

**HOLDCROFT:** Welcome to the General Affairs Committee. I am Senator Rick Holdcroft, representing Legislative District 36, and I serve as chair of the committee. The committee will take up the bills in the order posted. This public hearing today is your opportunity to be part of the legislative process and to express your position on the proposed legislation before us. If you are planning to testify today, please fill out one of the green testifier sheets that are on the table at the back of the room. Be sure to print clearly and fill it out completely. Please move to the front row to be ready to testify. When, when it is your turn to come forward, give the testifier sheet to the page. If you do not wish to testify, but would like to indicate your position on a bill, there are also yellow sign-in sheets back at the table for each bill. These sheets will be included as an, an exhibit in the official hearing record. When you come up to testify, please speak clearly into the microphone, tell us your name, and spell your first and last name to ensure we get an accurate record. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally by anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. There will be a deviation with the first two bills, as we will do them as a joint presentation. And I'll explain that in just a minute. We will be using a three minute light, three minute light system for all testifiers. When you begin your testimony, the light on the table will be green. When the yellow light comes to you, you have one minute remaining, one minute remaining, and the red light means you are finished. And I will stop you at the red light. Then we'll open it up for questions from the committee, and they may feel sorry for you and let you continue, but I will stop you at the red light. Questions from the committee may follow, which do not count against your time. Also, committee members may come and go during the hearing. This has nothing to do with the importance of the bills being heard. It is just part of the process as senators may have bills to introduce in other committees. A few final items to facilitate today's hearing. If you have handouts or copies of your testimony, please bring at least 12 copies and give them to the page. Props, charts, or other visual aids cannot be used simply because they cannot be transcribed. Please silence or turn off all your cell phones. Verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause for you to be asked to leave the hearing. Finally, committee procedures for all committees state that written position comments on a bill to be included in the record must be submitted by 8 a.m. the day of the hearing. The only

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acceptable method of submission is via the Legislature's website at nebraskalegislature.gov. Written position letters will be included in the official hearing record, but only those testifying in person before the committee will be included on the committee statement. I will now have the committee members with us today introduce themselves. Starting on my left.

**ANDERSEN:** I am Senator Bob Andersen, I represent District 49, which is northwest Sarpy County in Omaha.

**DeKAY:** Barry DeKay, representing District 40, which encompasses Holt, Knox, Cedar Antelope, the northern part of Pierce County, and the northern part of Dixon County.

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

**QUICK:** Dan Quick, District 35, Grand Island.

**ROUNTREE:** Victor Rountree, District 3, Bellevue and Papillion.

**STORM:** Good afternoon, Jared Storm, District 23 Saunders, Butler, Colfax County.

**HOLDCROFT:** Also assisting the community today to my right is our committee research analyst, Micah Chaffee. And to my far left is our committee chair, Barb Dorn. Our pages for the committee today are Tate Smith of Columbus, a junior at the University of Nebraska-Lincoln majoring in political science, and Arv-- Arnav Rishi of Omaha, also a junior at UNL and a political science major. OK. For today's-- today we will be hearing LB9 and LB125 as a combined bill hearing. Please complete a green testifier sheet for each bill for which you wish to testify, and clearly mark your position on each bill on the sheets. We will not use our usual procedure for asking for proponents or opponents or neutral. When it is your turn to speak, you will announce in your opening which bills you are testifying on and your position. This is important for our committee clerk and transcribers in keeping an accurate record, especially if you happen to support one bill and oppose the other. Testifiers, please take a seat in the front row. As front row seats are vacated, those who are seated behind and wish to testify, please move up to the front. When you are finished testifying, please go to a seat in the back rows if you want to stay in the room. Please do this as quietly and efficiently as possible so the mics don't pick up the sounds of movement and obscure the testimony. When all testifiers are done, we will then call the

introducing senator to come up for her closing remarks. When the combined hearing is finished and we continue with the agenda, we will resume our usual procedures of hearing proponents, opponents, and neutral testimony. Thank you for your attention to these details. Senator Hughes, your opening.

**HUGHES:** Are we ready? Good afternoon, Chairman Holdcroft.

**HOLDCROFT:** Do I need to repeat it for you?

**HUGHES:** I'm good, I'm good, I got it. And members of the General Affairs Committee, I kind of wondered who was in here. We spend a lot of time here with Natural Resources Wednesday and Thursday. So I wondered who was here before, but--

**DeKAY:** And Fridays.

**HUGHES:** Yeah. And Friday. I am Jana Hughes, J--a-n-a H-u-g-h-e-s, and I represent Legislative District 24. I am here today to introduce LB9 and LB125. We'll start with LB9. LB9 updates our existing law to improve the regulation and enforcement of the Tobacco Products Tax Act. This law was first enacted in 1987, and has been updated multiple times, most recently in 2023 with the creation of the new tax on electronic nicotine delivery systems, or ENDS, otherwise known as vaping products. I brought that legislation in 2023, and I've worked closely with the Attorney General and the Department of Revenue since then to make sure our enforcement processes are efficient and effective. I have provided you with a section by section summary of LB9. The heart of the legislation is in section 6. Section 6 deals with tobacco products tax filings, and the ability of the Department of Revenue to effectively audit these returns. This section also provides the department with the flexibility to extend the period that retailers have to respond to notifications about incomplete or missing returns. Along with the section by section, I've included details from the Department of Revenue, that's the second page, on how the proposed changes in LB9 will help with more effective enforcement of our new vape registry. LB9 also updates the legislation that I introduced last year that was enacted to regulate vaping products. LB9 clarifies that the Department of Revenue and their partners in law enforcement have the ability to confiscate products that do not register with the department under our new vaping regulation law. That was the intention with what we passed last year, but we needed to clarify that this is an option for enforcement. Finally, because our state government had been playing Whac-a-mole in trying to keep up with all the new

nicotine based products out there, we've updated the definition of alternate, alternative nicotine products. These will not only include the nicotine, nicotine pouches that we've seen everywhere, but also new products that come forward. Additionally, we are seeing products manufactured that look like nicotine, act like nicotine, but because they change one hydrogen molecule here or one carbon molecule there aren't technically nicotine. These are nicotine analogs, and we include a definition of these products in the bill. They will be treated just like nicotine going forward for the purposes of the Tobacco Products Tax Act. The second bill, LB125, imposes a tax on alternative nicotine products. These have been-- these have been defined in statute, but not taxed. Enforcement of our nicotine and tobacco products is only effective-- effectively possible if there is a corresponding tax associated with the products. As alternative nicotine products are not currently taxed and everything else is, LB125 rectifies this. As alternative tobacco products are taxed at the 20% rate, we felt that it was fair and reasonable to tax alternative nicotine products at the same rate. I looked around at what other states are doing regarding alternative nicotine products like pouches, and found that Maine taxes pouches at 43% of the wholesale, Minnesota taxes them at 95% of the wholesale price. We aren't singling out pouches with LB125. We are taxing them and all other new nicotine products that will emerge at the 20% wholesale price. You will undoubtedly hear testimony in opposition to LB125 that alternative nicotine products should be taxed based upon weight. They will say that these products promote harm reduction because they allow those more-- those addicted to more harmful nicotine products to transition to less harmful products. And I'm sure there's going to be some way for opponents to justify this, but I want you to not accept the argument. Creating a weight based tax on a product that is easily and readily able to be concentrated will only incentivize manufacturers of these products to sell products with much higher nicotine content than is currently on the market. This would be shortsighted and potentially dangerous to the consumer, especially if a child gets ahold of the product from an adult. Nicotine is a neurotoxin and in concentrated form is commonly used as an insecticide. Blurring the line between consumer product for adults and industrial use of this chemical is one we do not need to accidentally incent by means of a tax policy. Reducing harm by transitioning adults from more harmful products would be a good thing if these alternative nicotine products weren't just creating a new generation of nicotine addicts. The arguments we'll hear are simply about putting profit above people, period. They are going to still make a lot of money. It's hard not to when your

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products contain nicotine, one of the most addictive chemicals known to man. I am happy to answer any questions you might have about LB9 or LB125, and I thank you for your time.

**HOLDCROFT:** Thank you, Senator Hughes. Are there any questions from the committee? I assume you'll be here for your closing.

**HUGHES:** Oh, you bet. I've got a long day in Education, and so I'm willing to stay here for a little bit longer.

**HOLDCROFT:** Thank you, thank you, Senator Hughes. OK, with that, our first testifier. Pro or con?

**STACY ALEXANDER:** Chair. Hello, everyone.

**HOLDCROFT:** And you-- are you testifying in-- as a proponent or an opponent to these bills?

**STACY ALEXANDER:** As a proponent to the bill.

**HOLDCROFT:** Both bills?

**STACY ALEXANDER:** Yes. Hi. My name is Stacy Alexander, S-t-a-c-y A-l-e-x-a-n-d-e-r. I am from Grand Island, where Senator Quick is. I own a small chain of vape shops in the tri-city area. A little bit of history. I have some history with Senator Quick. He was the first person to actually introduce legislation to raise the age of vaping up to 19, and to try to create a bit of a barrier between an attending high school student and their ability to legally purchase these products intended for adults. I believe that was in 2019, Senator Quick. With that regulation, having been in business during that, I was a proponent of that bill as well. And when we saw that age raise, go up to 19 and then the federal government then raised it to 21. Today's statistics will tell you that teen vaping is at an all time low since 2014. In fact, teen vaping is under 8% when asked for children, which is significantly lower, a far significantly lower statistical number than many other problems. I'm coming out today as a proponent for Senator Hughes' bill. My business partner and I met with Senator Hughes last summer, and we had some conversation as to ways that we could mitigate access to minors in the state and still leave access to these adult products that are intended for adults. What we believe, and the reason why I'm a proponent of this bill, is I believe that Senator Hughes' bill introduce a regulatory framework that, as you heard her mention, puts all of the products that are going to be sold in the state of Nebraska on a, on a state registry, where if

those products are not on the state registry, you're not allowed to sell them. What this will do with this framework being laid out, it will put some clear lines in the sand as to what is inbounds and what's not. We've heard several testifiers of vaping being a bit compared to the old west, the wild west out there, because there are no real laws. Anybody who I'm sure who would be testifying today as a proponent for this bill would consider himself a, a good actor in this industry. We believe that with the, with the analog inclusion, what we have seen. I just told you guys that teen vaping is at an all time low, but what is at an all time high are these nicotine pouches that you see. They allow children to fly under the radar. They don't have to suck on anything, they're not blowing out anything, they're just simply tucked into the lip. They don't have the terrible taste of your traditional chewing tobacco. And so we are seeing a bit of an uprising in this. And so we do believe that, that those products should be classified under her LB9 to be-- all analogs included. And we believe that with the regulatory framework that she has laid out in her bill, at current, at current numbers right now, the vape industry alone is worth about \$200 million a year in the state of Nebraska. With her tax proposal, including sales tax, that would leave about \$47 million of new taxable dollars that we'd be bringing to the table for the state of Nebraska.

**HOLDCROFT:** That's your time, Mr. Alexander. So we'll see if you have any questions from the committee for you. Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here, Mr. Alexander. So these analog things, I know one of them's this ZYN, right?

**STACY ALEXANDER:** Correct.

**J. CAVANAUGH:** Is there an age limit on those?

**STACY ALEXANDER:** There is, yes. 21 would be-- they are still considered nicotine. They do have the warnings. Nicotine is an addictive substance, this product contains nicotine. They are considered nicotine. You would have to have a tobacco license to sell these products. They are in the, in the nicotine, in the nicotine box.

**J. CAVANAUGH:** OK. So that bill, LB9's not changing that, then. It's, it-- OK.

**STACY ALEXANDER:** It's allowing tax, it's allowing taxation on those products, a new taxation is what I believe.

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**HUGHES:** LB125.

**STACY ALEXANDER:** LB125. I'm sorry if I referenced the bills incorrectly.

**J. CAVANAUGH:** No, no, that's my mistake. And so you made a reference, you said 8% is what teen vaping is at. Do you know what it was before, say, Senator Quick's bill?

**STACY ALEXANDER:** In 2014 it was at 16%.

**J. CAVANAUGH:** 16. So it's half that? And what was the-- did you have a number on the teen use of the-- these analog pouches?

**STACY ALEXANDER:** I don't have a number on those, I just, just recently read a report that they are on the rise. I know that the number outlasted-- I believe that somebody else will testify and probably have some of that information for you.

**J. CAVANAUGH:** OK. Thank you.

**STACY ALEXANDER:** Thank you, Senator.

**HOLDCROFT:** Senator DeKay.

**DeKAY:** Thank you. Thank you for being here today. So if teen vaping is down to 8%, when it comes to adults, has that number risen or not on adults vaping?

**STACY ALEXANDER:** Are adults vaping more now? I think, I think that question would be yes.

**DeKAY:** I'm just trying to wrap my head around where the profits are coming from if teen vaping is down, how-- where do vape shops come in and make the money on that.

**STACY ALEXANDER:** Currently, under federal law and Nebraska state law, vape shops or anyone who carries a tobacco license is only allowed to sell to someone who is 21 years of age or older.

**DeKAY:** OK. And then when it comes to-- I'm guessing you're a proponent of if you're talking about the nicotine by-- sold by weight, rather than by the product is--

**STACY ALEXANDER:** I think, by weight, honestly. And I, and I heard an argument in the Rotunda. By weight, these nicotine pouches can be

very, very light. So I think it is more sensible to put a wholesale tax on it, regardless of the weight. It's the nicotine content therein.

**DeKAY:** The smaller-- just the nicotine patches are-- they contain the same amount of nicotine in them as a regular chewing tobacco pouch has in it or not?

**STACY ALEXANDER:** Yes, sir. I'm sure-- there are varying milligrams on it which you don't normally find with traditional tobacco chewables. But yes, they are, they are in milligrams of three and six milligrams of nicotine peer patch, and it's in a nicotine salt formation that's mixed with the flavor.

**DeKAY:** OK. Thank you.

**HOLDCROFT:** Any other-- Senator Quick.

**QUICK:** Thank you, Chairman. I know we talked briefly this morning, but, you know, about, like, what you do in Grand Island as far as, as, as your stores versus stores that are maybe the bad actors. Can you talk a little about that? And also about making-- working with our law enforcement and what-- some of that which you've done?

