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Judiciary Committee
March 21, 2007

[LB258 LB261 LB336 LB337 LB580 LB585 LB685]

The Committee on Judiciary met at 1:30 p.m. on Wednesday, March 21, 2007, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB685, LB261, LB336, LB337, LB258, LB580, and LB585. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Ernie Chambers; Vickie McDonald; Amanda McGill; Dwite Pedersen; Pete Pirsch; and DiAnna Schimek. Senators absent: None. []

SENATOR ASHFORD: (Recorder malfunction)...started a little bit late but not so late. And I know, Senator Pedersen, you have to leave at 3:00 so maybe we'll be through by then hopefully. So welcome to the Judiciary Committee. Most of you or some of you have been here on occasion, many occasions in some cases. Simple rules, we have light system to tell you when you have three minutes, the yellow light will go on when you have a minute left and then the red light, we'd ask you to sum up. Try to keep your testimony to three minutes. If you have some written testimony you'd like the pages to get from you and we'll receive them into the record. There's a sign-in sheet that you may sign, should sign if you are going to testify. And if you don't wish to testify, you can also sign the sheet to record your presence. So with that, Senator Karpisek, is this your first... []

SENATOR KARPISEK: This is my first time I've darkened your doorstep. (Laughter) []

SENATOR ASHFORD: Darkened is much too pejorative, Senator. Well, thank you. And after you get through, I'll introduce everybody. Why don't you go ahead and introduce the bill. []

SENATOR KARPISEK: Okay, thank you, Chairman Ashford and members of the Judiciary Committee. My name is Russ Karpisek, K-a-r-p-i-s-e-k, and I represent the 32nd Legislative District. And I am here today to introduce LB685, dealing with minors consuming alcohol. Under LB685, a minor would be considered in possession of alcoholic liquor if found to have a blood alcohol concentration of two-hundredths of one gram or more by weight of alcohol per 100 milliliters of his or her blood, or a concentration of two-hundredths of one gram or more by weight of alcohol per 210 liters of his or her own breath. This would, the only exception would be if they were on the property of his or her own place of residence. The reason that I'm bringing this bill today is that a superintendent in my school district, who is here today to testify, brought the situation to me. At a prom dance, they were using a preliminary breath test, or a PBT, to make sure that the students had not been drinking so they could enter prom. One student was tested that they had been drinking. So the student could not enter the dance nor could the school let the student leave since they knew that he had been drinking. The school called the sheriff's office but was told nothing could be done since they could not prove the alcohol was not consumed at home or at his residence, thus

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the law had not been broken. Hence, LB685; any minor found to have .02 BAC and not on his or her own property would be considered MIP. Section 60-6,211.01 of state statute states it shall be unlawful for any person under 21 to operate or be in the actual physical control of any motor vehicle with a BAC of .02. This is where we got the language obtained for the .02. An example of this is Missouri law where it is illegal for a minor to be intoxicated or under the influence, which is defined as being visually intoxicated or having a BAC of more than .02, regardless of where the minor consumed the alcohol. In Wyoming it is also illegal for a minor to be under the influence, no matter where the alcohol was consumed. How to determine if the minor has a blood alcohol content of .02 has proven to be a challenge. Under what circumstances does a police officer have the right to administer the PBT or BAC test? What would be the punishment for refusing the test? These are a couple questions that have recently been brought to my attention and I would be more than willing to work with the legal counsel of the committee to draft an amendment that would be acceptable to the committee. The other reason for bringing it, I know we have many bills in front of us today that deal with minors in possession, some dealing with not being able to indulge in any church activities, those sort of things. I felt that this would leave it up to the parents. If they want to allow their kid to drink at home, although I don't agree or condone that, I don't want to step on those toes. And they could also go to church and do the communion, those sort of things that, some of the problems that I saw come up with some of the other bills. So with that, I'd be willing to try to answer any questions of the committee. [LB685]

SENATOR ASHFORD: We don't want to, try not to step on the toes of the church, if possible, churches. But I appreciate your bill. This basically doesn't prohibit a child from drinking at home. But if they're off premises of their home, they would have to...the .02 would apply. [LB685]

SENATOR KARPISEK: Yeah. So many times, and I've heard even more since I drew up this bill, that if they find a student or a minor somewhere and they smell alcohol on their breath, the kid says well, I drank it at home. [LB685]

SENATOR ASHFORD: Okay. [LB685]

SENATOR KARPISEK: And so then what can you do? Nothing. [LB685]

SENATOR ASHFORD: I see. Okay, Senator Pirsch. [LB685]

SENATOR PIRSCH: You're going to have...is somebody going to testify who has knowledge of Missouri, how it's implemented in Missouri? [LB685]

