for cannabis is 9%, alcohol is 14%, cocaine is 17%, opioids is 23% and nicotine is 32%. So you can see that it has a much lower addictive potential than any of the other substances that are commonly used in our society. And it has medical benefit when, when properly used. So hopefully that answers your question.

DeBOER: Yeah. It does. So one of the things we've been hearing about is that there are children who are getting hold of these things, and they're having pretty severe reactions, I guess. I don't--

AMANDA McKINNEY: Yeah.

DeBOER: --responses, reactions, whatever. They're, they're getting very sick or, or worse. So what-- so when I ask about toxicity, I guess I'm kind of thinking about that. Like I've never seen a kid-- not, not that I've seen any kid but-- well, I spent some time in Germany, to the German doctor, and there are children being given beer there, and they don't spontaneously die. So like, if, if the toxicity level-- so I'm trying to understand how kids are getting sick here and--

AMANDA McKINNEY: Right. So, so there is no lethal dose for cannabis. So THC you, you, you cannot-- there's no respiratory depression associated with it. So it's not lethal in that sense. People do get sick sometimes when they take a gummy that maybe they don't know how much is in there, or maybe they have, have never used it before, right? And so they, they're completely naive to the-- to, to THC in general. And so the reactions that people have, you know, the descriptions of, you know, paranoia, somnolence, you know, falling asleep, vomiting, all those things are accurate. I mean, those things happen, but they are self-limited and they resolve on their own. There's no-- there's no medication that's required to resolve those issues. It's just literally a tincture of time just to let it wear off. So while I certainly don't-- I mean, we need to be careful about-- you know, we don't want these things in kids' hands. I mean, I have teenage kids, and we talk to our children all the time about not using these products, not using-- not just CBD; we talk about alcohol, we talk about nicotine, we talk about all those things. So it's, it's--

DeBOER: Let me ask you this.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

AMANDA MCKINNEY: Yeah.

DeBOER: Why? You talk to your kids about not doing them. Why do you talk to your kids about not doing them?

AMANDA MCKINNEY: Well, it's been fairly well-established that in, in children before the age of really about 25. So, so 21 being the legal drinking age is probably not what we should be doing if we're really concerned about health concerns. But using any of these substances before the age of 25 has the potential to alter their brain chemistry, in the sense that it can alter their brain or their white and gray matter formation in the brain and have some negative consequences. Now, we know lots of young people that have consumed alcohol fairly regularly as teenagers who go on to be totally functioning normal adults, right? And, and maybe even high-functioning adults. But as a physician, knowing what I know about substances and medications and drugs, I discourage my children from using anything until they are, you know, they've completed their full development.

DeBOER: So then if there are reports and I, I think I've heard that there have been reports of children that have been quite adversely affected by these Delta-8 products. How does that fit in? Like, can, can a kid have some serious-- and I think-- I'm trying to remember maybe a heart attack or a serious, some kind of serious health incident as a result of consuming these.

AMANDA MCKINNEY: I'm not aware of, of any serious long-term effects from children consuming Delta-8. Now, I, I, I don't claim to know everything, but, I'm not-- I'm not aware of any of those reports.

DeBOER: OK. Are there any other questions?

BOSN: I just thought of a couple of clarifications. So is there a difference between when it's naturally-occurring versus when it's been synthetically modified?

AMANDA MCKINNEY: No.

BOSN: OK. So there's no difference in psychosis or the heightened potency or toxicity of any of those substances.

AMANDA MCKINNEY: No.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

BOSN: OK. Thank you.

AMANDA McKINNEY: You're welcome.

DeBOER: Any other questions? Thank you for being here. We'll take our next opponent testifier. Welcome.