**STACY ALEXANDER:** Yes. Thank you, Senator, I appreciate that. eTITAN is, is the name of my company, and we've been in business for 12 years in April. I should said primarily we operate out of Grand Island, that is our, our hometown. Some time ago, through watching the media and seeing the negative press that kids were getting their hands on vapes, and me being a father of children who were in high school, I didn't want to be a part of that problem. About two and a half years ago, Jacob and I decided to self-regulate. And that is why, once again, we are here as proponents for this bill, because we are trying to work inside a regulatory framework that's non-existent right now. We are literally going off of a moral compass on how we do this. So, for instance, to answer your question, Senator Quick, Jacob and I decided to raise the level of even walking into our store to 21 years old. Now, we know that that's stringent. We know that a pers-- you could walk down the aisle, the liquor aisle, of Hy-Vee, and purchase a bottle of alcohol with your child, with your niece, with your grandchild, and that's legal. But we believe that the look of impropriety can be as bad as the act itself. What we don't want is anybody who appears to be under the age of 21 walking in or out of our doors. So we have simply raised our age to 21 and made it a minimum

standard. We do get some push back with customers because we are operating outside of the law, but we're above it. We believe that that's where, at a minimum, regulations should be. Once again, that's why we're here as promoters for the bill. We're looking for some regulatory framework so that, so that the good actors in the industry know when they're in bounds and when they're out of bounds. Currently, right now, the way that I operate, I miss a two year demographic because I don't serve anyone who's 18 or 19 or 20 years old, even though I legally can on some of the products that I sell in my store. However, by self-regulating and putting ourselves to 21, we have seen no drop off in business and we have gotten nothing but positive returns from our customers who appreciate what we're trying to do. When my business partner and I started thinking about regulation when legislation started coming out, we started thinking, well, if vaping is legalized and regulated, what does that look like? We feel that our model that we're currently operating under now would be somewhat close to that flame-- framework.

**HOLDCROFT:** Any other questions from the committee?

**STACY ALEXANDER:** Oh I'm sorry, and I forgot to answer one more question for you, Senator Quick. We also do what are called exit bags. These are nondescript black bags that are child resistant. I passed them to some senators. Senator Hughes is one who's had them, Senator Cavanaugh had that pleasure of opening one today. We place those products inside of a black bag so that no matter what the product looks like on the outside, no matter how appealing it may be to a child, it's out of view. It's child resistant, and we, and we have the verbiage on the bag that asks that the people keep the products in the bag between uses to keep children and pets safe. We also add on a QR code onto the bag for law enforcement, so should they have encountered a traffic stop and find some of these products that look like they could possibly be something else, there's a clear line for them to, to do a roadside investigation and, and know with, with pure clarity what they're dealing with, whatever that person may have. And, and like I said, once again, these are just levels that we've raised ourself to, and we would even embrace more regulation if, if, if we thought that we could really create the difference between adults and children, because both are important to us, serving adults and keeping children safe are at the top of our priorities, just like many of you senators up here today.

**HOLDCROFT:** Any other questions from the committee? Senator Andersen.

**ANDERSEN:** Chairman. Thank you for being here. I don't really have a question, but I do have a comment, and I really do appreciate your attention to the sensitivities of children and not attracting children, and going above and beyond what's required to keep these things away. children. I, I appreciate what you're doing.

**STACY ALEXANDER:** I appreciate you, Senator, and if I may respond, I'm a Nebraskan. My values are Nebraska values. My children go to the schools in the school districts where I live, and I am a proliferator of vapes there. I make sure that I walk extra careful and try to do everything I can, because it is, it is, in my opinion, and my business partner's opinion, to keep the community safe is the number one thing. Another reason why, and I'm, I'm probably out of time, so I, I'll leave the rest for other people who want to talk, I'm sorry.

**HOLDCROFT:** All right, thank you Mr. Anthony.

**STACY ALEXANDER:** Thank you.

**HOLDCROFT:** Next testifier. Alexander, actually. Are you a proponent--

**SARAH LINDEN:** Yes.

**HOLDCROFT:** --for both?

**SARAH LINDEN:** I'm a proponent of LB9.

**HOLDCROFT:** OK, and you're not testifying on LB125?

**SARAH LINDEN:** No.

**HOLDCROFT:** OK.

**SARAH LINDEN:** Good afternoon, Chairman Holdcroft and members of the General Affairs Committee. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and I am the owner of Generation V with 16 vape stores in Nebraska. First, I would like to commend Senator Hughes for bringing this bill forward. I am very grateful to Senator Hughes and her team for allowing me to collaborate on passing commonsense regulations on vapor products last year, which will restrict their appeal with minors and prevent unsafe products from being sold in Nebraska. Unfortunately, bad actors are circumventing regulations by selling nicotine analog products, which are not currently covered by the regulations that we passed last year. Nicotine analogs are chemicals molecularly similar to nicotine, which have similar effects and are

used as a substitute for nicotine. There are currently several available under various names like nitotine [PHONETIC], and they come in disposables or e-liquid, just like regular vapor products do. Personally, I do not sell any of these products at my stores because there's very little data on the safety or potential effects of these products. However, they are currently available at other retailers in Nebraska. Therefore, they should be wrapped into this regulation and regulated just like other vapor products. Additionally, LB9 provides penalties for bad actors who attempt to evade vapor taxes or fail to comply with the Tobacco Products Tax Act. Unfortunately, there's very little that can be done to force compliance without reasonable repercussions. This bill proposes necessary and reasonable penalties to help enforce the laws that are already in place. I kindly request that you vote in support of LB9 to close these loopholes, and require nicotine analogs to be regulated like any other nicotine vapor product, and allow the state to provide penalties for not complying with the Tobacco Products Tax Act. And just for the ref-- for reference, I am very willing and would support tougher penalties all around for people failing to abide by the laws that are already in place for vapor products, like selling to minors. I like eTITAN. We actively report our competitors who sell to minors, because we don't want anyone selling to minors in the areas and communities that we're in.

**HOLDCROFT:** OK. Thank you. Any questions from the committee? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thanks for being here, Ms. Linden. Just so I understand, I guess in my mind I was thinking of these little pouches things. But you're saying this LB9 captures--

**SARAH LINDEN:** There's two different things

**J. CAVANAUGH:** --the analogs? Is that what it was?

**SARAH LINDEN:** Yeah. Sorry. There are-- I appreciate you bringing the question because I thought that there was a little confusion. There's two different things. So nicotine analog products are basically like Senator Hughes described. They change the molecular substance by like adding a hydrogen or some other component in order to get around it being nicotine, OK? But it still has the same effects or similar effects to nicotine. The pouches are something different. The pouches are another alternative nicotine product that's becoming very popular with kids. I think it's still only like 2% of teens are using them,

but it's gaining popularity very rapidly. So I would suggest that, you know, where vaping was in 2019, where it was like-- and that was a question that was asked, was actually like 27% of teens that were using vapor products, not have habitually, but infrequently, like maybe once a month or experimentally back in 2019 and now it's 7.8% using them experimentally and only 3% using them habitually. But I do think that like as rapidly as that gained popularity with teens, we're kind of seeing the same thing with the pouches. But I wasn't really here to speak on the pouches, but I don't, I don't necessarily have it, you know, have that much of an opinion on whether or not they're taxed. But I think that Senator Hughes is trying to, like, wrap them into the same regulatory framework, which I would support, but then also tax them just like any other nicotine product is taxed.

**J. CAVANAUGH:** And so LB125, that is-- when I'm thinking about it, I should be thinking more of that it's something that's put into the vape liquid then, is that what we're talking about?

**SARAH LINDEN:** No. LB125 is the pouches.

**J. CAVANAUGH:** Oh, I'm sorry, not LB9, sorry.

**SARAH LINDEN:** And LB9, LB9 is really just, I would call it like-- sorry if I'm butchering your--

**J. CAVANAUGH:** No, no, this is my fault.

**SARAH LINDEN:** I would call it like a housekeeping bill. Like LB9 is like, OK, we passed this regulation, it was really great. We worked very collaboratively with the industry. She did. And we came up with this framework. But then we noticed that there's like a couple things that need to be tweaked on it, because people are starting to sell these other products that aren't technically nicotine so they're not technically under this regulation, but they should be. And then also, like, we need some penalties, because just because we passed regulation doesn't mean that people aren't going to-- are going to change their behavior unless there's penalties or repercussions for not changing their behavior. So I think that was kind of missed, we needed stricter penalties. So LB9 is just a clean-up bill. That's, that's how I would think of it. And then LB125 is like trying to tackle this pouch thing because pouches weren't really a big issue until, like, they started come-- like, become more and more popular like last year. And so that's why they weren't probably in, kind of speaking for Senator Hughes, but probably in her purview as she wasn't

wrapping it all together last year because they weren't as big of a problem amongst teens back then. But now they are becoming more and more and more popular, and I would say more popular than vaping. I know we're going to talk later today about a flavor ban and protecting kids, which I too want to protect kids, I have a 12-year-old, I hope he never vapes. But, like, kids are kind of not vaping anymore. Like they're turning to pouches or other things, or like this whole Gen Z mentality of, like, if they call it the sober generation, they're really not doing that stuff anymore. And even adults are stopping vaping. I just did a study of my own trying to understand why my business is declining. So I surveyed, like, thousands of people who haven't shopped with me in the last three months, and 27% said the reason they haven't shopped with me is because they quit vaping. So people are actually quitting. That's one of the beautiful things with vaping. Unfortunately, I'm in a business that, like, my hope is to put myself out of business someday. You know, like I'm trying to get people to quit smoking by using vaping, and then I'm trying to step down their nicotine intake with them over time so that they can quit vaping. So I know I'm going to put myself out of business, and that's a good thing. But, but people really are, like, kind of moving away from vaping in general, like adults and kids.

**J. CAVANAUGH:** Thank you.

**HOLDCROFT:** Any other questions from the committee? Yes, sir, Senator DeKay.

**DeKAY:** Thank you. So moving from vaping to the pouches, is, is that just the flavor of the day or is that the next best thing, are they always continuing looking at-- people in the industry, are they looking for new products to bring forward to try to attract new business?

**SARAH LINDEN:** So, I personally don't think that anyone in the industry is, like, trying to attract kids. But it is up in nature. Like when disposables became popular in vaping, they were like really small, or like the JUUL looked like a flash drive and it became very easy for kids to use undetected. And now that's kind of the same thing with the pouch, because vapor products have gotten bigger and bigger and bigger over the last couple years, and-- but the pouches they, like, someone before me spoke, they don't expel any vapor, they're very easy to hide, you can tuck them in your lip, you can do them in front of your parents, they would never know. And so I think that's why maybe they're gaining popularity. Plus, one of the things that teens liked

was they liked the like the nicotine hit, the little buzz that you get from nicotine. And that's why they really, like, adopted the JUUL back in the day, it was because it was really strong nicotine. And so they could get a little like jolt of a buzz. And it was fun for them. Now those pouches actually, like, even I've tried one of those pouches before, like the 3 milligram or 6 milligram, and I'm like, holy cow, that's a lot of nicotine, like at once, for me anyway. And so I think they get the same kind of buzz effect thing. It's pretty, pretty potent. Maybe something else will come out next that teens will like more. But right now, I don't-- being in the industry, I don't see anything else coming out that they would tend to adopt.

**DeKAY:** So the nicotine buzzing it, what's the after effects? Tired, lethargic, or does it just wear off and you go about your--

**SARAH LINDEN:** I think--

**DeKAY:** --business?

**SARAH LINDEN:** I mean, I think that people would probably have different things to say about this, but I think that it just wears off and they go about their day. Unfortunately nicotine is addictive. So I'm not going to lie about that. Like, there are people-- I mean, just the fact that there's 7.8% of teens that are using them like one time per month and 3% using it habitually, though. Like, a lot of them-- that tells me that-- and this is vape, because I don't have that same data for pouches, but that tells me that, like, teens are-- don't actually have as much access to these products. They're kind of borrowed, like using their friends when they're at school and things like that. They're not necessarily having their own that they're carrying with them all the time and using all the time. And I would guess that pouches would be similar, because for the most part, people do a decent job of, like not selling to minors. Like, we do. There's going to be bad actors out there that are desperate and trying to make money, and they sell to minors. But, like the good actors, we're not. And so we do make it a little challenging to get these products.

**DeKAY:** Thank you.

**HOLDCROFT:** And the other questions from the committee? Thank you very much, Ms. Linden.

**SARAH LINDEN:** No problem.

**HOLDCROFT:** Next testifier.

**MARK WELSCH:** Oh. Oh, I'm sorry. I should have been filling that out. If you're done, I'll go do that.

\_\_\_\_\_ : I'm sorry, I'm not prepared as well. I apologize.

**HOLDCROFT:** OK. Any other testifiers? I mean, we'll wait. You can go ahead and come up and testify and fill out the form afterwards.

**MARK WELSCH:** I apologize for--

**HOLDCROFT:** No problem.

**MARK WELSCH:** --not being prepared.

**HOLDCROFT:** Are you testifying as opposition or a proponent?

**MARK WELSCH:** I'm for, for both bills. And good afternoon, Chairman Holdcroft. My name is Mark Welsch, M-a-r-k W-e-l-s-c-h, and I'm the president of the Group to Alleviate Smoking Pollution, or just GASP of Nebraska. And I want to thank Senator Hughes for introducing both LB9 and LB125. I won't go over all the good things that she talked about. These products are changing through chemists at big tobacco, which owns most of the vaping, pouch, all the other kind of nicotine products are owned by big tobacco, by and large, or they have a big stake in the companies that are not wholly owned by Big Tobacco. I just thought about this when I got here today, that maybe you could change the tax. Since you're talking about taxing nicotine products, maybe it could be fair for all tobacco products, and change them so that they're a percentage of their wholesale price across the board. As you know, as you probably know, cigarettes are not taxed that way. They're are a set number of pennies per pack of cigarettes. Every year, big tobacco raises their price. That makes the effective tax rate on cigarettes go down and down and down and down every year for I think it's been over 20 years since the tax has been increased on cigarettes. The tax rate is now around 7%. I haven't calculated it now with the, the latest prices of tobacco, but it's the lowest it's ever been since you started to tobacc-- tax tobacco, before most of us were born. It just keeps going down and down. So I'd like you to consider that. I'll put some numbers together afterwards to show you where it's at now, where it should be, etc. but it, it needs to be a lot higher. That's the best way to stop kids from starting to smoke and use other tobacco products, nicotine products. And make no mistake, big tobacco wants more children to start using their products, whether they're cigarettes, cigars, pouches, vaping, they rely on children starting to

smoke before it's legal for them to do so. Because if they don't, they won't become customers. They have to get them hooked before they're 18 or they'll never get them. That's what the statistics show. So-- and they keep creating new products. These, these pouches are, are just the next step. There will be others that we can't imagine that are on their, their chemists' tables right now. So thank you very much.