SENATOR KARPISEK: I don't think so, Senator. I know we do have the superintendent and I did not line up any more. [LB685]

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SENATOR PIRSCH: That's okay. [LB685]

SENATOR KARPISEK: I knew that we had so many of them on the docket today that I thought the committee may make a super bill out of all the others. [LB685]

SENATOR ASHFORD: Well, it's pretty straightforward. Thanks, Senator Karpisek. [LB685]

SENATOR KARPISEK: Thank you. [LB685]

SENATOR ASHFORD: Do you wish to stick around? [LB685]

SENATOR KARPISEK: I will stick around. Thank you for your attention. [LB685]

SENATOR ASHFORD: Okay, thank you. Thank you for coming. Any proponent, first proponent? Good afternoon. [LB685]

TOM SHARP: (Exhibit 1) Good afternoon. Senators, my name is Tom Sharp, S-h-a-r-p, and I am the school superintendent and Russ represents our district. And this all started off with our school district deciding for the first time to use a Breathalyzer, which is not uncommon for schools to use that for major school functions. And when I checked with law enforcement when I borrowed their Breathalyzers and I arranged for an off-duty State Patrolman to help me with the testing, the county sheriff informed me there was no use to call them because there was no violation in the law. And I thought, well, that couldn't be possible. [LB685]

SENATOR ASHFORD: Well, you've got a lot of laws. [LB685]

TOM SHARP: There are. [LB685]

SENATOR ASHFORD: There are a few that we don't have. (Laugh) [LB685]

TOM SHARP: And that's why we have hearings. Okay, and so I do have this opinion from January 10 of 2007 from our own school attorney's office that said you expressed concern and perhaps that's because that they actually do not see the minor consuming alcohol, they cannot presume the minor consumed the alcohol at a place of his residence, and thus they're saying that a law hasn't been broken. And so I'm in support of Senator Russ' bill and I'm in support of Senator Kruse's bill, anything to help address the problem. It's not widely known that students can go out and about in the public and be intoxicated. They can break a school law. But really what the crux of the matter came down to, if I had a student who was intoxicated come to a school function and I could not in good conscience just let them go out into the public, particularly if they were going to drive. And law enforcement is telling me they have no right to hold somebody. And so

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the paradox kind of comes up where as a school administrator I'd have more authority to hold somebody to detain them for their own good than a law enforcement person would have. That's silly. And there are some students who are bigger than I am that I would not even care to try and detain. But it would be responsible because as superintendent, a school administrator has a paramount duty to protect a student from himself and others. And you couldn't in good conscience let somebody go back out into the public who was visibly intoxicated. But then again, the only deterrent would be to physically hold them until a parent could arrive. So it's not a good situation. It needs to be addressed and it needs to be a violation of Nebraska statutes. And so that's all I have for now and I'll talk again later for Senator Kruse's bill. [LB685]

SENATOR ASHFORD: Okay, Tom, thanks. Any questions of Tom? Thanks, Tom, very much. [LB685]

SENATOR PIRSCH: I guess I do have just one. [LB685]

SENATOR ASHFORD: Oh, okay. [LB685]

SENATOR PIRSCH: Do you tend to have a lot of students showing up where you do smell alcohol? I mean, how common of an occurrence or how big of a problem is this that students are drinking at these... [LB685]

TOM SHARP: It's a big enough problem that it had to be addressed with the whole situation of Breathalyzers. Because it was a hard decision for the board because they feel like it's an intrusion. But there was two or three incidences where it's only a couple of people but there was enough of a concern that we were trying to keep them safe, at least for one night, and that's why all these people spend so much money on post-prom parties, too, is because everybody thinks it's silly. But the idea is we're trying to keep them safe. [LB685]

SENATOR PIRSCH: Yeah. [LB685]

TOM SHARP: So it's a big enough problem that it had to be addressed. [LB685]

SENATOR PIRSCH: Was it just within the context of after school, prom, those kind of...or is it during the day, during the, you know, regular classes in school? [LB685]

TOM SHARP: We haven't had that during the day that we're aware of. [LB685]

SENATOR PIRSCH: That you're aware of, okay. Well, thank you so much. [LB685]

TOM SHARP: Thank you very much. [LB685]

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SENATOR ASHFORD: Jim, welcome. [LB685]

JAMES MOYLAN: Thank you, pleasure to be here. [LB685]

SENATOR ASHFORD: Pleasure to...(laugh) [LB685]