BRETT MAYO: Good night. Chairman Wayne and members of the Judiciary Committee, my name is Brett Mayo. It's spelled B-r-e-t-t M-a-y-o. And I am the chief marketing and extraction officer of Sweetwater Hemp Company. We are the world's largest ice water extraction facility. We just received our renewal on both of our growing and processing-- processor-handler licenses, and as of this morning, we're the only licensed processor of hemp for the state of Nebraska. Being fourth- and fifth-generation family farmers and running a greenhouse for our family business, Sprout House Herbs, our roots are deeply based in agriculture. We wanted to expand our family business and start something new and exciting to move into-- move us into the future. We opened Sweetwater Hemp Company in January of 2020 and invested about \$4 million into our dream. We set out to be an example of how a CBD company could and should operate and focus on customer education and making sure each customer is getting the right product for their individual needs. After years of research, we chose ice water extraction because how innovative and safe it is for both employees and customers. We are one of the only companies in the country using this groundbreaking technology. We use only ice and water in the extraction process. The ice has 2 jobs in the process: It freezes the trichome and acts as the hammer to knock the trichome off the plant. The water then rinses and filters the trichome from the plant matter. We, we preserve most minor cannabinoids, terpenes and flavonoids, which extraction methods using solvents damage or completely destroy. Preserving these other parts of the hemp plant makes our products the fullest full-spectrum products on the market today. All hemp used in our retail products are grown in Nebraska, processed at Sweetwater and all but one of them are made at our facility. Our individual oils and rosins have full panel tests listed on our website. Those tests includes cannabinoids, terpenes, heavy metals, pesticides, and mycotoxins. Many of our products are intended for medical use so we put a lot of care into our packaging to reflect that and not mislead people by imitating other non-CBD brands. We include warnings, supplemental facts and dosage recommendations for all of our products. We also use a QR card-- QR code, so finding out more about the product

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

is easily accessible. Eliminating processors in the state of Nebraska would reduce the number of farmers growing hemp, because they would have to leave the state and find a new company to trust with their commodity. It would be very detrimental to my family's growth and hurt us very much financially. We've made great, great effort to do the right things the right way, and we are more than happy to open our doors to anything. We are cGMP certified, kosher certified, and registered with the FDA. We want to be able to make the state of Nebraska a great example and be a leader in the CBD industry. Education is fundamental to what we are trying to accomplish at Sweetwater. I also invite you to come to our facility, see what we're all about, and the investment we have made in creating CBD brand in the state of Nebraska. Thank you so much for your time, and I'd be happy to answer any of your questions.

DeBOER: Thank you very much for being here. Senator DeKay has a question for you.

DeKAY: Thank you, Senator DeBoer. When you're going through your extraction process and stuff, what happens to the waste product or by-product of your process? Where's that disposed at?

BRETT MAYO: So we actually don't have to dispose of anything. Since it's just ice and water, we have 3 by-products and also they can be used in the growing process or they can just be spread out just as fertilizer or anything on the corner of the field. Using only ice and water, no solvents, there's no harsh-- no harsh things at the end of the process.

DeKAY: All right. Thank you.

DeBOER: Thank you, Senator DeKay. Other questions? I don't see any. Thank you so much for being here.

BRETT MAYO: Thank you.

DeBOER: We're going to have our next opponent testifier.

ANDREW BISH: My name is Andrew Bish, A-n-d-r-e-w B-i-s-h. I come to you representing myself and the Nebraska farmer. I'm a national recognized hemp leader. I serve as the president of an organization called the Hemp Feed Coalition. In my day job, I run a company called Bish Enterprises located in Giltner, Nebraska. We are an agricultural

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

equipment manufacturer. Hemp happens to be a space that we have worked in since 2016. Some of my clients, in 2023, would be Cornell University, Rutgers University, the University of Kentucky, the USDA, University of Nebraska-Lincoln. And I say all those things because these places consider what I have to say credible. I'm first going to talk about D-8. And I'm not here for or against D-8. What I'm concerned about with this particular bill is it doesn't seem to address the problem at hand, which is consumer products. This bill does not address the testing of what is inside of, of the other non-D-8 products that are out there. And I think that that is equally as concerning as what is inside of the D-8 products. So I'm not going to speak for or against D-8 itself, but say that we need to have regulation on these products in general so that people are getting what they think that they're getting. Whether it's CBD or CBG or CBN or whatever it is, I would like to see some sort of regulation put in place. I would turn to the Nebraska Hemp Commission and, and those that are serving on that as they have worked through some ideas on that already. I'm going to move to an opportunity that Nebraska has and it has nothing to do with D-8. I sent before you some information about chickens. The-- like I said, I'm the president of the Hemp Feed Coalition, and we recently achieved approval through AAFCO to legalize hemp seed meal as an animal feed ingredient. What that means is that we'll need about 685,000 acres of hemp cultivation just to satisfy 5% of the chickens in the United States. Nebraska has a huge opportunity to grow the hemp industry and help our farmers. What I'm concerned about with bills like this is that we don't necessarily create a pathway for farmers. I also don't think that it helps when we talk about criminalizing some of the hemp industry. That doesn't make it interesting for the farmers. Now, finally, I do agree we do need to move the program over to the USDA. But it is more loosely-- the reason the USDA regulations are looser is because the Nebraska Legislature has been apathetic to the hemp industry over the past couple of years and has not taken the steps that it needs to, to align itself with federal Farm Bill and the Final Rule. Thank you.