**HOLDCROFT:** Thank you, Mr. Welsch. Let's see if there are questions from the committee. Seeing none, we appreciate that. Make sure to fill out a form, your form--

**MARK WELSCH:** I will.

**HOLDCROFT:** --turn them in. Next testifier. OK. Any-- we must have an opponent.

**JOHN MURANTE:** That's my cue. That's the handouts.

**HOLDCROFT:** And you're testifying in opposition to both bills?

**JOHN MURANTE:** Just LB125, not LB9.

**HOLDCROFT:** Just LB125.

**JOHN MURANTE:** No, no position at all on LB9. So, good afternoon, Mr. Chairman, my name is John Murante, J-o-h-n M-u-r-a-n-t-e, and I am testifying today on behalf of Philip Morris international, or PMI. PMI is an American company that is transforming its products into innovative, smoke free tobacco and nicotine options that are a much better choice for adults who would otherwise continue to smoke. I am testifying today in opposition to LB125, legislation that would place a 20% wholesale tax on nicotine pouches. We believe that this is the wrong approach for public health and the wrong approach for Nebraska. Today, roughly 13% of adult Nebraskans are cigarette smokers. This habit hurts their personal health, and it hurts Nebraska as a whole. It is estimated that smoking related health care costs for the state of Nebraska totaled \$924 million per year. The obvious answer to this challenge is to encourage smokers to quit. But the CDC tells us that half of the adult smokers try to quit every single year, but less than 1 in 10 are actually successful. This is one big reason why a growing body of public health experts are embracing tobacco harm reduction, a strategy that tries to move smokers away from combustible cigarettes toward products that can be better for their health, such as nicotine pouches. The FDA has recognized that the health risks of tobacco products exist on a spectrum, with combustible cigarettes being the

most harmful, while with pouches, adult smokers are able to obtain their nicotine fix without inhaling the toxic and cancer causing chemicals in cigarette smoke. The FDA has also recognized the importance of ensuring that adult smokers can access these products. Last month, the agency authorized the marketing of 20 forms of ZYN nicotine pouches, the first nicotine pouches to receive this authorization. After a thorough four year review, the FDA concluded that these products, quote, pose lower risks of cancer and other serious health conditions, end quote, than other tobacco products like cigarettes and moist snuff. And they are-- and they offer, quote-- and they, quote, offer greater benefits to population health than risks, end quote. The FDA also specifically addressed concerns about youth usage. They noted that youth usage of these products remains low, despite growing sales in recent years, and that ZYN products, quote-- provides, quote, a benefit to adults who smoke cigarettes and other smokeless tobacco products that is sufficient to outweigh the risks of the products, including to the youth, end quote. The FDA is embracing the potential of nicotine pouches to improve public health. Unfortunately, LB125 would do the opposite. Under the bill, nicotine pouches would be taxed at a significantly higher rate, as much as 700% more than some tobacco products like moist snuff. Thus, Nebraska would be forcing adults to pay-- I've learned my lesson, Mr. Chairman, on your rigorous pursuit of the light system, and I will be happy to answer any question you may have.

**HOLDCROFT:** thank you, Senator. Any questions from the committee?  
Senator DeKay.

**DeKAY:** Thank you, sir. Thank you for being here. I see there are different levels of concentration, three milligrams and six milligrams. Does that give them twice the buzz or twice as long a buzz from those pouches?

**JOHN MURANTE:** I think with like a lot of products like this, it, it depends on how they're consumed and to the person who's consuming them. But obviously the more milligrams, the more potent they'll be.

**DeKAY:** Is there any data showing, like, from oral cancer, cancer to the lip, gums or anything, you need data on that, research on that, with--

**JOHN MURANTE:** Not data on this specific product, on, on the ZYN products. But the FDA has done a thorough analysis of the products that we sell, so it's not as easy as just they'll, they'll, they'll

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have a lighter product going forward. This would have to go through an entire FDA process all over again for a good actor that's actually going through that, that process. So it's not, it's not as simple as they'll just have a, a, a product that weighs less.

**DeKAY:** And you want to-- when you put a pouch in your mouth, how long does it take to absorb all the nicotine out? What's the timeline for that?

**JOHN MURANTE:** That, that's going to vary widely, just depending on how it's consumed, who's consuming it, their experience, and those sorts of things.

**DeKAY:** I just wonder-- it should be consumed about the same, they're not going to eat it, but.

**JOHN MURANTE:** Oh, if you eat it, I see.

**DeKAY:** No, I'm just kidding about that. Thank you.

**HOLDCROFT:** Any oth-- Senator Andersen.

**ANDERSEN:** Thank you, Chairman, and thank you, Mr. Murante, for being here. Your client, do they agree that ZYN is a nicotine analog?

**JOHN MURANTE:** That ZYN is a-- There's nicotine in it? Yes.

**ANDERSEN:** OK. So, so what is their objection, is it the tax rate that is in here?

**JOHN MURANTE:** Yes.

**ANDERSEN:** And they believe-- what do they believe should be the appropriate tax rate?

**JOHN MURANTE:** They prefer that the law as it exists right now, where the tax is, is the sales tax. We do believe that going by weight makes more-- is, is a better tax policy, but that's something we'd be willing to engage in.

**ANDERSEN:** So for Philip Morris, what, what is the tax rate for cigarettes, which they are--

**JOHN MURANTE:** It's per pack as, as was discussed. It's a per pack for, for all cigarettes.

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**DeKAY:** But it's higher than sales tax.

**JOHN MURANTE:** Like \$.46. What's that?

**DeKAY:** That's higher than straight state sales, right?

**JOHN MURANTE:** Yes. Yes.

**DeKAY:** So why, why is ZYN different than a pack of cigarettes?

**JOHN MURANTE:** It's, it's a different-- it's not a combustible product, so it has a much higher cancer profile, as the FDA articulated. But-- so it's, it's, it's not the same thing is, is why it's not taxed the same.

**DeKAY:** Yeah. I'm just trying to figure out the objection by your client. It seems like both of them are sin tax, right? I mean that's kind of what this is, a sin tax--

**JOHN MURANTE:** Mm hmm.

**DeKAY:** --right? So why wouldn't they be similar?

**JOHN MURANTE:** In terms of why wouldn't the two tax structures between cigarettes at the end-- we'd be more comfortable with taxing ZYN like cigarettes as opposed to the 20% wholesale across the board. Just because the we believe that the, the, the weight isn't necessarily indicative of potency here or anything like that, and it's not really reflective of the fact that these ZYN pouches are substantially healthier, quote unquote, than cigarettes. So we don't underst-- from our-- from the from the tax policy perspective, even the FDA is saying a cigarette is substantially more harmful than these pouches. So from our point of view, a bill that would tax these pouches at a substantially higher level than cigarettes doesn't seem-- there seems to be a disconnect there from a policy--

**ANDERSEN:** [INAUDIBLE] cigarettes is not 20%?

**JOHN MURANTE:** No, there isn't, for cigarettes, it's something-- I believe it's \$.46-- as a nonsmoker as I believe it's \$.46 per pack. It's not a weight. \$.60, I, I apologize. Yeah, the exact-- but it's a, it's a per pack, it's not a 20% of the wholesale cost.

**ANDERSEN:** OK.

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**JOHN MURANTE:** So it's not like snuff or anything like that.

**HOLDCROFT:** Senator Storm.

**STORM:** Thank you, Chair Holdcroft. I've got a couple questions about your product.

**JOHN MURANTE:** Yes, sir.

**STORM:** So-- and I'm familiar with these. I mean, these are-- I have two high schoolers and a middle schooler, so they're all over schools, just so you know, that they're easily tied in. But is this synthetic nicotine? Is it-- so because it's just a clear pouch. So--

**JOHN MURANTE:** Yes.

**STORM:** It is synthetic?

**JOHN MURANTE:** It is not synthetic. It is nicotine, it is nicotine, but it's not--

**STORM:** So they're taking that from the plant, from tobacco leaf, somehow taking that out of it, put it into a clear pouch? Am I understanding that right?

**JOHN MURANTE:** Yes. If I'm understanding your question, then yes, it's not like-- it was sometimes discussed that, like, you're taking on a different bill on a different subject matter, that, that they're taking something that was nicotine, change the molecule around. That's not this particular policy question, this is nicotine.

**STORM:** So this is natural nicotine. OK.

**JOHN MURANTE:** Yeah, so [INAUDIBLE].

**STORM:** I was curious on that, but OK.

**HOLDCROFT:** Any other questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here, Mr. Murante. Kind of on Senator Storm's question. Is ZYN the name of the thing or is that a name brand?

**JOHN MURANTE:** It's a brand. Yeah.

**J. CAVANAUGH:** So there are other versions of this pouch or whatever.

**JOHN MURANTE:** I'm sure there's lots of tobacco pouches, yep.

**J. CAVANAUGH:** Tobacc-- is that what it's called, a tobacco pouch?

**JOHN MURANTE:** That's, that's what we're using, using for our purpose. Our interest with just LB125 is just the, those ZYN pouches.

**J. CAVANAUGH:** Yeah. But ZYN is Philip Morris' particular brand--

**JOHN MURANTE:** Yes.

**J. CAVANAUGH:** --there's other, whatever the other, R.J. Reynolds makes one and whatever else.

**JOHN MURANTE:** Yes.

**J. CAVANAUGH:** OK. I'm trying, trying to understand. I have younger kids than Senator Storm's, so fortunately I have not had-- found these in somebody's shoe and [INAUDIBLE].

**DeKAY:** Is that where you--

**J. CAVANAUGH:** Wherever people hide things. So, all right, so here's my question. So Mr. Welsch was saying that we should raise the taxes on cigarettes. I mean, would that-- if we raise the taxes on cigarettes to be more in line with this 20%, would that be OK? Or--

**JOHN MURANTE:** Now that's a-- I mean, to me, that's a totally separate po-- what the, the tax rate is on, or ought to be on, cigarettes is a sort of separate issue than what this on pouches should be. As a matter of comparative analysis, our view is these pouches are healthier than, than cigarettes, as the FDA has already articulated, so it shouldn't be taxed, certainly at a higher rate than cigarettes ought to be. But anything beyond that we haven't had the chance to. If there's a separate bill, a different subject matter, on a different day, we'd-- happy to take a look at it, but--

**J. CAVANAUGH:** But if we decided, the Legislature decided, to pass this bill as is, then we should probably take a look at the tobacco tax for cigarettes is what it sounds like. So that it would be comparatively higher?

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**JOHN MURANTE:** I would say this this Legislature is entitled to consider-- just consider the Pandora's box to the extent that any is opened and what needs to be considered holistically. That's-- from our point of view, that's outside the scope of this bill. But we'd take that under consideration, and undoubtedly would advise accordingly.

**J. CAVANAUGH:** OK. Thanks.

**HOLDCROFT:** Senator DeKay.

**DeKAY:** One quick question. Thank you, thank you, Mr. Murante. Hey, just curious. The ZYN pouches compared to a regular chewing tobacco pouch, the milligrams of nicotine in them, are they comparable for regular tobacco as compared to the--

**JOHN MURANTE:** To other pouches?

**DeKAY:** Yeah.

**JOHN MURANTE:** I'm not fam-- I'd have to get back to you on that one, Senator, I'm not familiar with what--

**DeKAY:** OK.

**JOHN MURANTE:** --the content of the other, other kinds of pouches are.

**DeKAY:** Well, just regular chewing tobacco, whether it be Kodiak or something like that, if the nicotine levels are at the same levels as comp-- if you're comparing them--

**JOHN MURANTE:** We'll get you that information and what's out there on the market and that, that sort of thing.

**HOLDCROFT:** Any other questions? Seeing none, thank you, Senator Murante. Next testifier. And Senator Hughes, if you continue to make the facial expression and hand gestures, you're gonna have to sit over on the side.

**NICOLE FOX:** Afternoon, Chairman Holdcroft, members of the Rev-- of the General Affairs Commi-- Committee. Nicole Fox, N-i-c-o-l-e F-o-x, representing Platte Institute. And I'm here in opposition to just LB125. This bill proposes a 20% tax on the sale of alternative nicotine products. A tax at this level has the potential to harm both Nebraska businesses and public health. And while previously, you know, we have been in support of smart regulation, such as the registry

established last year to help prevent illicit, illicit products from being sold, we don't feel that taxation is likely going to keep these products out of the hands of teenagers. It's well established and supported that cigarette taxes are not a stable source of revenue. This could be said for taxes on other nicotine delivery systems as well. Taxation varies greatly from state to state, and large differences in prices drives smuggling and tax avoidance. Low tax products commonly find their way into high tax states. Imposing higher taxes leads to loss of revenue. The revenue loss is not just the tax on the alternative nicotine product itself or tobacco, but it also encompasses lost tax revenues on other products that are purchased when one leaves the state. Additionally, sin and discriminatory taxes, like those on cigarettes and alternative nicotine products, are regressive, meaning that low income Nebraskans pay a greater share of their income than higher income earners, making them especially burdensome. Alternative nicotine products offer a means of nicotine consumption that is less dangerous, dangerous than combustible cigarettes. They allow users to consume nicotine contained in tobacco but with fewer harmful chemicals than traditional combustible cigarettes, and therefore are a potential option for individuals interested in smoking cessation. According to the CDC, 68% of the country's 33 million smokers have expressed an interest in quitting. Protecting access to harm-reducing alternative nicotine products is intertwined with tax policy because these products are economic substitutes. Low tax rates on alternative nicotine products encourage consumers to switch from combustibles. High tax rates on these products are counterintuitive to harm reduction efforts, as they encourage users to return to smoking combustible products. Like vape, it is anticipated that states around the country will propose new taxes on these products, such as pouches. But currently, our only neighboring state that imposes such a tax is Colorado. The Platte Institute suggests that if a tax were to be imposed on these products, that the Legislature can instead consider taxation based on recommendations from the Tax Foundation. They have proposed four categories of taxation for reduced harm products, with each category having a tax rate compared to combustible cigarettes. And so in your handout I have the four different categories. And basically what this means is that under LB125, alternative nicotine products would fall under category 3. And I see my light is red. And I'm happy to answer any questions.