JAMES MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, M-o-y-l-a-n, appearing on behalf of the Nebraska Licensed Beverage Association. I will be involved in a few other bills this afternoon and I thought I would bring in the statistics I have on this one and then we'll refer to the other bills, you can refer to this bill for most of the testimony. As you know, we've always been opposed to minors and intoxicated persons in the establishments throughout the state. They've been nothing but trouble for retailers and they do their best not to serve minors and not to serve intoxicated persons. Now here's a couple surveys. About three years ago, the Century Council, which is an organization of distillers, had a survey and found out that 65 percent of teen drinkers get their alcohol from friends and family members, including their parents. And only about 7 percent got it from a retail establishment. Now there was another survey, now this is in '04 but it happens to be in the six counties in our area. It excluded the Omaha Public Schools but it was in Cass, Dodge, Douglas, Sarpy, Saunders, and Washington Counties. And it involved sixth graders, eighth graders, tenth graders, and twelfth graders. Now alcohol had been consumed by about 17 percent of sixth graders, 41 percent of eighth graders, and 66 percent of tenth graders, and 76 percent of twelfth graders. Now let's extrapolate that back to the 65 percent, you know, who are getting it from friends, family, and parents. Now nearly of the 17 percent of sixth graders, 47 percent of them who had used alcohol said their supplier was age 21 or older and about 37 percent who had consumed alcohol said they did so in their homes with their parents' permission. That was 37 percent of the 17 percent of sixth graders that had used alcoholic beverages. So we see it's a problem, the minors. And how do we attack it? I think this bill here that Senator Karpisek has is one good bill to start with. Got to get somebody's attention. It seems like most of those that are working on the project want to go after the retailers. It's kind of like hunting ducks. A new guy is out in the blind with his guide, you know, and he's up there ready to shoot his shotgun. And one side comes one duck and on the side comes 20 and he shoots at the one and misses. The guide says, well, that wasn't very smart. Why didn't you shoot at the 20, you might have gotten a couple of them. Same thing here, turn your guns at where the kids are getting the alcohol from, the most of their alcohol. And that is parents, friends, and family members, not the retailers. So if there's any questions, I'd be happy to answer them. [LB685]

SENATOR ASHFORD: Any questions of Jim? Thanks, Jim. And you continue with our tradition of good metaphors. Good metaphor, it was good, good examples. We always like metaphors here. Next, any proponents, more? How about opponents? Greg. [LB685]

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GREG SCHLEPPENBACH: (Exhibit 2) Senator Ashford, members of the Judiciary Committee, I am Greg Schleppenbach, S-c-h-l-e-p-p-e-n-b-a-c-h. I'm here on behalf of Jim Cunningham from the Nebraska Catholic Conference. He was called away suddenly and could not present the testimony. So this is a realm I'm not normally...an issue I'm not normally involved with. We are opposed to the bill in a very limited sense, primarily because it's unclear about how it would mesh with existing language, particularly as it might affect places of worship. And the rest of Jim's comments are mentioned in his testimony. I don't know that I'm prepared to answer any questions but if you have any, I'll certainly try or get an answer for you from Jim. [LB685]

SENATOR ASHFORD: Thanks. And we have this letter as well, so... [LB685]

GREG SCHLEPPENBACH: I also had testimony for him on LB261. Do you want me to wait until that bill? [LB685]

SENATOR ASHFORD: Or you can give it to us now if you like. [LB685]

GREG SCHLEPPENBACH: (Exhibit 7) Okay, I'll do that. [LB685]

SENATOR ASHFORD: That would be great. Thanks. Any questions of Greg? Thanks, Greg. Any other opponents? [LB685]

DIANE RIIBE: Hi, Senator Ashford, members of the committee. My name is Diane Riibe with Project Extra Mile. And first, I'm glad we can call him Senator Russ because I have practiced his name for, like, weeks and can't do it. So we really genuinely appreciate the attempt and the desire and understand the frustration of the superintendent of schools, but we would oppose the bill primarily because it opens up the, quite frankly, the minimum age drinking law that we have. I don't know of a state in the country that allows for a .02 level for youthful drinking; .02 is a zero tolerance issue, is really the drinking and driving for young people as an infraction. It's not meant to be there for measurable consumption for minors possessing or consuming. That just is not the standard that's used. One doesn't have to...a law enforcement officer doesn't have to use a testing device to determine whether or not a minor has been drinking. That's just not part of the law. Yes, it can be used, but as those who have worked on the issue know, PBTs are not evidential so they're not used in court. They're not able to be used as evidence. So there are some frustrations and there's a need to address the parts of the statute that there was an attempt to address here, but this does just, in our estimation, just the opposite of what we want to happen, happen. We don't want to mess with the minimum drinking age law per se. We want to look at how we close the loophole. This just doesn't go to the heart of that. I think we have some proposals that might do that in a way that's different and maybe helpful. So I'm happy to answer questions. I will also say we hear from schools pretty frequently with the same kinds of concerns, and it's difficult because we have put schools in a position where they have