DeBOER: Thank you very much. Are there questions for this testifier? I will say I appreciate you addressing the issue of whether or not it should be moved over because that's something I'm also curious about. We haven't had a lot of testimony on it, so thank you for addressing that issue. I don't see anything else. So thank you very much for being here. We'll have our next opponent testifier.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

MARK ORSAG: Vice Chair--

DeBOER: Welcome.

MARK ORSAG: Thank you. Vice Chair DeBoer, members of the committee and staff of the committee, I am Dr. Mark Orsag. I'm a professor of European and interdisciplinary history at Doane University. Thank you for this opportunity today. I'm here to offer a longer term historical perspective. From that viewpoint, LB999 will clearly make Nebraskans less safe. LB999 constitutes an overreaching government solution. The FDA's July 5, 2023, warning regarding Delta-8 dealt largely with the much narrower issue-- narrower issue of copycat products that could be mistaken for food. This is precisely the kind of issue that limited regulation, as opposed to unenforceable blanket bans, could more effectively address. There is, of course, and it's been mentioned several times today, another elephant in the room. Alcohol kills more than 140,000 people in the U.S. each year, according to no less an authority than the CDC. Right here in Nebraska, according to Lincoln Journal Star, an average of 1 in 8 recent deaths among people 20 to 64 years old was related to alcohol, including the deaths of a number of children. Yet no one proposes to ban alcohol. The why of this discrepancy is obvious: history; lessons from Prohibition. During that impractical era, organized crime and cartels proliferated. Average citizens were turned into criminals. Violence was widespread. The safety of products and people was disregarded. Per-- police were overwhelmed, and yet the number of people drinking alcohol actually increased. Recent polling shows that between 65% and 82% of Nebraskans want cannabis to be legal for recreational or medicinal purposes. The analogy is exact. This law cannot be enforced when the majority of Nebraskans do not want it enforced. On an even vaster scale than Prohibition, the 100-year War on Drugs like-- likely-- likewise wasted billions of taxpayer dollars, turned law-abiding citizens into criminals, filled jails with nonviolent offenders, and increased the reach and power of drug cartels. That gargantuan effort also decreased the safety of cannabis products, which were, of course, used anyway. Despite all these downsides, the War on Drugs has utterly failed to stop cannabis use. If implemented, this law will also fail, just as the War on Drugs had, and Prohibition did. Thank you very much for your attention and I would welcome any questions.

DeBOER: Are there any questions from the committee? Thank you so much for being here. I love having a historian here to talk to us, right up

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

my alley. Next proponent. Opponent, sorry. For the record, opponent.
Next opponent.

MANDY RODY: Hi. My name is Mandy Rody and it's M-a-n-d-y R-o-d-y. I've been recently diagnosed with stage 4 diffused large B-cell lymphoma. And it's a very aggressive form of cancer, and it has overtaken my entire body with the exception of my brain, my heart, and my lungs. I'm in constant pain. And it's to the point where literally walking is a chore. It's my bone marrow so the bones hurt just walking, sitting, doing anything. I'm on a lot of pain meds. I have 9 new prescriptions at home. Oxycodone is one of them to relieve my pain. When I'm on oxy, I can't function, I can't work, I can't take care of my children or my grandchildren or anything like that. I use Delta-8 for pain. Delta-8 takes away the pain that the oxy can't. And on Delta-8, I'm not high. I don't know where these people get off saying stuff like this. I'm not high. I'm comfortable. And if no one's been through chemo, don't tell me-- don't tell me it don't work. And you said that the consumers of Delta-8 are victims. No, I'm not a victim. I'm a victim of cancer. And the fact that you are trying to make my cancer worse and more unbearable is quite offensive. And I do not appreciate that, nor do any other cancer patients. That is ridiculous. How dare you? So I'm just saying it has helped me sleep. It has helped me deal with my pain on a daily basis. It has helped me be more of a normal person, especially going through chemo, especially going through everything that, unless you've been through it, you have no idea. And I doubt you've been through it and you know what I'm going through. So if there's anything I can answer, I'd be more than happy to do so. You have my testimony in front of you.

DeBOER: Thank you very much for testifying. Are there any questions? I don't see any at this time. Thank you so much for being here.

MANDY RODY: Thank you.

DeBOER: Next opponent.