**HOLDCROFT:** I'll let you finish your--

**NICOLE FOX:** All right.

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**HOLDCROFT:** --last paragraph.

**NICOLE FOX:** So I'll finish this last example. So I-- we've discussed how currently packs of cigarettes are, are taxed at \$0.64 per pack. So according to the Tax Foundation, we're wanting to increase smoking cessation and, and also help promote that through tax policy. This would translate, then, to approximately a \$.06 tax per container of nicotine pouches, just since we've been talking a lot about nicotine pouches. This would be comparable to what they do in North Carolina, which is what Tax Foundation considers to be best practice amongst those states that do tax nicotine pouches. They tax at \$0.10 per container. So with that, I conclude my testimony and happy to answer any questions.

**HOLDCROFT:** Questions from the committee. Senator DeKay.

**DeKAY:** Thank you, Sir. Just to clarify one statement you had in here. Thank you for being here today. Are Nebra--lower income Nebraskans paying-- buying more the nicotine or, or proportionally are they paying more, how--

**NICOLE FOX:** Thank you for your question, Senator DeKay. And I apologize that I did not make that clear. So yes, we consider it regressive because a larger proportion of their income would then be spent on tobacco or alternative nicotine products.

**DeKAY:** Thank you.

**HOLDCROFT:** Any other questions from the committee? Thank you, Ms. Fox. Oh. Senator Storm.

**STORM:** Thank you, Chair Holdcroft. Thank you, Ms. Fox. So I've got a question. What's the Platte Institute's position on as they incr-- the price goes up on cigarettes and tobacco, do people buy less of that product?

**NICOLE FOX:** No, they don't. So--

**STORM:** So. But there's got to be a point where they will stop, they can't afford to buy that. Or does that--

**NICOLE FOX:** No--

**STORM:** --create a black market or what?

**NICOLE FOX:** Some-- Senator Storm, that's a very good question, because that is basically what I was trying to convey in my testimony, is that a lot of times we think about, you know, we want to generate more rev-- either one, we want to generate more revenue, or number two, we're trying to deter somebody from smoking or using the product. But actually in reality, what happens is people go elsewhere.

**STORM:** Right.

**NICOLE FOX:** So they will go and, you know, for example, in Missouri, when it comes to tobacco, as far as our surrounding states, it's one of-- it is, I think, the lowest. And so instead of just buying fewer cigarettes, they take off and go to Missouri and buy their products. So we have, you know-- so number one, people are not quitting. And then number two, we have a revenue loss because now we are not taking any tax revenue--

**STORM:** Sure.

**NICOLE FOX:** --and, you know, plus, you know, other things that they might purchase. So [INAUDIBLE]--

**HOLDCROFT:** Any other questions?

**NICOLE FOX:** --you out.

**HOLDCROFT:** Senator Andersen.

**ANDERSEN:** Thank you, Chair. And thank you, Ms. Fox, for being here. So for the Platte Institute, nicotine pouches would be in category 3, 10%. If that was what the bill was amended to, then Platte would be neutral. If it was 5%, it would be in favor?

**NICOLE FOX:** I wouldn't say that we would be in favor just because of the fact that right now we only have one neighboring state, so we'd still be somewhat uncompetitive. But I think, you know, the reality is that states are probably going to start taxing these newer products, just like they've started taxing vape. Not all states tax it. But we would, I would say we probably-- I mean, we wouldn't support it, but we would probably be a little bit more along the lines of neutral.

**ANDERSEN:** So it's the level of taxation is that a concern or objection by the Platte Institute?

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**NICOLE FOX:** I would say at this point-- I mean, we would-- I mean, right now we're in opposition to the bill as written, and I can't really speak for a bill that has yet to evolve. So.

**ANDERSEN:** So you're in opposi--

**NICOLE FOX:** But yeah.

**ANDERSEN:** I'm sorry, I may be a little slow, but you're not in lasting opposition to it because they believe the tax rate at 20% is too high, and it should be lowered. Is that--

**NICOLE FOX:** And we think that it could lead to ultimate revenue loss for our state.

**ANDERSEN:** OK. Thank you.

**HOLDCROFT:** Any other questions? Senator Rountree.

**ROUNTREE:** Thank you so much, Chairman Holdcroft. Ms. Fox. Thank you so much for your testimony. I've been out of this game for a long time. I quit smoking in 1983. All of my formative life, I grew up on a tobacco farm, so that's all I've known coming up. So this has kind of been in the blood. But as I look at prices, I remember back in my day, a pack, just a pack of cigarettes cost \$1. I don't know what they are now. But some question going on, and if we're in a category 3 for these vape products, and one of these little containers has about 15 to 20 pouches, but we're going to have maybe a 10 and-- 10% tax on that, I'm just trying to look at the relation of a pack of cigarettes versus a pack of these little pouches and see what dollars are. I mean, if the cigarettes are too high, and we tax these, and let's say these pouches, these little pouches are, maybe, \$5. I'm just throwing it out because I don't know. And this pack of cigarettes over here being \$10, even at a 20% tax on the pouches, they're still going to be less than what we have over here for our cigarettes. But I can back into a lo-- faulty conclusion because I don't know those prices. But as you've looked at it, what kind of prices do you think we're looking at out there?

**NICOLE FOX:** Senator, to be quite honest, I, I am not super familiar with the prices of a variety of these products because I am not a user, but I did in preparation for this hearing, look up the price of what a container of nicotine pouches would be, and I saw anywhere from like \$3.50 up to about \$6.50.

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**ROUNTREE:** OK.

**NICOLE FOX:** So, yeah, I-- and I'm not familiar with exactly what cigarettes are costing nowadays, but I would think that they're a little bit less, yes. But the goal again is to, you know, do all we can to promote smoking cessation. And so that's why we would recommend-- you know, if the goal is to deter teens from using these products, I mean, I would just say enforcement of things like the registry and current laws where they have to be 21 to purchase them is a better alternative than trying to tax them, because, again, with your adult population, when they're trying to, to quit smoking, they're going to go to some-- they're going to go where it's cheaper. And if it's cheaper outside of Nebraska, they're going to, they're going to buy those products outside of Nebraska.

**ROUNTREE:** Thank you so much.

**HOLDCROFT:** Any other questions for this testifier? Seeing none, thank you, Ms. Fox. Next testifier. Then are you testifying just on one?

**BILL HAWKINS:** Chairman Holdcroft, I am testifying in a neutral position on both those bills.

**HOLDCROFT:** OK, you'll need to fill out another form when you're finished. You'll need two forms, right?

**BILL HAWKINS:** Oh, two forms? Or I did, I put both numbers on one, but if I need to, I will.

**HOLDCROFT:** Carol, I mean Barb, what's the story on that? What do we need?

**BILL HAWKINS:** What is the clarification? Do I need to fill out another one?

**HOLDCROFT:** Yeah. So when you get finished, fill out another one.

**BILL HAWKINS:** Certainly I will.

**HOLDCROFT:** And you're a neutral on both.

**BILL HAWKINS:** Neutral on both bills. My name is Bill Hawkins. B-i-l-l H-w-k-i-n-s. I'm a lifelong Nebraskan and organic farmer and herbalist. I'd like to clarify things. In a neutral position, it gives me a chance to listen to both sides. Big tobacco is constantly

innovating to create new products. I think, personally, the reason the pouches now are becoming more popular with the youth and they're all over the schools, is because the schools have introduced vaporized technology that is alerting when somebody is vaping in the bathroom. So they are going to the alternative of the pouch to get the buzz that nicotine gives you. So in my neutral position, I want to thank Senator Hughes for working with the industry, and I am not against local, sustainable businesses, and I appreciate these business owners behind me who are trying to keep, quote, are you safe and, and doing the right thing and, and reporting bad actors. But they are still selling a poisonous, deadly product. Whether a nicotine patch is safer than smoking cigarettes, it's still a poison. And so, I believe that we've discovered that cigarettes are-- have had a free ride for a long time on their taxing, and we need to tax them more. If we lose some revenue by raising the tax rate and they go to another state, that's their choice. But that tax rate and what we are gathering from big tobacco is not going to cover the health care costs of the Generation V vaping industry that has come about. Minutely vaporizing particles deep into the lungs is different than tobacco smoke, and it's very much different than the tobacco that Senator Rowntree was harvesting many decades ago. Many addictive chemicals-- And so I don't think this bill goes far enough, and I think you need to regulate this industry a lot more. So that's my testimony, and I appreciate the committee being in here on such a nice, beautiful Nebraska day. I greatly appreciate you. And I stayed here just for this testimony, so.

**HOLDCROFT:** Thank you, Mr. Hawkins--

**BILL HAWKINS:** I'll be glad to take any questions.

**HOLDCROFT:** Any questions from the committee? Seeing none, thank you, Mr. Hawkins.

**BILL HAWKINS:** Thank you, and have a good day.

**HOLDCROFT:** Next testifier. Any further testifiers? Yes? And how are you testifying?

**DANIEL MUELLEMAN:** Testifying proponent to LB9.

**HOLDCROFT:** OK.

**DANIEL MUELLEMAN:** Revenue [SIC] Committee, Senator Holdcroft, my name is Daniel Muelleman, D-a-n-i-e-l M-u-l-l-e-m-a-n. I'm an Assistant Attorney General with the state AG's office. And my main function at

the office is tobacco regulation and nicotine regulation. I just want to speak in support of LB9 briefly, for all of the non-entertaining parts of that bill dealing with the enforcement mechanisms and the audit support. The Department of Revenue does a lot of great work with what our office does in support of the Master Settlement Agreement, and the millions of dollars that are contributed through that agreement to the state Health Care Cash Fund. And so we're just speaking in support of LB9 in that it furthers that work. Thank you for your time.

**HOLDCROFT:** Thank you, Mr. Muelleman?

**DANIEL MUELLEMAN:** Yep.

**HOLDCROFT:** Any questions from the committee? Seeing none, thank you very much. Any further testifiers? If not, then we will welcome back Senator Hughes. For LB9, there were four proponents, no opponents, and one neutral. For LB125, there were five proponents, eight opponents and one neutral. Your closing, please.

**HUGHES:** Thank you, Senator, Holdcroft, Chair Holdcroft, and the rest of the committee. So I think we've got it clarified. LB9 is a clean-up bill, and adds analogs to that structure. It will also include the nicotine pouches in that structure, which you need to do an excise tax on so that you have that capability to regulate. There was something mentioned, how is nicotine made into pouches. And it's extracted nicotine either from the tobacco plant or it can be synthetically produced. And then they add other fillers like cellulose, flavorings, adjusters, stabilizers, etc. and then put them in a little pouch that, that we all know how those work. LB125 adds the tax to alternate nicotine items, including pouches. ZYN is one brand. There's other brands available. I think one's called Go. I did go to a gas station and bought my first ZYN pouch container the other day, and the cost, Senator Rountree, was around \$5.30 ish for the pack of-- and it was 15 pouches in the little container. I also wanted to say thank you to the reputable dealers that you heard at the beginning, Mr. Alexander from Grand Island. They have an in-- for eTITANS, they have a very innovative packaging when they sell products. It's kind of a child proof packaging. I heard Senator Cavanaugh tried to open it. It took me a while to figure out how to open it, which is a-- I, I just-- it shows their commitment to making sure that they're safe and reputable in what they're doing. I thought it was also interesting when he mentioned that you cannot buy these things unless you're over 21 in the state, but they don't even let anybody in their store that he

would even-- that is under 21, which I think is just another aspect of showing how serious they are that this is for adults. So thank you for your time today. I urge you to vote both LB9 and LB125, LB125 out of committee, so that we can have a more effective enforcement system in place for vapes, pouches, and whatever comes forward with new nicotine or nicotine-like things. We are no longer living in the world where nicotine products are made of tobacco from your day, right? Working on the tobacco farm. Synthetic nicotine, just made with industrial chemical facilities is pumped out in whatever concentration, it can be whatever weight. And that's my hesitation on doing the pouches by weight. When they say, well, that's how tobacco pouches are done. But yes, a tobacco plant chopped up is the weight of every pouch tobacco plant. But when you are using a synthetic nicotine and mixing it with fillers, it's like, it's like powder, and they can make that weigh anything and they will-- those little pouches can weigh almost nothing. And if we're doing a tax based on weight, guess what we're encouraging? We're encouraging those pouches to weigh almost nothing. I want to, to Senator Cavanaugh with the analog thing. Think of the analog piece of, of nicotine, kind of like now we have Delta-8 everywhere, right? Delta-8 is in the marijuana, but it's chemically made. So that would be what an analog is. So we just need to get this umbrella bigger to anything that acts like nicotine or whatever falls under this. I found it interesting that, let's see, Philip Morris came in and said that pouches, pouches, these nicotine pouches like the ZYN are for adults, people trying to quit smoking regular cigarettes. And I find that interesting, because I have a daughter that's young adult, she's 24, living down in Kansas City, and she was telling me the other day that it was the summer, actually, this past summer, she went to a concert, an outdoor concert, and they had a big tent set up, Philip Morris had a huge tent set up with ZYN pouches that they were handing out for free. They did check that you were over 21, but she, she could go up to the tent, and they had about ten different fla-- or like five or six different flavors, and she could pick three flavors to try at this concert for free. So if they are truly just a cessation device, which would be great for people that are smoking, I don't understand why you'd be at a concert handing out free nicotine pouches to someone that, you know, isn't standing there smoking a cigarette or whatever. It's also interesting to me that Philip Morris said that, that, and it is true, four days before the Biden administration left, they approved some of the flavors of ZYN pouches. And I just want to mention that the FDA also approved cigarettes back in the day too, too, so that, you know, that doesn't necessarily mean anything in my opinion. I also want to mention that if we are going to enforce our laws on nicotine,

we have to tax them because then we have the structure in place to do that. All other nicotine products have an excise tax. It doesn't make sense to me that we would not have some sort of excise tax on these nicotine pouches, and any other thing that gets made up to-- that's like nicotine for people to use. The 20% wholesale price is what we use for other tobacco products, so I think it makes sense for us to do that with our alternative nicotine products. And I want to mention something that Mr. Welsch mentioned. He said he thinks a wholesale price makes sense on all the nicotine. And that, that also brings me to the point of, if you would do a number per ounce, like, you know, \$0.30 per ounce of something, 10 to 20 years from now, what does that \$0.30 per ounce mean? It has lost any, you know, a dollar today is not the same in 10 years or 20 years. So at least if you do a wholesale percent, as that price of that base product goes up, the excise tax is also going up proportionately. And so to Mr. Welsch's point, I would, I would like to see all our nicotine taxes done on a wholesale percent, because then it's not something that you have to come back to. And we-- we're talking about the \$0.64 on a pack of cigarettes. That was done, I think it was 1992. I could be off on that, but whenever it was done. Think of what that would have been back then to today. It's not growing every year. And so then we come back to the body and we say, OK, now the tax should be in \$1.50 on a pack of cigarettes, but it's so much harder. If we would have done a percent on wholesale, it would have just been growing as we go. And you don't have to keep revis-- revisiting the statute to change. OK, I think that I have all my notes. I think that is it. I am happy to answer any questions.