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felt like they have to really be, in some fashion, defending their behavior and their actions, when in reality they're not a court of law, and we ought to give them kind of permission to make sure when they see harm or potential harm for kids that they're able to take more action that is outside of the purview of law enforcement. They are there to help our children, so we ought to give them kind of the political permission to do that, frankly. [LB685]

SENATOR ASHFORD: Okay. Any questions? [LB685]

SENATOR LATHROP: I may have a few. [LB685]

SENATOR ASHFORD: Yeah. I may have one or two. [LB685]

SENATOR LATHROP: Currently, can a principal or somebody that runs a high school, which is really what we're talking about,... [LB685]

DIANE RIIBE: Uh-huh. [LB685]

SENATOR LATHROP: ...can they turn a student away from a postprom party or the prom or the homecoming if they have any concern that the person has had alcohol? [LB685]

DIANE RIIBE: Sure. The superintendent could answer that better than I could, but certainly. [LB685]

SENATOR LATHROP: That's your understanding though right now? [LB685]

DIANE RIIBE: Uh-huh. [LB685]

SENATOR LATHROP: I'm trying to understand what your concern is. Of course the Catholic Conference is concerned that... [LB685]

DIANE RIIBE: Right. [LB685]

SENATOR LATHROP: ...we don't set it... [LB685]

DIANE RIIBE: Right. [LB685]

SENATOR LATHROP: ...set the blood alcohol... [LB685]

DIANE RIIBE: Right. [LB685]

SENATOR LATHROP: ...so low that a person can't take communion and then be...

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[LB685]

DIANE RIIBE: Exactly. [LB685]

SENATOR LATHROP: ...crosswise. The .02 seems to do that. [LB685]

DIANE RIIBE: Well,... [LB685]

SENATOR LATHROP: You'd agree you couldn't get to .02 typically by taking communion? [LB685]

DIANE RIIBE: Oh, absolutely. That's a...that should be, in all of our discussions henceforward, a nonissue. [LB685]

SENATOR LATHROP: Okay. Well, and I'm trying to get to where your concern is. Is your concern that we allow them to get to something below .02? [LB685]

DIANE RIIBE: Correct, there is that 00 to .02, and again, I'm not aware of a state in the country that allows for any deviation off of 00 when it comes to the minimum drinking age law, which is what was signed. [LB685]

SENATOR LATHROP: But we're not changing the minimum. We're not essentially carving out an exception. We're just saying you can do this if they happen to show up with that blood alcohol. [LB685]

DIANE RIIBE: Well, what you're actually doing, if my understanding of the reading of the proposal is accurate, what you're actually doing is allowing for any young person, any minor in any location, to drink up to a .0199. I mean they can go right up to the .02 and it would still be acceptable, and that's really where you're at. You're not wanting to give... [LB685]

SENATOR LATHROP: Okay. [LB685]

DIANE RIIBE: ...any deviation off of the 00 for purposes of that law. [LB685]

SENATOR LATHROP: So in terms of LB685, your concern is, as you read this, you think we're okay in drinking up to .02. [LB685]

DIANE RIIBE: It does, yes. [LB685]

SENATOR LATHROP: If we disagree with that, then you would have no other objection to this? [LB685]

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DIANE RIIBE: If there's...the heart of the matter is how do you get to the home exemption piece, and that will be addressed again in another bill I think that's appropriate. That is an issue that has to be looked at. Law enforcement has that difficulty in addition to school folks, so that has to be addressed. But actually taking it to that level is a concern, so that piece is the part. Uh-huh. [LB685]

SENATOR LATHROP: Okay. We'll look at it with that in mind, or I will. Thank you. [LB685]

SENATOR ASHFORD: Any other questions? Thank you. [LB685]

DIANE RIIBE: Thanks. [LB685]

SENATOR ASHFORD: Any other opponents? Neutral? Senator. [LB685]