JOHN REDDEN: Chairman Wayne and members of the committee, my name is John Redden, J-o-h-n R-e-d-d-e-n. I am an Iraqi War veteran and I have PTSD from that deployment. I do not sleep very well at night, but when I do, it's broken from thrashing wildly and night terrors. When I do-- when I have nights like this, I wake up in pools of sweat and I wake up in a lot of pain from pulled muscles and being tense. I have found

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

that the delta and botanical products that I use help me get sound sleep at night. I get better rest using these products than I do with any prescription drugs which left me with lots of side effects, including very painful awakenings and inability to wake up on any given set time. I do not have side effects from these like I do with the prescriptions. The deltas that I use and the botanicals I use, I get no side effects like I do from prescriptions. I use edible gummies, syrups and at times the vape disposable devices. I also use topical botanical products, muscle rubs, roll-ons, and lotions to soothe the muscles after they've been pulled to the point where I can't walk. My-- the botanicals and delta products help me function in my everyday life with the strict routines I have daily because I take care of my two autistic sons, and routine and consistency is very important. It also allows me to maintain employment and not be absent during my PTSD episodes that frequently happen. If these products were not available or are taken away, it would drastically impact my daily life functions and it would be very negative impact. I have spoken with hundreds of other veterans over the past few years since these products have hit the market. And they have-- they have had very similar positive effects with being able to be in rooms with people without the social anxiety, the muscle rubs, and the ability to sleep is the most key that all of the veterans that I have worked with say is best. I resp-- sorry, it's hard to read right now. I respectfully request for me and all veterans suffering long after we have come home, please vote against LB999. Thank you, and I'm happy to answer any questions that you guys might have.

DeBOER: Thank you so much for testifying. Are there any questions? Thank you for your service.

JOHN REDDEN: Thank you.

DeBOER: Thank you.

JOHN REDDEN: Thank you.

DeBOER: We'll have the next opponent testifier. Welcome.

JACY TODD: Hey, welcome. Jacy Todd, J-a-c-y T-o-d-d. My wife and I have a shop in Grand Island, Herban Pulse, about four and a half years. We're a service/disabled vet-owned business. So, I first would like to address that, you know, what a difference 5 years makes, from

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

passing the, the hemp bill. You know, it said, let's return Nebraska to the forefront of the hemp history. What are we doing here today? This is not, you know, propelling anybody into the forefront. And, yeah, Nebraska has a lot of history on hemp. You know, 3 farmers in 1887 came down from Illinois and landed in Fremont and came up with the, the hemp-- the Fremont Twine Factory. So we have a lot of history here in Nebraska, so. And I think I'm going to address the, the elephant in the room of the FDA. Nobody wants to really come out and say, you know, why isn't the FDA looking at this cannabis or hemp? Well, it's just one simple rule of the FDA. It's called the LD50 rule. Anybody know what the LD50 rule is? It's a lethal dose amount that kills 50% of the people. Cannabis has killed zero people so it'll never, ever, ever be legalized under the current rules of the FDA. So that's why the FDA is not looking at it, not because it's a black eye or any other reason. So-- and a matter of fact, we've been dealing with hemp since 2015. LB390 talks all about doing studies on cannabis, a pilot program. Some of you might remember that, the pilot program, \$500,000 of taxpayers' money went to go support this program. And all it was, was to get Epidiolex, the one drug that CBD is in, to get it FDA approved. So, so then one might ask, well, what's the lethal ingredient then, in that Epidiolex? Because, again, CBD has killed zero people. Well, the lethal ingredient is ethanol alcohol. And that was approved up here at UNMC, ethanol alcohol. And we know that it's formulated for 2-year-olds and up. So, so that's the FDA, you know, the real reason why cannabis is-- the FDA is not looking at cannabis. So then back to Attorney General Hilgers, he said that 17 states have banned Delta-8. Well, let's not forget that those 17 states have medical cannabis in them. So we do have that in those 17 states. And on this-- on this LB390, that Epidiolex, cannabidi-- it says here: Cannabinoid receptor agonist shall mean any chemical compound or substance that, according to scientific or medical research, study, testing or analysis, demonstrates the presence of binding activity at one or more of the CB1 or CB2 receptors. So you guys knew about this back in 2015 with, with the CB1 endocannabinoid system. So it's, you know, it's a travesty, you know, that you guys are thinking about taking this off LB999. So I oppose it. Any questions?

DeBOER: Thank you so much. Are there any questions from the committee? I don't see any.

JACY TODD: All right.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Thanks so much for being here.

JACY TODD: Thank you.

DeBOER: We'll have our next opponent testifier. Next opponent.