**HOLDCROFT:** Thank you, Senator Hughes. Any questions from the committee? Seeing none, thank you for your testimony.

**HUGHES:** Thank you guys. I appreciate the time today. I did not think it would go this long, so sorry.

**HOLDCROFT:** That concludes our testimony on LB125 and LB9, now we'll move to LB125. I'm sorry, LB285. LB285. Senator Lonowski, you may begin when ready.

**LONOWSKI:** Good afternoon, Senator Holdcroft and members of the General Affairs Committee, thank you for this hearing. For the record, my name is Senator Dan Lonowski, Delta, Alpha, November, Lima, Oscar, November, Oscar, Whiskey, Sierra, Kilo, India, and I represent the 33rd District. When I say vape throughout this, I really mean aerosol sprayed into your lungs. Kind of like hairspray. I'm here to introduce

LB285, because public health should be paramount, especially for the youth in our state. LB285 prohibits the sale of fla- flavored vape products, which are referred to as electronic nicotine delivery systems in our statutes, known with the acronym ENDS. The bill addresses a subset of those referred to as flav-- flavored vape products. LB285 prohibits their sale in Chapter 28, which concerns a licensure of retailers and others, and in Chapter 77, which is the Tobacco Products Tax Act. The Tobacco Products Tax Act currently provides that any ENDS sold in Nebraska are to be certified. This bill prohibits flavored vape products from being certified. Tobacco and menthol flavors are unaffected by this bill and can continue to be sold in Nebraska. Cherry, berry, mango, strawberry, watermelon, just to name a few, there are more than 6,000 flavors of vaping products available on the market. The number of flavors continues to grow as big companies seek to acquire new customers and retain their current customers. With a significant elevated level of nicotine contained in vaping devices, the people using them become easily hooked. Producing more flavors available in vaping devices only increases the chances of more people who are vaping to become addicted. I worked for an area substance and alcohol abuse prevention anti-drug task force known as ASAP from 2023 to 2024. I was also a public school teacher for 35 years. During that year with ASAP, I returned to schools across four counties relating the dangers of fentanyl, alcohol, and various other drugs. I soon realized that vaping was the biggest culprit of drug abuse among our youth in small town Nebraska. In most small communities surrounding Hastings, every fifth grader knows someone in their class that is vaping. A document I provided to the committee includes some of the health risks of vaping. Vaping, or the use of electronic nicotine delivery system, ENDS, like e-cigarettes carries severe health risks, some of which are still under investigation due to the relatively new nature of these devices. This is an important-- this is important information for the committee to read with LB285, along with my other bill that will be heard today, LB688, which addresses advertising of ENDS systems. The health risk of vaping cited in that document include lung damage, cardiovascular risks, nicotine addiction, toxic exposure, oral health, impact of brain development, unknown long-term effects, a potential gateway to smoking, reproductive health, and se-- and second hand exposure for those near the person who is vaping. Some other states have passed legislation prohibiting the sale of flavored vape products, and it is time for Nebraska to join them. I distributed for the committee's consideration an amendment, AM201, which would strengthen and improve section 4 of the bill. Also, a new section inserts an operative date of January

1st, 2026 to allow retailers enough time to comply with the passage of the bill. No flavors are available-- let me correct this, only two flavors, tobacco and menthol, are now available in California, Maine, Massachusetts, New Jersey, New York, Rhode Island, Utah, and Michigan. Opponents argue vaping helps stop cigarette smoking. An important fact that they don't disclose is that one vape can have the amount of nicotine in one entire package of cigarettes. Flavors like tutti frutti, mango ice, rainbow candy, etcetera, they're not geared toward adults, they're geared toward children. In 2024, 1.63 million students reported vaping in the U.S. Nearly 90% of those vaping with the youth were using flavored vapes. Thank you, Chairman Holdcroft and members of this committee for your consideration of LB285. I respectfully ask for the committee's support to advance LB285 with the amendment AM201 to General File. Now, I will try to answer your questions that you have.

**HOLDCROFT:** Thank you, Senator Lonowski. Are there any questions from the committee? Seeing none, will you be here for close?

**LONOWSKI:** Yes, sir. Thank you.

**HOLDCROFT:** OK, we're going to go back to regular now, testimony. We'll start with proponents. Proponents of LB285.

**BRANDON KOEHLER:** Good afternoon. Thank you, Chairman Holdcroft and the committee for hearing our testimony. My name is Brandon Koehler, B-r-a-n-d-o-n K-o-e-h-l-e-r. I'm here representing the Metro Omaha Tobacco Action Coalition, otherwise known as MOTAC. I think I have been given a unique opportunity here to speak on this topic. Also, giving-- given my role and employment, I'm also the program manager for lung cancer with one of the major health systems in the Omaha area. And to reiterate a lot of the things that the senator just laid out, we, we do know that these flavored electronic nicotine delivery systems are being geared towards children. The bubblegum flavors, cotton candy, blue razzmatazz, I, I can't say I've talked to a single person in my line of work that has reached for a flavor, flavored nic-- vape or electronic nicotine device in their efforts to quit smoking. Granted, in the lung cancer realm, we, we don't recommend using vapes to try to quit smoking. But, you know, we, we realize, you know, we, we want these folks to try to quit smoking however they can and, or however will best work for them. And if a vapor and nicotine replacement product is the way that they can do it by stepping themselves down, that's great. But not a single one of these people are grabbing a cotton candy flavored vape to do so. These flavors are

clearly directed towards children. Another one of our efforts, we work with the Boys and Girls Club of the Midlands to try to reach the at risk youth populations that are being subject to these products. And to reiterate one of the stats stated earlier, of all of the kids that are reporting using these products, almost 90% are using a flavored vape or electronic nicotine delivery. And while we do see that the overall vaping has marginally de-- decreased by very little, it's still is a very prevalent issue that our youth is up against. And with that, thank you for your time.

**HOLDCROFT:** Thank you, Mr. Koehler. Any questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. And thanks for being here, mister Koehler. So you said out of-- this is out of kids, 90% are using a flavored vape?

**BRANDON KOEHLER:** If, if they're using an electronic nicotine delivery product or a vape, 89 to 90%. It is a flavored variety.

**J. CAVANAUGH:** Do you know what the similar number is for the adults who vape?

**BRANDON KOEHLER:** I do not have that readily available.

**J. CAVANAUGH:** Thanks.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you, Mr. Koehler. Next proponent. Proponent.

**MARK WELSCH:** Good afternoon, Chairman Holdcroft and committee members. My name is Mark Welsch, Mark Welsch Bundeswehr. I'm the president of the Group to Alleviate Smoking Pollution, or just GASP of Nebraska. I thank Senator Lonowski for sponsoring this bill, and for Senators Andersen, McKeon, and Clements for co-sponsoring LB285. As you know, this bill prohibits the sale of most, but not all, flavored e-cigarettes, which are referenced as electronic nicotine delivery systems in state statutes. This bill allows tobacco and menthol flavors to be sold. Statistics show menthol is the flavor that is preferred by most Black and Hispanic children and adults. Candy and other fruit flavors are preferred by mostly white children and adults. Our laws should protect all children and adults in the same way by banning all flavors at the same time, not just the flavors preferred by the white demographic. Two of the online opponents are opposed only because this bill doesn't include menthol. All of the neutral, all of

the for neutral writers, want you to include menthol in the flavors that are banned by this bill. By including menthol in the list of banned flavors, you would have 14 proponents. 15 opponents and zero neutral with your online comments. Those who would like to-- this change include the American Lung Association, American Heart Association, and of course, GASP. We want you to include menthol to make it illegal. The long-term effects of vaping are largely unknown. As more people use e-cigarettes for more years, some more health studies are finding that they may just be as dangerous as smoking tobacco. We don't know yet. They haven't been used long enough. Our children and young adults who become addicted to vaping are the medical test subjects. After they have used these addictive products for 20 or 40 years, the doctors might be able to say which is more dangerous. I'm sure they won't say there's not a cough in a carton like they did about cigarettes back in my day. Big tobacco companies own at least a controlling interest in most of these e-cigarette companies. They've created or bought them, so they would continue to profit from nicotine addiction no matter how people bought the addictive products. They make billions of dollars every year. Big tobacco does not want anyone to stop using their products. Almost all parents do not want their children to become smokers or vapers. They don't want them to become addicted to nicotine. Almost all children do not want their parents to be smokers or addicted to nicotine. Even Governor Pilleen last year said that--

**HOLDCROFT:** Said, your time, Mr. Welsch. We'll see if there are any questions from the committee. Any questions for Mr. Welsch? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here, Mr. Welsch.

**MARK WELSCH:** Thank you.

**J. CAVANAUGH:** How is the honey production?

**MARK WELSCH:** It's going well for me. I haven't lost nearly as many hives as everybody else in the country as reported.

**J. CAVANAUGH:** Well, keep up the good work.

**MARK WELSCH:** I'm not sure how yours are doing.

**HOLDCROFT:** I have-- I just-- my wife just send me a picture of one hive that's active today.

**MARK WELSCH:** Yeah?.

**HOLDCROFT:** So.

**MARK WELSCH:** Yeah.

**J. CAVANAUGH:** Well, did you want to finish your remarks? Now that I got my question answered.

**MARK WELSCH:** Oh, I will-- I'll just, I'll just-- In the interest of time, and I'm sorry, I was just-- I'll just finish a couple paragraphs here. Thank you very much. I was mentioning that last year, governor Pillen said he wants to reduce the deaths caused by tobacco because his father died because he smoked. And I think that most people are like that. Getting rid of the candy, fruit, and other flavors will reduce those deaths and would make almost every parent and child proud of you. If these flavors are banned, children will be much less likely to become addicted to nicotine by using them. It's not much longer, I'll go ahead. If, if children don't become addicted to these products, they will be much less likely to start smoking tobacco, which right now we think is perhaps more deadly than e-cigarettes. This would cause many people to never start smoking, avoiding a life addicted to tobacco with half of, of their dying year-- of them dying years too early because of their addiction to tobacco. They would to be spared a lifetime of health problems and likely early death caused by tobacco. Thank you, Senator Cavanaugh.

**J. CAVANAUGH:** Can I ask a follow up question?

**HOLDCROFT:** Go ahead.

**J. CAVANAUGH:** From what you just said there made me think. Are there studies that show-- I mean, we hear from a lot of folks that vape serves a range between smoking and a step down, but you're kind of saying it could go the other way where people step up to cigarettes. Is, is there studies that show that or is that anecdotal, or--

**MARK WELSCH:** At this point I, I, I have not done-- I can't quote you something that says that, but in being on listservs and stuff about tobacco control, I, I am confident that that is true. And I can send you a study about that if you want.

**J. CAVANAUGH:** OK. Thanks.

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**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you, Mr. Welsh.

**MARK WELSCH:** Thank you.

**HOLDCROFT:** Oh. Was there one? I'm sorry, hold on just a moment.

**DeKAY:** This--

**HOLDCROFT:** OK.

**DeKAY:** So going --if vaping goes into adulthood from --do they continue to use the same flavors like bubble gum flavor or how does that go forward?

**MARK WELSCH:** I'm sorry, I couldn't tell you if they if they, if they start with candy, you know, orange flavor, do they stay with orange flavor, is that your question?

**DeKAY:** That's a -- Yeah, the gist of it is, is if they're go from there to-- part of your testimony talked about menthol and stuff. And obviously there's menthol cigarettes and stuff out there, so I don't know, of any bubblegum flavored cigarettes, but--

**MARK WELSCH:** Yeah. I know from personal experience, I used to smoke tobacco and I smoked Camel Straights most of the time, or Pall Mall with no filters. And one time I didn't have any cigarettes, so I bummed a cigarette from somebody. I took one puff of it. It was a menthol cigarette. I gave it back to him, I said, if that was the only cigarette in the world, I would never smoke again because I was married to my Camel Straights and Pall Mall flavor.

**DeKAY:** Thank you.

**MARK WELSCH:** As they say, till death do us part, but thankfully I quit.

**HOLDCROFT:** Any other questions from the committee? Thank you, Mr. Welsh. Next Proponent. Proponent for LB285. Seeing none, any opponents.

**CHRIS PETERSON:** Chairman Holdcroft, members of the General Affairs Committee. My name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n, and I am a registered lobbyist appearing on behalf of AMV Holdings LLC in opposition to LB285. Kure CBD & Vape, a subsidiary of AMV Holdings,

operates 68 stores in 14 states, including 11 stores in Nebraska, located in Bellevue, Grand Island, Fremont, Lincoln, Omaha, and Papillion. Customers have trusted Kure for over a decade as a company that meets Nebraska consumer demand with safe and legal products. While we understand and support the intent to pro-- to protect public health, particularly among young people, we believe LB285 represents government overreach, unfairly eliminates consumer choice, hurts small business, threatens jobs, and will result in an unregulated and untaxed underground market for these products. These products are only sold to adults age 21 and older. At Kure stores, IDs are checked at the point of sale to confirm the age of customers, and IDs are checked for any customer or potential customer who enters a Kure store and does not appear to be 21 years old. Many adult cus-- consumers use flavored vape products as an alternative to traditional tobacco products. Prohibiting these options may discourage cigarette smokers from switching to potentially less harmful alternatives, or may encourage vapor product users to return to cigarette smoking, both of which may undermine public health objectives. Flavored vapor products constitute a significant portion of sales, underscoring consumer demand for these products. Banning these products would drastically reduced store revenue, potentially leading to business closures, job losses, and vacant retail locations leaving empty storefronts behind. A ban could drive consumers to seek flavored products through unregulated channels and illicit markets, where product safety and quality cannot be assured. We don't want youth using vapor products any more than the sponsor of LB285. That's why the industry worked with the Legislature in 2024 to prohibit packaging that minors may have found appealing. Together, we ended the use of cartoon-like fictional characters, designs, and symbols that mimicked other products primarily marketed to minors. And together we put an end to celebrity images on packaging and ended the sale of devices designed to look like something else, such as thumb drives or colored markers or other writing instruments. In conclusion, while we share the commitment to preventing youth vaping, we urge the committee to consider the broader implications of LB285 on small businesses and adult consumers. We advocate for balanced solutions that protect public health without unduly harming local small business and restricting consumer choice. Thank you for your time and consideration.