SENATOR KARPISEK: Try to be brief. I guess I would, first of all, with the Catholic Conference, I do agree and I did talk to them beforehand. I just don't think that, again, communion would be .02, that they could get up to .02 taking communion. Their concern was if you give the kid cough syrup before they go to church and then they take communion, and just in case he would get over that, what would happen. And I can understand their concern, but right now, so I guess, you know, in current statute that we have you...it actually states you could drink at home or at a religious function. So I did not carry that over. That would...I would leave that up to the committee counsel to decide. The other part about the .02, right now we have nothing there. Again, a child could be intoxicated. They could be .30 and we have no way to test them, and they can say they drank it at home. So I don't think that it makes any more of a point to have minors drinking. I think this at least gives us a way to curtail that. Again, NyQuil cough syrup, a lot of these things do have some sort of alcohol content in it and we surely don't want to be "MIPing" those sort of people. So to have a 0.000, I don't know that is...I think grape juice has some alcohol content. I guess if the committee would want to go lower than the .02, I would also be okay with that. We just want to try to do something to help out to things like...when we talk about postprom and we talk about football games, basketball games, but it could also be the policeman downtown that has a bunch of rowdy kids and he really can't do anything about it. He can smell the alcohol on him. We have minor in consumption laws, but as I understand them, if you don't see them consume it, there's not much you can do, or have probable cause. And this committee is much better at knowing those laws than I am. But I thought minor in consumption would cover this. As I've talked to attorneys and police officers, it does not. So with that, I would be glad to answer any other questions the committee has. [LB685]

SENATOR ASHFORD: Thanks, Russ. Any questions? Thank you very much. [LB685]

SENATOR KARPISEK: Thank you. [LB685]

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SENATOR ASHFORD: Okay. Senator Kruse, I believe, is next. LB261. [LB685 LB261]

SENATOR KRUSE: (Exhibit 3) Thank you, Mr. Chairman. That's the same number I brought forward here, so we're together. [LB261]

SENATOR ASHFORD: Good. [LB261]

SENATOR KRUSE: Mr. Chairman and colleagues, I am Lowen Kruse, K-r-u-s-e, serving District 13, and I bring forward LB261. We'll be working from the white copy. And as you're looking for the white... [LB261]

SENATOR ASHFORD: Is there another... [LB261]

SENATOR KRUSE: Do you have a white copy? [LB261]

SENATOR ASHFORD: I'm not sure. We have a green copy. [LB261]

SENATOR KRUSE: Oh, okay. [LB261]

SENATOR ASHFORD: But maybe we have a... [LB261]

SENATOR KRUSE: Here's some more white copies. [LB261]

SENATOR ASHFORD: Okay. [LB261]

SENATOR KRUSE: As we're getting those around let me note that my partner, LaMont, and I were very young men when we started on this subject and had no wrinkles or anything like that. We've been through a zillion drafts, five or six official drafts of this, and we finally threw away all those drafts, all those wordings. We've had endless conversations with Mr. Cunningham and so on, trying to figure out the proper wording, and a number of other people who were quite helpful in pointing out that this is a problem, as Senator Karpisek has found out also. So we've come up with something that's just very simple, and that's sometimes the way it comes. You just look it all over and you say, well, let's simplify it down to the bare bones. So the white copy removes the exemption for a teen to drink at home or church or synagogue. It exempts religious services, which is an improvement over the other language, because the other talks about on the premises and Jewish citizens have religious services in their home at the time of Passover, during which time a youth might consume a very small amount of wine, but that's an important part of the ritual. We want to honor that and I join others who have said this really is a nonissue. There is not measurable amount. It just doesn't come before us. Some have wondered and, you know, have objected to this because they say, well, you're taking away the right of parents to give alcohol to their kids to help

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a teenage to drink. Well, that right is not there now. That's not...the law does not allow that and we're not touching that law, not getting into that. We've had enough. The main thing that we're really emphasizing here, and I'm sure the committee will be, too, is to eliminate the confusion. And the point is that we are more and more agreed on teens ought not to be drinking. They ought not to be served drinks. And we're not talking about alcohol in cough drops or cough syrup, rather, and gargle and so on. Give a little bit of a history on this, Senator Lathrop. I was present in this room when the .02 was added and you would appreciate that I was extremely frustrated. Why was the .02 put in there? To allow the teenager to gargle before they go leave the house. That was it. That was the whole argument. You can go back and check the transcript. You know, well, they could gargle and so they might get out there and they might, you know, it's not zero. Well, pardon me. You know, it's not a measurable amount. If you came into court with a point one-half, point zero one-half, it'd get thrown out. That's not what we're talking about. I really want us to stay focused on the question about teen drinking as I shall make clear...well, immediately. Might as well just jump right into it. But at any rate, the .02 could come off of that other. There's no need for the .02 in Senator Karpisek's request. I have taught courses on alcohol consumption to all ages and it's very clear when you got the .02 a teenager could have been given two beers within the last hour and they would be below .02, unless the person weighed 40 pounds. And that really would be violating the principle that we're after, that you ought not to be handing a teenager a drink. And this gargling is not doing that. And at any rate, enough on that. I do want to make a statement now and like Mr. Moylan I will say it at the first one of these bills and not repeat it again. I am a very upset man. I've been working on this for years, as you know. I am really upset with procuring. And as you know (laugh), because you got them all, I got five bills on procuring this year. They're all small, little dab here, little dab here, but LaMont and I have worked on this (laugh), had to back and forth over it. How do people get by with procuring? It really is upsetting to me. And I will join with Mr. Moylan in saying I'm not talking about a clerk who makes a mistake in an ID. That, in fact, one of these bills specifically excludes that. I am talking about a deliberate crime. [LB261]