NELAM MILLATMAL: Good afternoon, members of the Judiciary Committee. My name is Nelam Millatmal, that's N-e-l-a-m M-i-l-l-a-t-m-a-l, and I appear in opposition to LB999. I work for the Cannabis Factory. We're a Nebraska-based business, and we have fortunate to be able to succeed in the last several years. We currently have 16 stores throughout the state of Nebraska, starting from Lexington, going South Sioux, Omaha, Lincoln and many more. There has been a lot of misinformation and misstatements about the products that we offer, the protocols that we follow, follow, and really how we operate ourselves as a business. I want to talk a little bit with you guys about how things really work. So how do we get our products? We purchase our products from reputable distributors that have hemp licenses issued by the Department of Agriculture within their state. I provided an example to you guys. They also use DEA-certified labs to test these items, and all items are delivered with a COA, which is a certificate of analysis, that not only test to make sure that these meet potency requirements, but also test for heavy metals, pesticides, and anything else that can be harmful, which in turn ensures purchased legal and safe products that we provide to our consumers. I provided a copy of our COA as well for you. To further make sure our products are safe and compliant with the Hemp Farm Bill, the bank we do business with and our credit card processing company requires that we provide these COAs to them and validate them as well before we can sell these products within our stores. The Nebraska Regional Poison Center has provided me with a report. In 2023 in the state of Nebraska, there was only 60 calls made to the poison center that were related to Delta-8 THC. Of those, 46 were nonemergency and only zero resulted in death. And mind you, since 2016 there has been zero deaths related to Delta-8 THC in the state of Nebraska. How we market and sell our products. You might wonder who our products are sold to. We have over 101,590 customers that are prob-- belong to our loyalty program. The median age for our loyalty customers is 40 years old. They include but are not limited to retired military personnel, teachers, chemo patients, law enforcement officers, all of whom find benefits from health concerns with our products. We do not sell to any items to people under 18 years of age. Our employees are trained on a strict protocol of age verification. I

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

provided our policy that all of our employees have to sign to you as well. Our employees are directed not to allow anyone under 18 years of age to even enter our stores. How will we contribute to our society? We currently employ 69 people in our stores alone. We pay our employees well above minimum wage starting at \$15 to \$18 per hour. That's not even including tips that our employees receive. Some of our employees have been with us since we first opened. We pay nearly half a million in sales tax in 2023, and we're expecting to be paying over a million in 2024. If LB999 becomes law in its current form, it will destroy our business. We're willing to work with our senators to come to a way where we can amend and regulate, and [INAUDIBLE] provide government oversight without eliminating our business.

DeBOER: Thank you very much. Are there questions for this testifier? I don't see any. Thank you so much for being--

NELAM MILLATMAL: Thank you.

DeBOER: Oh, wait. You got one. Last minute, Senator DeKay.

DeKAY: I had to come jump in last minute.

NELAM MILLATMAL: Sure.

DeKAY: When did you start your business? I didn't see it in your testimony.

NELAM MILLATMAL: Sure. We started back in 2022.

DeKAY: All right. Thank you.

NELAM MILLATMAL: Yep, of course.

DeBOER: Thank you.

NELAM MILLATMAL: Thank you.

DeBOER: Next opponent testifier.

CHRISTINE VANDERFORD: Hello, my name is Christine Vanderford, C-h-r-i-s-t-i-n-e V-a-n-d-e-r-f-o-r-d. Good evening, Vice Chairman DeBoer, members of the committee. I work for Kure CBD and Vape. We have 12 stores in Nebraska. We operate a total of 75 store locations

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

across the United States in 14 different states, and we have 45 employees currently in Nebraska. We pay taxes to support those employees' wages here. We offer an opportunity for 45 people to contribute to Nebraska's economy and to their families and to be wage-earning taxpayers. We are good actors in our industry. We understand how they can help and support people's ailments outside of pharmaceutical drugs. We want to keep products available for age-appropriate Nebraskans that are seeking alternatives for relief. We started in November 2018 selling some CBD-related products into our Nebraska stores, and now they represent about 20% of our business. We find that when people see what works for them, the numbers increase and we're seeing that month over month. Despite regulatory changes at the federal and the state level, we continue to grind away at being lawful abiding citizens in this industry. We only sell what we're allowed to, when we're allowed to and where we're allowed to. We file reports on the federal and state and sometimes local levels as each of the municipalities may require in addition. Prior to hemp law changes that we experienced in Virginia this year, we owned and operated 7 retail locations. The Virginia Cannabis Control Act legalized retail marijuana sales for recreational use that were effective as of January 1, 2024. Between July 1, 2023, and January 1, 2024, we closed 6 of our locations and we saw hemp shops, head shops pop up at almost every corner, and they continue to sell hemp and delta products without any regulations to make them any more effective. They don't care. They operate in the black market. They're waiting for people to enforce it. So far we have not seen-- we've seen some enforcement, but it could be a lot better. We're weary from being punished and overregulated when we're the good actors and the bad actors go unpunished and they continue to act badly. In Tennessee, hemp laws have been more thoughtful and advanced. We would like to see what Tennessee is doing being done here. That is that the legislators work with the business owners and the citizens to find ways to regulate it instead of eliminate it. The state benefits, the citizens benefit, and there is enforcement, but there's a line within the needs. They work with industry leaders there, just as like we'd like to do here, to make laws effective and work for everyone in a legal environment of regulation. I've emailed some information because I didn't know if I could give this to you all in this, in this hearing. So with that, I'll take any questions. And I'd like to ask you to oppose LB999.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