**HOLDCROFT:** Thank you, Mr. Peterson. Any questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here, Mr. Peterson. So if we passed this bill, you wouldn't be able to go into a brick and mortar store and buy any these flavors. But would you still be able to buy them on the internet?

**CHRIS PETERSON:** Last year, as part of the legislation passed and agreed to by the industry, online sales for delivery were eliminated. You could, you can still purchase online for pickup at a store. But you cannot purchase online in Nebraska for delivery.

**J. CAVANAUGH:** OK. And so under that mechanism today, you order it, it goes to the store and you pick it up, they'd open the package. So we'd still be effectively banning these, I guess. Is that the mechanism we would ban the flavors?

**CHRIS PETERSON:** Right.

**J. CAVANAUGH:** OK. Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you, Mr. Peterson. Next opponent.

**SARAH LINDEN:** 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 with 16 vape shops in Nebraska. I was born and raised in Nebraska. I graduated from UNL, and I returned to Nebraska to start my business in what I thought was a business friendly state. LB285 has grave consequences for adult consumers, local businesses, and the state of Nebraska. Banning flavors will eliminate 99% of vapor products, making it impossible for specialty retailers like me to survive. This bill will shut down the entire vape industry, costing Nebraska \$175 million in revenue to the state's economy, 1,200 jobs, \$53 million in wages, and \$14 million in state and local taxes. Generation V alone provides 135 jobs in Nebraska, with an average pay of \$19.41 per hour, a total of \$4.1 million in wages. We collect \$910,000 in sales tax annually for the state, and pay an additional \$154,000 in property taxes, and \$1.4 million to rent space in Nebraska. We would immediately lay off our entire workforce and close all 28 of our stores nationwide if this bill goes into effect. I, along with many other small business owners in Nebraska, will lose everything. This bill would hand the Nebraska vape industry out over to out-of-state retail or criminals willing to bend the law. 80% of Nebraskans live within a one hour drive from one of its borders, where flavored vapor products are legal. The flavor ban will create a burgeoning illicit market for homemade, unregulated,

and unsafe vapor products, posing public health risks and undermining legitimate businesses. I support restricting youth access to vapor products, but not at the expense of the hundreds of thousands of Nebraskans who rely on these products as a smoking cessation aid. Only 13.5% of teens mentioned flavors as one of the many reasons that they try vaping, so banning flavors will do little to limit their appeal to teens. However, flavors are important to adults. Only 4.6% of adults use tobacco or menthol flavors. Studies show that bans on flavored vapor products push adults back to deadly cigarettes. One study found an additional 15 cigarettes are sold for every flavored nicotine pod no longer being sold. Additionally, shutting down an entire industry seems unnecessary given that teen nicotine use is at an all time low. The CDC's 2024 National Youth Tobacco Study shows that only 8% of teens are using nicotine in any form at all, down 49% since 2013. And we're proud to report that youth vaping has decreased 72% since 2019 to its lowest level ever. Only 7.8% of high school students are vaping experimentally, and only 3 are vaping habitually. We worked with Senator Hughes to pass common sense regulations on vapor products last year. These have yet to be fully implemented or enforced. Rather than banning flavored vapor products, I kindly request that you oppose LB285 and allow time for our regulations to show results. Thank you for your time and I'm happy to answer any questions that you may have.

**HOLDCROFT:** Thank you, Ms. Linden. Any questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here again, Ms. Linden. Well, you answered one of my questions, sort of, in your intro. 4.6% of adults use tobacco or menthol. So that, does that mean that 95.4% of people use-- adults--

**SARAH LINDEN:** Right.

**J. CAVANAUGH:** --use flavored ones. OK.

**SARAH LINDEN:** That's correct. Just like adults like flavored alcohol, adults like flavored vapor products. And we're not banning candy cane flavored vodka because 22% of youth are drinking alcohol.

**J. CAVANAUGH:** OK. And I think you might have probably heard when I was talking to Mr. Welsch--

**SARAH LINDEN:** Yes.

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**J. CAVANAUGH:** --about studies, he's got a whole lot of data here I haven't really had a chance to look through.

**SARAH LINDEN:** Yes.

**J. CAVANAUGH:** Are you aware of studies-- I mean, I remember you testifying before about people stepping down. Are you aware of studies that, I guess, verify that, and then show what the converse is?

**SARAH LINDEN:** So there was a study done in 2019 by the Journal of the National Cancer Institute that showed that vaping is not a gateway to smoking. And they did the study among youth, not adults. But I would assume that it's the same with adults. But so people who vape do not then go on to use cigarettes. And I think that that makes a lot of sense, like logically in my brain too, because smoking tastes really awful. So someone who's using a fruity flavored vape is not going to go transition to, like, a nasty cigarette flavor. So I think again, that's a, that's propo-- that's a proponent of, like, flavors existing because I think it would be a lot harder to switch from a strawberry flavored vape to a tobacco flavored cigarette.

**J. CAVANAUGH:** Could, could you say the name of the study again? Sorry.

**SARAH LINDEN:** Yeah, it was by the-- it's actually on page 6 of the packet.

**J. CAVANAUGH:** Oh. It's in your packet? OK.

**SARAH LINDEN:** And it's letter e, and I do cite to-- have the citation at the bottom in case you want to look it up, but it's by the Na-- it was published in the Journal of National Cancer Institute, January 25th of 2019.

**J. CAVANAUGH:** OK. Thank you. You anticipated my question.

**HOLDCROFT:** Senator Andersen.

**ANDERSEN:** Thank you, Chairman. That it's kind of scary, anticipating his question. When-- 2023, wasn't there a [INAUDIBLE] to actually address the packaging and advertising of vape to take it away from children, changing colors, changing emojis and everything else. Was that true?

**SARAH LINDEN:** Yes. So we worked with Senator Hughes last year to create regulation to limit the appeal to youth. So we did a few

things. We limited-- like we made everything in childproof packaging so that kids can't open it and accidentally consume it. We eliminated the use of celebrities. So there was like a Mike Tyson disposable that was on the market. That is now off the market in Nebraska just recently. And then we also got rid of all cartoons or anything that was imagery that was attractive to youth, or predominantly seen or used by youth. And then we did one other thing where we got rid of any product that mimicked or looked disguised as something else. So there were vapes, I didn't sell them tha-- but there were-- was a vape that looked like a highlighter. And so, like, kids would be able to use it in schools. So we eliminated the ability to have any of that. Like there's some that are like cell phone cases, there's some that are look like little toy smoothies. We got rid of all of those types of products so that teens wouldn't be able to, like, use a disguised product in schools.

**HOLDCROFT:** Yes, Senator, a question.

**ANDERSEN:** Looking at your data and the use rate of vaping, what I find is you see a high teen was in 2019 and '19 to '20 was down 7.9%, '20 to '21, it is down 8.3% '21 to '22 was up 2.8%. I'm assuming that was an anomaly with Covid or just--

**SARAH LINDEN:** Yeah. I--

**ANDERSEN:** --just being locked down and not being with their friends and turning to other things. Is that, is that fair?

**SARAH LINDEN:** It could, it could be because when this data-- I follow this every single year and when that, when the drop happened in 2021, a lot of people, not people in the vapor industry, but the people like American Cancer Association and all them, all of them were blaming Covid as like why those numbers were so low. And then the next year it did go up, but then it went back down and it stayed down. And it's continued to drop since. So it could have been a Covid blip type of thing that maybe, maybe the rate was slightly higher in 2021, but it wasn't reporting correctly. But COVID's now in the past. And so I would definitely trust the numbers that we're seeing now into 2024.

**ANDERSEN:** So based on this graph, it looks like it's a con-- a continual decline, with the one year being the outlier.

**SARAH LINDEN:** Yeah.

**ANDERSEN:** I think there was nothing normal about '21 to '22, so that would explain it.

**SARAH LINDEN:** Yeah. And there wasn't anything to my knowledge that was happening in the industry that would have, like, made the numbers go up.

**ANDERSEN:** Thank you.

**HOLDCROFT:** Are there any other questions? I have a couple, just for clarity. You started off by saying you have 16 vape shops in Nebraska. But if we-- and, and, and if we pass this bill, it would close all 28 of our stores nationally.

**SARAH LINDEN:** Yeah, because my headquarters is in Nebraska, I live in Nebraska, and I do the bulk of my business in Nebraska. A lot of my stores in Iowa and South Dakota are actually, like, not very profitable, and I don't spend-- expend a lot of energy on them. So I would probably just, like, I'm going to have to close my warehouse, and I'll have to close my headquarters, and I'll have to lay off all of my office staff here. And I'm not planning to move to Iowa or South Dakota. So I would just close my business.

**HOLDCROFT:** OK. Thank you. Any other questions? Thank you for your testimony, Ms. Linden. Next opponent. Opponent.

**JOSEPH FRAAS:** Thank you, Senators, Mr. Chairman. My name is Joseph Fraas, J-o-s-e-p-h F-r-a-a-s. I'm the owner of G&G Smokeshop. We're a small business with two locations, one in Lincoln, one in Omaha. We've been open for 18 years, so we've had a chance to see the entire evolution of vaping. We employ 18 people. We generate annually about \$172,000 in sales tax. I share the intention of Senator Lonowski's bill. We should not entice or allow children to start on nicotine in any form. And I have made this a high priority of my company, and of course with my own children, and my business has an exemplary record of not selling nicotine or other age sensitive products to minors. Now, while I share this goal with Senator Lonowski, I do not think this bill is the proper way to achieve this goal. The idea that flavors are only attractive to children is simply false. The anti smoking and anti-- and anti-vaping activists who created this idea were well intentioned, but they were wrong. Just think about your own life. Do you not like sweet and pleasant flavors? Of course you do. I was brought up that alcohol comes in many flavors and has traditionally for many years. So flavors are attractive to everyone,

not just children. And to expand on something that Sarah said, we sell so few tobacco flavors as to not even be worth mentioning. Since vapes are much safer than cigarettes, and most people enjoy pleasantly flavored vapes, then it stands to reason that banning flavored vapes will disincentivize some cigarette users from switching to vapes. And that could actually cost lives. Also, teen vaping is at the lowest it has ever been. If flavors are enticing to children, then why do we see this decline? The idea that flavored vapes are creating new nicotine users is simply not held up by the evidence. In fact, all nicotine use and deaths are at historic lows. The likely main causes of this have been the education of the public, about the dangers of smoking and nicotine use, and stricter enforcement and adherence to age regulation or age restriction laws. Education especially has been key for children and adults alike. Since flavored vapes make it easier to switch from cigarettes and are far safer, they are a significant part of this decline in cigarette use and deaths as well. Worst of all, this bill will not prevent the sale of flavored vapes in Nebraska. It will push those sales to out-of-state vendors, vape websites, and underground who are hard to enforce against and will have lax age, age verification process. And at the same time, it will hurt Nebraska businesses and Nebraska tax revenue. So in conclusion, flavored vapes are not creating new users, but are providing a lifeboat for existing cigarette users. Anything that makes the safer alternative less attractive will likely cause unnecessary illness and death. Nebraska's resources would be better spent on health education, and on the enforcement of existing age restrictions. The consequences of LB285 are, in my opinion, counter to its honorable intent. Please throw a lifeline to Nebraska's desperate cigarette users, and do not vote to move LB285 forward. Thank you.

**HOLDCROFT:** Thank you, Mr. Fraas. How do you say that?

**JOSEPH FRAAS:** Fraas, say Fraas.

**HOLDCROFT:** And we'll see if there are any questions from the-- yes, Senator Storm.

**STORM:** I got one. Thank you. So this is a I don't know about vaping, but I got a question about this. So when someone vapes, is there as much nicotine in that vape-- is there a cartridge, or how's, how's that work?

**JOSEPH FRAAS:** Well it comes-- there used to be separate cartridges. It kind of depends on the device you're going to use. But mostly they're

disposable vapes that have an in-built cartridge. It's, it's hard to say like a per cigarette exchange because people don't-- like a cigarette, you smoke the whole cigarette or most of the cigarette and then you discard it. With a vape, it's like use on-demand, so you can use it as much as you want. But they are comparable. In fact, early in vaping there was a problem where some vapes were incredibly strong, and then people didn't prefer those vapes because they were too strong, and other vapes were weak. So I would say they are equivalent per on-demand use, if you can make that equivalency.

**STORM:** So if you-- like a cartridge of vape, or is that what it comes in, a little liquid?

**JOSEPH FRAAS:** Yeah, well it's like a little-- I don't know how to put it, it's like a little foam, like a little box kind of-- And then inside there is a battery and a cartridge. But the cartridge is not separate per FDA regulations.

**STORM:** OK. So like a pack of cigarettes, would that be equivalent to that cartridge in there?

**JOSEPH FRAAS:** Generally a disposable vape is equivalent to many packs of cigarettes.

**STORM:** Many packs?

**JOSEPH FRAAS:** Yes.

**STORM:** OK.

**JOSEPH FRAAS:** I mean, it's like a week's worth of vaping for most people.

**STORM:** What's a cartridge cost?

**STORM:** They're between \$20 and \$30, normally on the \$20 end.

**STORM:** OK. All right. Thanks.

**HOLDCROFT:** Any other questions from the committee? Thank you, Mr. Fraas.

**JOSEPH FRAAS:** Thank you.

**STORM:** He has one more question.

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**HOLDCROFT:** Oh, I'm sorry, Senator Rountree.

**ROUNTREE:** Thanks so much, General Holdcroft. Thanks, Mr. Fraas, I was just doing a little researching -- A couple of testimonies back, I heard JUUL mentioned, the j-u-u-l, these old things that have passed by. So is there a difference in [INAUDIBLE] JUUL and with vaping?