SENATOR ASHFORD: Lowen, can I just interrupt you for one second? [LB261]

SENATOR KRUSE: Yeah. [LB261]

SENATOR ASHFORD: Would it be...I mean, would you feel comfortable in introducing LB336 and LB337 at the same time, as long as you're... [LB261]

SENATOR KRUSE: I'd be glad to do that. [LB261]

SENATOR ASHFORD: ...as long as you're...because I think... [LB261]

SENATOR KRUSE: I think that would be appropriate, Mr. Chairman. [LB261]

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SENATOR ASHFORD: All right. If you want to do that, then just continue... [LB261]

SENATOR KRUSE: I will do that. [LB261]

SENATOR ASHFORD: ...continue on, then you can talk about all three bills. [LB261]

SENATOR KRUSE: All right, and I think those who would be responding can sort them out. When a person...when an adult buys alcohol for a teenager, that adult knows why they are doing it. It's because they are adult. It's because the other person is a teenager and it's because it's against the law for the teenager to buy and it's against the law for the adult to buy. There's nothing inadvertent about it, whereas a clerk, you know, could make a mistake and, you know, God bless them, they're trying. And I agree, most of them are really trying to do the right thing. But any adult who goes out there and does this is just about the lowest life that I can think of and that expresses my extreme distrust of these persons. And let me say why it is. Maybe they don't know all this, but it costs the state of Nebraska \$447 million a year for underage drinking, and I don't lay that on the teenager's door. That's adult activity. I appreciate Mr. Moylan's statistic. I was wondering about it. He said 7 percent, no more than 7 percent, could be charged to a retailer. Four hundred and forty-seven million dollars. The Governor is trying to put out a generous tax cut which is half that. If we could come up with that kind of money, and I grant this is not all in the state budget, if we could come up with that kind of money we would do things for our public schools that would be stunning. So for somebody to just do this and hammer us with a budget like that, it's just without conscience. Number two, we now know, when we did not know five years ago, we now know that steady drinking by teenagers causes permanent brain damage. These are the people we're putting out there. These are the people we want to have economic development. These are the kids that are going to be adults working and every job I know today needs brains. So when the parent says to me, well, I want to teach my kid to drink, I just say, you, sir, you may not realize it (laugh), and I had one recently...you know, I have...I give them a drink every day; you know, they got to learn how to use it. Sir, I grew up in a time when that was common wisdom, but now we know that it's not just teenagers. It's under the age of 25 and confirming studies have shown that up to the age of 25 the frontal lobe is developing, but at the age of 25 the development shuts off and alcohol slows down that development so you stop with what you got at 25, and you aren't going to develop any more. And the frontal lobe is what helps us in decision making. This is a really serious problem. And if the parent doesn't know it, I know it, we know it, and we got to deal with it. So pardon me for the passion on that, but I just see it as a huge problem that we have to take accountability for as legislators. And the third problem with dealing with teenagers, in particular, is this is the gateway to serious drug use. You don't find many 21-year-olds that are into serious drugs who didn't start with alcohol. So I'm after public attitude with this. I...you know, we got to make some changes. Five years ago I didn't know how much this cost. I was given those figures this fall. It was \$430 million in '01 by an out-of-state, very careful researcher; and \$447 million in '02. We got to deal with that.

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Now this bill gets past some of the problems that we have when we get too much focus on churches or synagogues or something. It gets past that, but it also gets past measurement. And let me say in completing this bill that it came...the bill came to me from law enforcement in the middle of the state and it was keggers. And other illustrations have been given here, the superintendent's, so on. I didn't get any of that. It was all keggers. And State Patrol said we go out there and we see a keg in the middle and there's only teenagers all around and they see us coming and they are smart enough to set down anything they're holding, because they can't be holding a drink. That is against the law. But they can be looped. You can talk with them and they can't even give you a straight answer, but all they have to do, and they've been trained, trained each other to say, I was drunk when I left home, and we are trapped. When I passed this bill around to get cosponsors, I was talking to Mr. Aguilar, who says this is a huge problem in Grand Island. Senator Harms was close by and overheard it and he said this is just a major problem in Scottsbluff, and he was talking about keggers where nearly everybody is drunk but they can't do anything about it. So I will close on that bill. I think you had listed next LB3... [LB261 LB336]