DeBOER: Thank you for your testimony. Let's see if the committee has any questions. I don't see any. Thank you so much for being here.

CHRISTINE VANDERFORD: Thank you.

DeBOER: Next opponent testifier. Thank you. Welcome.

NICHOLAS HINER: Thank you, representatives, for allowing me time to speak. My name is Nicholas Hiner, N-i-c-h-o-l-a-s H-i-n-e-r. I was born and raised in Omaha, Nebraska, graduated from Millard South High School and went to community-- college at Metropolitan Community College. Currently, I'm employed at the Cannabis Factory. Two years ago, I took what was hopefully my last drink of alcohol, and it's in no small part to the cannabinoid Delta-8 and other products being affected by LB999. I had heard of marijuana edibles for quite some time and thought they could help, but they are illegal here, so my research never went further than a cursory glance. And I continued to use alcohol at a very severe detriment to my physical health and my life as a whole. When I found that the 2018 Farm Bill will allow-- would allow me to purchase of Delta-8, my curiosity piqued once again, and I researched it until I was satisfied that it was safe for me. These substances have allowed me to live a healthy, productive life again for the first time in a decade, and I continue to make steps forward every day. The changes in my life have been dramatic. I'm mending bridges with my family, friends, and community at large. I felt such great, great debt of gratitude to these substances and establishments that sell them that I applied to work there for my first job when I returned to the workplace. The owners took a chance on me and I believe I've excelled in my position there. I want to continue to make progress in my life, continue to take steps forward. And if LB999 is passed, it will not only mean a step back for me, but in my opinion, a step back for Nebraska as a whole. Again, thank you very much and I will answer any questions you may have.

DeBOER: Thank you. Are there questions? Don't see any. Thank you so much for being here. Next opponent testifier. Welcome.

ARIN SUTLIEF: Now good evening, Chairman Wayne and members of the Judiciary Committee. My name is Doctor Arin Sutlief, spelled A-r-i-n S-u-t-l-i-e-f. I am the senior lab technician at Sweetwater Hemp Company and an adjunct professor at Doane University and Little Priest Tribal College. I'm testifying today in opposition of LB999. After 4

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

years in business, Sweetwater Hemp Company's marketing strategy still focuses mostly on education. It's due to the lack of understanding about hemp that the general public still has today, along with our more unique method for extracting molecules like cannabinoids and terpenes from the plant. Being in the classroom is not my chosen career, but I am an educator. I have been trained to be able to explain and spread the news of science and my work. I was introduced to hemp while completing my postdoctoral research at Doane University, and the more I learned, the more fascinated I became with the whole industry. Since then, I have enjoyed introducing many, including the general public, customers and students, to the exciting rabbit hole of hemp education. I am a co-author on a 2-volume textbook series for hemp education. I have created and taught multiple hemp education courses. I find it to be a subject that once you start learning about it, you don't want to stop. But this industry is ever-evolving, so this education is an ongoing process for us all. I helped establish the first hemp testing lab in Nebraska as the laboratory director; this required an ISO 17025 certification. At Sweetwater Hemp Company, I oversee the GMP process and I am responsible for preparation of our annual recertification. So I am well versed in good laboratory and manufacturing practices required for quality product development and testing. I am also the product formulator. I work hard to develop innovative products that bring benefits of hemp and other quality ingredients together for our customers. By this point today, you may have already heard a number of terms and phrases that you are either hearing for the first time or you still don't understand. Maybe we passed on a little knowledge today, but I am sure you would by no means call yourself experts in hemp. I believe what I and the rest of us here today are trying to say is that we have experts in Nebraska that you can count on. We are ready to help you establish a great system to regulate hemp and-- coming in and in Nebraska already. We are ready to have lawmakers mold the hemp industry into what we need it to be. But education and expertise are needed to keep this industry growing. It's a brand new industry that is complex in many ways. We need it to be safe and we need to establish definitions and regulations. This development begins with the people that make the laws. Don't be afraid to ask for help. Thank you.