**JOSEPH FRAAS:** So it's a-- it's only a liti-- legal difference. I mean, so what happened was is the FDA was worried about an increase in teen vaping and they banned what are called pod based vape devices. That's a, a battery that's separate from a pod. Then you buy the pods, and then you recharge the battery, and you just put the pods onto the device. So when they, when they banned those, what they decided to do was come out with a disposable vape where you can toss the entire battery and the pod at the same time. Which I was very aggravated with, because you're literally throwing away an entire lithium ion battery every time you throw the device away. Now they've gotten to where they recharge the vapes as far as the batteries, and they have a lot more juice in them, but they don't-- you can't recharge the juice, if that makes sense. So at some point you're still throwing away an entire battery.

**ROUNTREE:** All right. Thank you.

**JOSEPH FRAAS:** My pleasure.

**HOLDCROFT:** Any further questions from the committee? If not, thank you very much, sir.

**JOSEPH FRAAS:** Thank you, sir.

**HOLDCROFT:** Next opponent.

**JACOB MARTIKAINEN:** Good afternoon. My name is Jacob Martikainen, J-a-c-o-b M-a-r-t-i-k-a-i-e-n, and I am in opposition of this bill. Personally, I don't believe banning stuff makes anything safer. Unfortunately, looking at the data, banning the flavors themselves would not stop someone from being able to access them. You can still buy flavored vapes online. We would lose le-- legal oversight over them as well. And admittedly, the flavors themselves, you know, we've heard a lot of testimony saying, you know, those flavors, they're to attract the youth. That's what they're there for and unfortunately the truth is that the flavors themselves are for the adults. Adults prefer flavors. I own eTITAN vapors. And back in the day when we first started in 2013, we had-- we started out with, I want to say 12, 13

flavors. 2 or 3 of those were tobacco flavors. And we thought, oh yeah, that's what adults want when they're switching over. Very soon we realized adults did not want tobacco flavors when switching over. If you think about it, if you're an alcoholic and your vice of choice is vodka, are you going to drink a vodka flavored water to get over vodka? Or are you probably going to drink, you know, Orange Crush or Grape sodas? And that's what we soon realized was the case for that. So that's kind of why you're hearing a lot of people saying, we don't want to ban flavors for adults. As you've heard, the youth vaping is down quite a bit considerably. The flavors, nothing has changed there. The things that have changed, which I believe are why those numbers are down, is because of conversations like this. People being educated, people being curious, people still saying, hey, what, what about this? And I think that is the key in the future to moving forward to mitigate the youth risk. Thank you very much. If you have any questions.

**HOLDCROFT:** Thank you. Any questions from the committee? Seeing none, thank you for your testimony.

**JACOB MARTIKAINEN:** Thank you.

**HOLDCROFT:** Next opponent.

**STACY ALEXANDER:** Senators again, thank you. Stacy Alexander, S-t-a-c-y A-l-e-x-a-n-d-e-r. I'll make this really quick since I've already kind of testified against it. I am an opponent to a flavor ban. This ban would, would, would kill the industry. Our data shows of our sales, we sell 3% tobacco flavored products. So that-- and we only-- and you're talking to a guy who says he self-regulates and puts himself at 21 and over to even walk in my store. And only 3% of the people walking through my door wanted tobacco flavor. So I feel that that should just quash the argument that flavors are not necessarily be the attractant that, that's keeping our youth at risk. When JUUL had to ban all of its flavors, as you guys may remember some time, the number one flavor became menthol. And that's one of the two flavors that we still want to leave on the board with this bill. So I think that that's completely ineffective, and I think that it directly goes against the legislation that Senator Hughes is introducing, which gives us some kind of a legal framework. It also puts some tax on there and makes it beneficial to the state and put some safeguards in there to keep our children safe. I believe with the fees associated with that, there would be some slush fund that could be used for enforcement. With a ban on it, we don't have any of that. We just have to look and see if

we see an illegal vape somewhere. And then I guess we try to, try to do something about it. Is it a coincidence that big tobacco is here to be a proponent for this bill to, to ban-- I'm sorry. You didn't, you didn't log in on this one. This was, this was last. So sorry. I'm getting my statutes confused. They were last year, though, on, on a vote to ban vaping. And they do have a controlling interest in tobacco, and they don't pay the same taxes that even us here are willing to give up today. We are, we are wanting regulation, we are wanting some taxation, and we're wanting some safeguards for the children. Banning flavors, unfortunately, will not be the answer. Simply said, by 3% of my sales and I only serve to 21 buying anything that's tobacco related. One last thing, I see I got one minute. Here. I wrote down a few notes here. I think that's it. Senators, thank you for your time. If you have any questions, I'd be happy [INAUDIBLE].

**HOLDCROFT:** Thank you, Mr. Alexander. Any questions from the committee? Seeing none. Thank you very much.

**STACY ALEXANDER:** Thank you, Senators.

**HOLDCROFT:** Next opponent. Opponent.

**SPIKE EICKHOLT:** Good afternoon, Chair Holdcroft and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Cannabis Factory as a registered lobbyist. My client actually hoped to be here today, but she was unable to be here, so I'm here on her behalf. I don't want to duplicate the testimony that's been said before. Just a couple of things. The Cannabis Factory has 21 stores throughout the state. We have over 80 employees, and in most of the stores they do also sell some vape products that will be impacted by this bill. What you've heard, and I think the last testifier really lifted this up, is that I think that Senator Lonowski's goal with this bill is to address underage vape consumption. But I think what this actually does is essentially, it addresses 90% of the adult market. If you look at the fiscal note for the bill, that Department of Revenue actually can measure the loss that this bill would cost. And I don't really need to read the numbers, but I wanted to point that out, is that you can quantify the sales that this is going to impact. And sales are sold to adults, people 21 or older. If the goal with this bill is to address under age use of vape products, then I think the Legislature has done some things recently, as you heard, that target that just last year, this committee probably did, I wasn't really involved in this, this thing last year, but this last year, Senator Hughes passed a bill that went

into effect in July of 2024. It's only been law for a little over six months. And if you want to look at that statute, it's at 28-1429.07. And I think that Ms. Linden and Mr. Frost and others talked about the components of that bill that bans advertising that seemingly is targeted to children, prohibits celebrity, use of cartoon characters, that sort of thing. There are some other criminal laws that, that the Legislature has passed that deal with this. 28-1418 makes it a crime for anyone under 21 years of age to have or possess a vape product. They can escape charge if they provide information for where they got it from. And then 28-1419 makes it a crime for any person, license holder or otherwise, to sell or provide vape products to someone who is under 21. So I think there are some things the Legislature has done that could actually target what this bill is intended to do. But unfortunately, what this bill does is really going to target the actual user because as you heard, the preference is that people buy these things, 21 or older, that are flavored, and not necessarily menthol or cigarette flavor. I'll answer any questions if anyone has any.

**HOLDCROFT:** Darn. I thought-- would you mind going on til the red light comes on so I can cut you off?

**SPIKE EICKHOLT:** I actually, I actually want to compliment you for that. That's very commendable. I've never been in front of this committee, but I appreciate that.

**HOLDCROFT:** Any questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair, and thanks for being here, Mr. Eickholt. I was just looking this up, and literally I forgot that that was my bill that we ended up passing last year that included this portion. It was Senator Hughes' bill to begin with, but it was incorporated into my bill by the end of the day, I think. And my recollection of it was part of it was we were working on a mechanism to create a list of products that were approved for health and safety reasons. Does that sound familiar to you?

**SPIKE EICKHOLT:** It does. I wasn't directly involved, but it does sound familiar.

**J. CAVANAUGH:** Well, I was directly involved and I didn't remember.

**SPIKE EICKHOLT:** OK.

**J. CAVANAUGH:** So. Maybe doing my thinking out loud here. And so I did ask Mr. Peterson about this, but I-- and he maybe made me feel like I shouldn't be afraid of this, but I've heard others say, so we created this list, you can't sell certain things. And that was partly to avoid unpure stuff, tainted things coming in from China. If we ban this, what we're seeing, looking at all this standard is 80, 90, 95% of people want this.

**SPIKE EICKHOLT:** Right.

**J. CAVANAUGH:** Aren't they going to find a way to get the ones that don't meet the health and-- health and safety standards that we put into place in LB1204?

**SPIKE EICKHOLT:** Yeah, that's, that's quite true. I mean, a lot of the people, I think the majority of people in this state live within an hour from another state. So like in the Omaha area, just drive over into Iowa. And I have no idea what the regulations are for Iowa, did they ban those unsafe products in their--

**J. CAVANAUGH:** We were the first that-- Senator Hughes was-- it was innovative. It was the first, almost, real attempt that was outside of the FDA's licensing scheme, if I remember right now that I'm thinking about it.

**SPIKE EICKHOLT:** And that's exactly right. People are going to go to Iowa or, or south or north.

**J. CAVANAUGH:** All right. Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you very much, Mr. Eickholt. Next opponent. Anyone else for opponent? Neutral, any neutral testifiers? OK, then while Senator Lonowski is coming back, there were 8 proponents, 15 opponents, and 4 neutral on this bill.

**LONOWSKI:** Thank you, Senator Holdcroft. And thank you all, you testifiers. I have a lot of notes here, so please, please bear with me. So, Senator Cavanaugh, first of all, two questions that you asked. One is FDA standards. You might check that out because there really are no FDA regulations. They limit some product, but not very much. And so right now it's unregulated. And we can, we can get, we can get online sales of about anything. If I close down my pyromaniac store where I sell gasoline and matches, I'm sure that you can find gasoline and matches somewhere. The other thing is smoking versus vaping. So it

has been proven that smokers can recover 100% if they give up smoking for 10 years, 15 years and recover their lungs. Vaping is different. We have different things that happen to your lungs. When you light that vape, there's some little medical particles that's-- metal particles that go into your lungs and they scar it and the scarring is permanent. Thousands of kids have been hospitalized by vaping, and that's some of the pictures you saw there, all the way up to cross-country runner who was vaping. And one day he just had a big fever, 103 fever. Mom took him to the doctor and his, his lungs were totally destroyed and he had to have a double lung transplant. That means he laid in a hospital for 30 days, waiting for someone else to die who had healthy lungs. Heck of a thing for his mom to pray for. So I understand every vaping outlet is not selling to, to minors. But as I told you, I worked for ASAP. Harvard, Nebraska, Blue Hill, Nebraska, Axtell, Nebraska, all these little towns, I would ask seventh graders, how many vaping, how many-- I got down to fifth graders and I said, don't point at your friend, because they're good at ratting each other. How many you have seen-- how many you know of someone that vapes. Every hand, Harvard, Nebraska, 17 out of 17. So I said, I don't believe you guys, that's a rumor. How many who have seen a classmate vape and don't point him out. Boom, every hand. That mean they saw one fifth grader in, in Harvard vaping? Or did one fifth grader see ten people vaping? I don't know. And I understand that, that these kids may not be able to go into the store. Here's another thing we're not even talking about is that this is bad for adults, too. But I'm not including adults in this bill, I'm worried about the kids that are coming up to, to be our replacements. Senator DeKay, you asked if vaping leads to a stronger addiction or more. And while I respect the report, it was from 2019. That's a, that's a pretty, that's a pretty old report in a, in a business that's only about ten years old. That there are studies out there. The American Medical Association says it will lead to, or can lead, or it may lead to something more addictive. But there's also kids putting other stuff into the vape, where they can get marijuana in it, or some type of THC. I would like to thank you all for listening to this. I also want to know what you didn't hear. I heard a lot about the economy, and if, and if we truly have that many vapers that are supporting our economy, we have bigger issues than I know. I did not hear anyone say this is unhealthy. Whether or not vaping helps you quit smoking, I'm going to drive 105 miles an hour because 106 is less safe? That's what I'm hearing. There's nothing good with vaping. It's been around in other countries for quite a bit longer, but really came to us in about the 2012, 2013, 2014 era. And the flavors, they do entice children, as I've also asked

kids, what's the favorite, and the favorite is tutti frutti. They will tell you these things, then they say, but I don't vape and I don't pressure them because that wasn't my job with this. So as these, these-- you know, I talked about it, I talked about the, the permanent scarring of your lungs. I also want to talk about the addiction. And they brought that up a little bit. 20 cigarettes in one vape? A vape pod might take a week. It might take a couple of days. It depends how bad you need it. Finally, I'd like to leave you with this. There is a teen YouTuber who recorded her year long withdrawal from vaping. So if you have a little time, go look at that. In fact, she's not even a teen anymore, she's in college, so I assume she, she might be 19 or 20. Look at it and, and just watch that and try to, try to see what we're doing here. And I don't, you know, I don't want to put anybody out of business. But I also don't agree with, with vaping on the market and the fact that 100% of kids can get their hands on it in the fifth grade. Here in Lincoln last year, they found a kindergartner with a vape. Were they vaping at the time? No, it was in his bag. Who knows, got it from mom, got it from dad, who knows? But to me, this is alarming. And to me, we have to take care of this. So I would respectfully work with anyone that would like to amend this bill. Otherwise I would ask you, and I'm also working with AM201, but I respectfully ask for the committee's consideration to advance this to General File. Thank you.

**HOLDCROFT:** Are there any questions for this-- for the senator. Yes, Senator Storm.

**STORM:** Thank you, Chair Holdcroft. Thank you, Senator Lonowski. So, have any other states done this?

**HOLDCROFT:** Oh, yes.

**STORM:** Have you said this already?

**LONOWSKI:** Several states have banned it to two flavors. And that's kind of why I decided to go with those two flavors.

**STORM:** Which states? Any that border us?

**LONOWSKI:** I, I don't believe so. Utah. California. I don't, I don't know where I even wrote it down here, but I had read those in my intro. New Jersey, New York, Rhode Island, Utah, Michigan. But if we were saying, well, they're going to just go across the lines, you know, they're less likely to do that. Maybe kids that live along the

Transcript Prepared by Clerk of the Legislature Transcribers Office  
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border would, but that also can't be the reason that we don't look at helping our kids out.

**HOLDCROFT:** Any other questions? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks very much, Senator Lonowski. It's an interesting conversation. And, and to be clear, the-- I was talking about the FDA rules didn't work for us, when we were passing Senator Hughes bill, she did come up with a pretty fairly innovative structure. And that was-- we couldn't copy the FDA rule because you're right, they don't really do anything. But I guess my question is, how were these kids, how were fifth graders getting these things?