SENATOR ASHFORD: The next one is LB336. [LB336 LB261]

SENATOR KRUSE: ...LB336. Okay. And LB336 I do have a...the white copy here. (Exhibit 4) LB336 is procurers. That was the first bill that my staff, Mr. Rainey, and I started working on, and he...I expressed my complete aggravation with people who procure and he said, what do you want to do to them, Senator? And I said, well, I'd like to drop them over a cliff. [LB261 LB336]

SENATOR ASHFORD: Is that in here? [LB261 LB336]

SENATOR KRUSE: And he looks...and he looks back at me with... [LB261 LB336]

SENATOR ASHFORD: Is that in here, Lowen? [LB261 LB336]

SENATOR KRUSE: Yes. Well, it was. (Laughter) That was one of the...any rate, he looks back at me with a wonderful, straight face; just says, that would be against the law. I said, well, we're making the law. At any rate, he got me off of that and so I said I want to make it a felony, and so he wrote it up that way. And he backed off of it and I think, you know, he's very much in tune with you all and said the problem with doing that is it probably wouldn't get prosecuted. Felony is a pretty heavy thing to lay on somebody. So I said, well, then let's throw everything in else that we can. So that's the quick summary of this. I'm not telling stories here, Mr. Chairman. I'm just saying so he went back to look at it, okay, if it's a misdemeanor doing the license revocation and a mandatory ten days in prison. I don't want to put anybody in prison very long; I just want them to sit there long enough to think about their sins. Now he raises the question and we simply put it to the committee, can you do a mandatory on a misdemeanor, and I

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don't know, and we don't know. We're not saying to you that that's a reasonable thing, but we just...(laugh) I've already told you what I'm trying to achieve and I trust your committee to help me do it. If it's a felony, and that be the case of causing injury, then there would be a mandatory. Again, I just want 30. I don't want to clutter up the jail with these people. I just want them, since hopefully most of them are sober to begin with, think about it. And in this you will see that we're not...we're making exception for the server and so on. We're not trying to throw servers in jail or anything like that. The question is the procurer, and I've described that enough times that you know I am targeting that person who intentionally breaks the law. I think the executive director of Liquor Control Commission is here, if you have technical questions on how they look at that. But aside from that, that would complete that bill. [LB261 LB336]

SENATOR ASHFORD: And LB337 is the... [LB261 LB336 LB337]

SENATOR KRUSE: LB337 is very quick and it's off the green copy, hey, and we don't even have an amendment on it, so look it there how easy life gets when we get down to the bottom of the pile. LB337 says when a fake ID is used by a minor the clerk may confiscate the ID and turn it over to police. That's the whole bill. Are we going to have a lot of people in jail on this? I sure hope not. I think we should reduce the attempts. And there's a certain basic item of fairness in here, which we've heard who have been around this for a long time. We slam the licensee for illegal sales, and we do that again and again. It's kind of a game between the teenager and the clerk as to who can bluff who out. But if the clerk misjudges, then that establishment gets slammed, and I don't think, you know, I think that ought to be the same on both sides. If the teenager came up there with a fake ID or with a genuine ID but they're trying to blow it past, they know they're breaking the law. It's why they came there. And they're doing it on their own and the law should be treated evenly. Again, I don't see there are more arrests on this. I think if we get the word around that an illegal purchase can cause a police officer to show up and stand beside you and arrest you, that it's going to have a giant cooling effect on all this challenging of clerks in these establishments. That is my hope. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you, Lowen. [LB261 LB336 LB337]

SENATOR KRUSE: And with that, I close. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you, Lowen, very much. Any questions of Lowen on any of the bills? Why don't we do this? Let's take each bill for testimony so we will start with LB261, not to get too confused here, if we start with LB261... [LB261 LB336 LB337]

SENATOR KRUSE: All right. [LB261 LB336 LB337]

SENATOR ASHFORD: ...and then you can close for all three, Lowen, if you want.