DeBOER: Thank you so much for your testimony. Are there questions from the committee? I don't see any right now. Thank you for being here. Next opponent testifier.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

ANNETTE WILES: Thank you, Chairman Wayne, Vice Chairman DeBoer and the rest of the committee. Special thanks to Senator Ibach for submitting LB999. Although I am in opposition, I am thankful that we finally have something that we can discuss. My first page on the handout just talks about the history. I was one of the first chosen with the university as a pilot in 2019. I also found it interesting I was going back through my notes that in 2020, I believe Senator Wayne had proposed 11 or LB1219, which would [INAUDIBLE] similar to where we are today. And at that time, I testified that we should provide tracking regulation and permitting hemp food establishments that would allow business but also put regulations in place. The next part shows from 2021, 2022 all of the committees I presented to, the emails I've sent to policy officers, I presented to Governor Ricketts, I have presented to Governor Pillen. And again, I'm glad that we're here. I will say that I wish that the Hemp Commission would have been involved in the writing of LB999, but I hope that moving forward a compromise can be made that addresses and satisfies the concerns and needs of everyone. My more focus here today is to talk about a proposal and change to the existing bill. My alternative solution is to introduce a consumable hemp program, similar to what Iowa has; establish the regulation and enforcement for consumer safety; create the policies that will provide revenue; impose a \$500 manufacturer fee, a \$500 retailer fee; establish testing, packaging and labeling requirements; and impose age restrictions. An additional thing I would like to add is propose a 10 to 15% sales and excise tax for consumable hemp-derived products; proposed a CBD grower levy fee, similar to what we have for seed and grain; and propose retailer background checks similar to liquor license rules for people that would be selling the product. I would also like for us to allow animal pet products and consider prohibiting synthetic or semisynthetic. The alternative solution gives you the opportunity of what the [INAUDIBLE] could be. If we add a 10 to 15% sales tax, we could be looking at \$10-15 million additional tax on top of the property tax that could be split for property taxes as well as law enforcement. I don't know how many of you are aware, but the Nebraska Crime Lab can only test flour. Today they do not have protocols or equipment to test anything else. So edibles, the tinctures, any of the stuff that comes in-- and I believe the AG mentioned that things have to be sent out. Several of you may not know, but a few years ago, we had a testing lab here, cannabis lab. The owner and I felt so strongly that we did go undercover prior to

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

the AG's office, found the test results and send them to people in the state to--

WAYNE: I'm gonna have to ask you to wrap it up.

ANNETTE WILES: --begin communicating. So, again, I offer a compromise. I know they've talked about the amount of property tax and so on. It was also brought up in 2019 the Legislature appropriated \$500,000 to UNMC for Epidiolex, which is the only USDA-approved drug. We would be walking away from all that money that we have invested, and we know that the Med Center can do amazing things. We're walking away from USDA grants, hemp farming grants.

WAYNE: I'm going to have to cut you off there. Any questions from the committee? Can you spell your name for the record?

ANNETTE WILES: A-n-n-e-t-t-e W-i-l-e-s.

WAYNE: Do you have a written testimony anywhere? Can you email the rest of your--

ANNETTE WILES: You got it.

WAYNE: OK. Thank you. Oh, I got it. Any questions from the committee? Seeing none, thank you for being here. Next opponent. Next opponent. Anybody testifying in a neutral capacity? Thank you. Welcome.

BILL HAWKINS: Chairman Wayne, 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, which is a nonprofit that has been in here for 11 years educating the Legislature and the public on the need for cannabis reform laws. I'm testifying in a neutral position because I don't use hemp products. I worked with Senator Wallman to introduce the first hemp bill before anybody else was around, and worked with Senator Wayne and continue to educate people on the hemp industry here in Nebraska. It hasn't developed. We don't have particle board shipping all over the country. We don't have a seed oil production facility. We don't have a hemp industry. And it's too bad that we don't. Part of it is because of that dangerous plant, the cannabis plant. And so you've heard from all these local sustainable business owners about wanting to provide a safe product. They're trying to do what is right. They're testing, they're checking IDs, most of them, but we still have a problem. We've heard of how dangerous this plant is. And I'm glad we