**LONOWSKI:** That, that is a good question. That-- I don't know. I've heard kids say, big brothers, big sisters, big brother's friend. I helped a young lady, she was 15 years old last year, and she was calling, Mr. Lonowski, I really want to be a wrestler, and I want to join the Army. How do I get, how do I get over this? So I said, let's sit down with your parents. I sat down with her parents, and her, and her mom pulls out the vape and puffs a couple. And I'm like, OK, you know, there's-- like anything you're more likely to, to try it, I guess, if your parents are doing it.

**J. CAVANAUGH:** Well, yeah, you pick it up, but I mean, I would imagine your parents would notice if you stole a carton of cigarettes from them. So--

**LONOWSKI:** Yeah, I--

**J. CAVANAUGH:** --I guess I'm trying to figure out how if you're stealing something from them, if they're, if they're stealing-- I don't, I don't know, I'm-- but you're not here to answer that question, I'm just curious.

**LONOWSKI:** Yeah. And it-- and I have tried to get to the bottom of that, to be honest. Where are you kids getting this? To a person, everyone that owns a store has said they don't sell to minors. So I don't know if, if some old guy stands outside that store and says, for \$5 I'll, I'll go in and buy you a vape? I really don't know.

**J. CAVANAUGH:** Yeah. All right. Thank you.

**LONOWSKI:** Yep.

**HOLDCROFT:** Any other questions from the committee? If not, that closes our hearing on LB285, and we'll open on LB688. Senator Lonowski.

**LONOWSKI:** Good afternoon, Senator Holdcroft and General Affairs Committee. Thank you for this hearing. My name is Senator Dan Lonowski, Delta, Alpha, November, Lima, Oscar, November, Oscar, Whiskey, Sierra, Kilo, India, and I represent the 33rd Legislative District. I'm here to introduce LB688, because public health should be paramount, especially for the youth in our state. LB688 prohibits advertising of electronic nicotine delivery systems. As you heard during the prior hearing for LB285, vaping devices pose a number of public health concerns, including lung damage, cardiovascular issues, impact on brain development, toxic exposure, dental issues, fertility issues, and nicotine addiction, among other health risks. I understand LB688th May face allegations this bill is uncons-- that this bill unconstitutionally restricts commercial free speech. I welcome any potential amendment to narrow its intent of reducing the visibility of these products to minors and others, aiming to curb the initiation of nicotine use among young people. Thank you, Chairman Holdcroft and members of the committee for your consideration of LB688. I respectfully ask the committee support the changes. I'll try to ask any questions you may have.

**HOLDCROFT:** Thank you. Senator. Any questions? I assume you'll be here for close.

**LONOWSKI:** Yes, sir.

**HOLDCROFT:** Ne-- First proponent. First proponent. Anyone speaking in favor of the bill. Welcome.

**MARK WELSCH:** Thank you, Senator. My name is Mark Welsch, M-a-r-k W-e-l-s-c-h. I represent GASP of Nebraska, Group to Alleviate Smoking Pollution. I support this bill, and I just carry on from what he suggested, possibly to get around the constitutional questions. I was doing some reading and I think if you would just limit it to outside of a store, allow ads inside the store, as long as they're not on the front window where kids can see them, if they're inside the store only and you don't allow kids in the store. I don't know if that would be germane to this bill, to not allow people under 21 into a, a store that sells these products. But that might be a way to get around that maybe unconstitutional aspect of this, is just to limit where they are, not an out-and-out ban everywhere. I'm going to be uncharacteristically short. That's all I have to say.

**HOLDCROFT:** Well, thank you, Mr. Welsch. Senator Cavanaugh. Do you have a que-- Oh.

**J. CAVANAUGH:** I'll ask a question [INAUDIBLE]. Thank you, Chair, and thanks again for being here Mr. Welsch. I'm, I'm going to just assume that maybe you know, something about what the regulations we have on just other tobacco advertising. Do you have anything--

**MARK WELSCH:** I'm, I'm not-- I didn't bone up on it before this hearing. I'm sorry.

**J. CAVANAUGH:** No, no, that's all right. I just-- I'm curious after I read this bill and was thinking, and I meant to look it up myself and have it, so I just thought maybe you could-- I could cheat and ask you.

**MARK WELSCH:** That's-- I, I, I don't want to say for sure, but I think that's where I got the idea of the advertisements not being allowed outside of a store. I'm pretty sure tobacco, you don't see any tobacco billboards anymore. I, I don't think you're supposed to see ads on the front of gas stations anymore. So you think it's supposed to be inside stores now for the advertisements.

**J. CAVANAUGH:** Thank you.

**MARK WELSCH:** I will make a note to try to find something and get that to you, Senator.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you, Mr. Welsch. Next proponent. Next proponent. Opponent. Anyone speaking in favor of the bill. Next opponent. First opponent.

**CHRIS PETERSON:** Good afternoon, Chairman Holdcroft. And members of the General Affairs Committee. My name is Chris Peterson, C-h-r-i-s P-e-t-e-r-s-o-n. I'm a registered lobbyist, appearing today on behalf of AMV Holdings LLC in opposition to LB688. Kure CBD & Vape, a subsidiary of AMV Holdings, operates 68 stores in 14 states, including 11 stores in Nebraska located at Bellevue, Greene Island, Fremont, Lincoln, Omaha, and Papillion. Customers have trusted Kure for well over a decade as a company that meets Nebraska consumer demand with safe and legal products. While we understand the attempt to protect public health, particularly among youth, we believe LB688 may have unintended consequences that could adversely affect small businesses and adult consumers. Additionally, existing federal regulations already address many of the concerns this bill aims to tackle. The

Food and Drug Administration has established comprehensive regulations governing the marketing and advertising of electronic nicotine delivery systems, or ENDS products. These regulations include strict guidelines to prevent misleading claims and ensure that advertisements do not target underage audiences. For instance, the FDA's deeming rule extends the agency's regulatory authority to all tobacco products, including ENDS, and sets forth requirements for health warnings and prohibits the sale of these products to minors. Implementing a state level advertising ban could create regulatory redundancies and potential conflicts with existing federal oversight. Responsible advertising provides adult consumers with necessary information about product availability, features, and potential risks. Prohibiting ENDS advertising may limit consumers' ability to make informed choices about alternatives to traditional tobacco products, which could undermine public health objectives aimed at reducing combustible tobacco use. Commercial speech, including advertising, is protected under the First Amendment of the U.S. Constitution. While regulations can be imposed to serve substantial governmental interests, such as preventing underage vaping, they must be narrowly tailored. A total ban on ENDS advertising may face legal challenges on the grounds that it is overly restrictive, and not the least restrictive means to achieve the intended public health goals. We propose considering alternative measures that address youth access and exposure without imposing a blanket ban on advertising. These could include enforcing existing age verification laws, restricting advertising content that appeals to minors, and implementing targeted public education campaigns about the risks of underage vaping. In conclusion, while we share the commitment to preventing youth vaping. We urge the Committee to consider the broader implications of LB688 on small businesses, adult consumers, and constitutional rights. Thank you for your time and consideration.

**HOLDCROFT:** Thank you, Mr. Peterson. Any questions from the committee? Yes, Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chair. Thanks for being here, Mr. Peterson. So you kind of hit on what I asked Mr. Welsch a little bit. What are the current, like, restrictions on tobacco, analog tobacco, whatever you want to call it? Old fashioned.

**CHRIS PETERSON:** I, I don't think I'm in a position to be able to answer that question, Senator.

**J. CAVANAUGH:** I thought that you said federal-- there's existing federal regulation. What are the existing federal regulations you're talking about?

**CHRIS PETERSON:** The-- there's existing federal FDA regulations that, that govern tobacco advertising. And I'd be happy to provide you with a copy of that outside the hearing.

**J. CAVANAUGH:** OK. Great. Thanks.

**HOLDCROFT:** Any other questions from the committee? Seeing none, thank you, Mr. Peterson. Next opponent.

**SPIKE EICKHOLT:** Good afternoon.

**HOLDCROFT:** Welcome back.

**SPIKE EICKHOLT:** Thank you. Good afternoon, Chair Holdcroft and members of the committee. My name is Spike Eickholt, S-p-i-k-e E-i-c-k-h-o-l-t. I'm appearing on behalf of the Cannabis Factory. The Cannabis Factory has 21 stores throughout the state of Nebraska and over 80 employees. And they also sell, most of the store's, vape products that would be impacted by this advertising ban. Senator Holdcroft and Senator Rountree and Storm know that on the Judiciary Committee, sometimes many people will come up and say, just a blanket, this bill is unconstitutional. I don't mean to be flippant when I say that, but in my opinion, this bill is unconstitutional. I, I talked to Senator Lonowski about our position last week. But if you look at the bill, it makes it unlawful for any person, not someone who's got a license or a store that's selling vape products, but any person to advertise, which is not defined, any electronic nicotine delivery system in the state of Nebraska. So it can be a verbal advertisement. It can be a written advertisement. Then you commit the crime. There's apparently a crime to this, it's in chapter 28, but it's unclear what the penalty is, not listed what the penalty is. Mr. Peterson just mentioned the Supreme-- U.S. Supreme Court standard in Central Hudson Gas & Electric Company. The states can regulate commercial speech. But I just want to point out one thing. Commercial speech is protected First Amendment speech. You don't have the right to use deceptive advertising, nothing like that. And states can regulate commercial speech as long as there's a substantial state interest in doing so. And when you regulate it, the manner that you restrict that speech needs to be no more extensive than necessary to serve that interest. If the goal of this bill is to limit advertising targeted at children,

this committee and this Legislature just did that last year in the bill, and that bill that was passed that we just talked about. And that's how you do it. You sort of limit it to what you want to actually control the speech, not just an absolute blanket bar on advertising. To answer, maybe, something like what Senator John Cavanaugh asked about before. As far as a federal-- I think it's kind of difficult to argue what the federal government requires for advertising with the Surgeon General warning, that kind of thing, because a lot of that was negotiated with a settlement that the tobacco companies have. In other words, the companies sort of surrendered their First Amendment rights as part of the settlement that they had with the various states they were getting sued by. The state does have more authority, the cases it said, to regulate speech as a condition of licensing. Right? But this is not just targeting to license holders who were selling vape products and tobacco products. So I urge the committee to not act on the bill, and I'll answer any questions if you have any.

**HOLDCROFT:** Thank you, Mr. Eickholt. Any questions from the committee? Seeing none. Thank you for your testimony. Next opponent. Next opponent. Anyone testifying in the neutral?

**SARAH LINDEN:** Hello again. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n. And I was not planning on testifying, did not prepare any testimony, but I do know the answer to Senator Cavanaugh's question, so. So the FDA, back in 2016, when they took vapor products under their purview and decided to regulate vapor products, and they are regulated by the FDA, they wrote some regulatory guidelines. And in those guidelines were advertising and marketing guidelines as well. So some of the things that they dictate in terms of vapor advertising is that if vapor products are advertised, 20% of the advertisement needs to say this product contains nicotine, nicotine is an addictive substance. Also, we're not allowed to market or advertise in any realm where greater than 20% of the audience are minors. So, like, I could advertise on a radio station that is primarily the listenership is like men, you know, 35-plus. But I can't advertise on a radio station where the demographic is, like, 18-year-olds, 20-year-olds primarily more than fift-- more than 20% And then additionally, we're not allowed to make any claims. So we can't say, legally, that vapor products are better than smoking. We can't say that vapor products will help someone quit smoking. They won't allow us to make any claims because according to the FDA, they haven't proved some of these things out, even though there are studies that show all of these things. The

FDA will not allow us to make those claims. So that's pretty much all that there is in terms of like the advertising guidelines.

**HOLDCROFT:** OK. Thank you. Any questions from the committee? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you Chair. Thanks for coming up and answering my questions, that was-- you anticipated my questions, [INAUDIBLE] answers, like, it's the best. So those things, I mean, are you allowed to do billboards then? I mean--

**SARAH LINDEN:** Yes. So we can advertise on billboards. If we're-- so if I'm my business and I'm advertising Generation V as a vape shop and we sell vapes, I don't need to put that disclaimer, the, the this product contains nicotine, nicotine is an addictive substance. But if I put the product on there, I would have to have 20% of my billboard would have to say that. But I am allowed to do billboards. Yes. I think that for the most part, because it is a little bit of a gray area, because there are kids, you know, you'll see that people like me have kind of taken it upon ourselves not to advertise products on billboards just because it's a little bit of a gray area.

**J. CAVANAUGH:** And then what about like, direct mail?

**SARAH LINDEN:** Direct mail is allowed in print. I mean, I would say primarily the person who's getting the mail is an adult. So, I mean, I would, I wouldn't think that that would be-- But you do see, I do see a lot of those, and I do them too, every once in a while, like a postcard or a mailer. Mine are usually when I'm opening a new store and I'm trying to build awareness. But there are a lot of, a lot of shops that are selling, like, sending mailers out and they're, like, come in the newspaper, or sometimes they're a postcard in the mailbox. And a lot of times they are like promotion-specific. So most of the time they are promoting specific products or showing those specific products. And I would say,, like primarily the person getting the mail or the newspaper is not under age. So I think that that's how they're able to do that.

**J. CAVANAUGH:** OK. Thank you.

**HOLDCROFT:** Any other questions from the committee? Seeing none. Thank you, Ms. Linden. Any other neutral testifiers? Neutral testifiers. Seeing none, as Senator Lonowski comes back up, LB688 had seven proponents, one opponent, and no neutral.

Transcript Prepared by Clerk of the Legislature Transcribers Office

General Affairs Committee February 24, 2025

Rough Draft

**LONOWSKI:** Thank you, Senator Holdcroft. In the testimony on behalf of both of these, the Nebraska Medical Association and the Nebraska Dental Association strongly agreed with, with my bill. I would really-- I would be willing to work with Chris Petersen and Spike and Sarah to limit these ads, or to get rid of this gray area that might be in there, so that we can maybe make the ads less appealing on the billboards or, or ensure that we're just we're not glamorizing these to youth. Otherwise, I would ask that the committee support LB688, and I respectfully ask for the committee's consideration for advancing this to General File. Are there any questions?

**HOLDCROFT:** Any questions for the-- Senator Lonowski? Seeing none, that closes our hearing on LB688, and our hearings for the day.

**LONOWSKI:** Thank you.

**HOLDCROFT:** The committee--