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

brought up alcohol and tobacco because they will kill you; cannabis hasn't killed anybody yet. So what I have a proposal-- I have passed out a handout that, due to some of the issues we've heard from the Attorney General and others, 70% of Americans-- the latest national Gallup poll-- believe in full federal legalization of cannabis. And so that's what I'm here for. We talk about property tax release-- relief. We need to put cannabis in a taxed and regulated system with hundreds of millions of dollars worth of sales. 70% of Nebraskans believe in full tax and regulations. Nebraskans want to go into a taxed and regulated store, and these businesses want to sell real cannabis to the public. It's time for Nebraska to look at this and really look at just how dangerous this plant really is. And so I appreciate the discussion and the late night that this committee has put in on this issue. And hemp farmers, I think they are OK with the federal changing of the licensing, because our state Ag Department has not cared about the hemp industry for the last 8 to 10 years that I've been in here. And so it will be a lot better for the feds. So I appreciate Senator Ibach and her office in working on this, and I would gladly take any questions that I could.

WAYNE: Any questions from the committee?

BILL HAWKINS: Seeing none, thank you.

WAYNE: I just want to say thank you for-- I've been at it for 8 years. You've always done a hemp show down underneath the-- in the circle down there. And I, I just always appreciate the fact that you are one of the few citizens who are very respectful in here to push an agenda you care about. And I think that means a lot so I appreciate it.

BILL HAWKINS: That means a lot to me, Senator Wayne. And I am respectful of this institution and we need to change. So thank you again for your time, everybody.

WAYNE: Any other neutral testifiers? Seeing none, Senator Ibach to close. Waiving closing is a perfect [INAUDIBLE]

IBACH: I was like, really. I'm missing dinner, so.

WAYNE: As she approaches, there is 28 letters: 9 in support, 18 in opposition and 1 in the neutral capacity.

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

IBACH: Thank you very much, Senator Wayne. And thank you to the committee as well. Your engagement, your really thoughtful questions and observations are very appreciated. I think we're all in agreement that the commodity piece of the bill seems relatively simple. And I think-- I think there's work to do on the criminal side, but I think we all agree that we're headed in the right direction. I think worth mentioning is the mental health piece, which the doctors alluded to, as well as our mental health expert. I think we can compromise on the E-clause so that we can work toward a solution. Senator DeBoer, I would mention that with the marijuana referendum there are several states that have legalized marijuana, but do ban Delta-8 products. So I, as one of the gentlemen said, that's doable. The fiscal note, I would just point to, reflects refunds to the collected fees that the growers have already submitted. The annual year at Nebraska Department of Agriculture is December 1 through November 30, so we would have to refund some of those fees and they would, in turn, register with USDA. One thing that I, I hear over and over-- heard over and over in the testimony, and I would remind the committee that we're really talking about synthetic Delta-8. We are not talking about the naturally-occurring Delta-8 that occurs naturally in such minute amounts that it takes so much of the hemp plant produced down to make the Delta-8 product. And those synthetic-- the synthetic Delta-8 does go through the process of adding in the carcinogens that are, are bad. I appreciate the testimony that the OB/GYN presented. But when she stated that there is not a difference between Delta-8 and naturally-occurring Delta-8, there definitely, definitely is. And it does alter brain chemistry, as she alluded to, before age 25. And in my opinion, that's exactly what we're discussing today. So I would just say thank you. AG Hilgers was very helpful in clarifying a lot of the legal terms. I appreciate Maggie Ballard sticking around with her expertise. Sheriff Davis, as, as always, shared his firsthand experiences with us in his 50 years in the force. And I appreciate and salute him for his, his service. And then Annette Wiles always-- last year when we had some hemp discussion in Agriculture Committee, she was very, very helpful. And so I appreciate her approach and will take a lot of her very thoughtful input to heart. And then Bill Hawkins, as you stated, Senator Wayne, I do-- He is just a champion for the hemp industry and is always on-hand to answer questions, has a very thoughtful approach, and he is very, very respectful. So I appreciate their engagement and their comments tonight. With that, I will say

* Indicates written testimony submitted prior to the public hearing in accordance with the Legislature's guidelines on ADA testimony.

thank you. If anybody has any final questions, Senator Bosn says please don't ask for questions.

WAYNE: Any, any questions? Senator Bosn.

BOSN: To your far right?

WAYNE: All right. Seeing none, that'll close-- is close the word-- conclude the hearing on LB999 and the hearings for today.