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[LB261 LB336 LB337]

SENATOR KRUSE: All right. [LB261 LB336 LB337]

SENATOR ASHFORD: So LB261 is the first bill, proponents. And that's the religious bill regarding exemption for religious uses of alcoholic liquor. Welcome back, Tom. [LB261 LB336 LB337]

TOM SHARP: (Exhibit 5) Welcome back. Well, thank you. And again, my name is Tom Sharp, S-h-a-r-p, and I applaud Senator Kruse for all the work he's done. I agree with his stance that it's a very important issue that needs to be addressed. What I'm having the clerk pass around now is a Request 1024, which you guys have not seen. It was a...I had this six-parted and I had been working on this independently for months because when I first came aware of the issue in January I spent two or so months looking through all of the regulations in other states, and I was...worked with our lawyer firm to try and get something going. And so what I bring to your attention with this 1024 that I'm bringing in front of you is that if you outlaw the use of liquor in homes... [LB261 LB336 LB337]

SENATOR ASHFORD: Tom,... [LB261 LB336 LB337]

TOM SHARP: Yes. [LB261 LB336 LB337]

SENATOR ASHFORD: ...let me just quickly answer. And I've caused the confusion here but...and it's fine. Why don't you just go ahead. This has to do with procurement generally, correct? [LB261 LB336 LB337]

TOM SHARP: Yeah, with all of the...the whole topic, right. [LB261 LB336 LB337]

SENATOR ASHFORD: So it really doesn't...doesn't refer directly to LB261. It refers to all, the whole issue of procurement. [LB261 LB336 LB337]

TOM SHARP: The whole issue, right. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. So this could be your testimony then on all three bills? Is that correct? [LB261 LB336 LB337]

TOM SHARP: Right. Yes. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. [LB261 LB336 LB337]

TOM SHARP: Okay. [LB261 LB336 LB337]

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SENATOR ASHFORD: Just so we know where we're going here. [LB261 LB336 LB337]

TOM SHARP: Okay. [LB261 LB336 LB337]

SENATOR ASHFORD: Because this don't refer specifically religious... [LB261 LB336 LB337]

TOM SHARP: No. No, it's... [LB261 LB336 LB337]

SENATOR ASHFORD: I've caused great confusion here, Lowen, and I apologize. [LB261 LB336 LB337]

TOM SHARP: That's okay. [LB261 LB336 LB337]

SENATOR ASHFORD: So go ahead, Tom, and... [LB261 LB336 LB337]

TOM SHARP: Okay. So this will be the last time I'm speaking, of course. But the idea is that if we do...on page 2, what I've passed out to you, if we make it illegal to use alcohol in the home, then the words "and legal," "and legal," there on page 2 have to be added to existing statutes to make sure that you don't have one statute that says you can't use alcohol in the home, but you have another statute that says that you can distribute it in your home or that you can make homemade liquor and distribute it in your home. So this just clarifies that if there is no standard of no alcohol served to minors in the home, then that would have to be addressed as it is in this Section 1. Then the other section is the...what I did all this work and did research, and when I talked to State Patrol people and all that, one of the things they told me, if we were going to open up this topic and discuss it that it would be real important that right now, under existing statute, if a...if you procure for a minor, that's just one count no matter how many minors you procure for, and the State Patrol representative, now not the State Patrol office and not the commander but state patrolmen out there in the field have told me that it would be worthwhile to look at having multiple violations per incident. So if you buy alcohol for one minor, it's two Class I misdemeanors, not just one. So that language is in this proposal that you might want to look at. And then just to clarify a little bit about that .02 and where Russ and I talked about that is if you say that you can use alcohol for religious purposes, which I wholeheartedly agree with, I tried to define what was excessive, and then I used existing statute to define what was excessive in this...for the--it says on page 4--for the purpose of this section, a minimal amount of alcohol means the amount of alcohol which does not create a concentration...and then go on into the existing statute. So I tried to define to say, to clarify, yes, it's okay to use a minimal amount of alcohol for religious purposes and then define what that was. So I tried real thoroughly to come up with something that didn't leave any gaps in legislation and was inclusive. And all this...it's just...I just give it to your attention and as you mull over all of the different proposals there, that perhaps you could form all these into a

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great committee bill. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Tom. Any questions? Senator Pirsch. [LB261 LB336 LB337]

SENATOR PIRSCH: Just a quick one. On page 3 of your handout there,... [LB261 LB336 LB337]

TOM SHARP: Uh-huh.

SENATOR PIRSCH: ...in subsection (2), line 14 through 17, that's...I think you had spoke to that a little bit and said that you added that... [LB261 LB336 LB337]

TOM SHARP: Uh-huh. [LB261 LB336 LB337]

SENATOR PIRSCH: ...each individual would...each minor had been...received alcohol would constitute a separate charge. Is that correct? [LB261 LB336 LB337]

TOM SHARP: Uh-huh. Right. [LB261 LB336 LB337]

SENATOR PIRSCH: Is your...is that...how come you added that provision? [LB261 LB336 LB337]

TOM SHARP: I did that mostly because of my conversations with law enforcement people. [LB261 LB336 LB337]

SENATOR PIRSCH: Uh-huh. [LB261 LB336 LB337]

TOM SHARP: They said that it was a...when it's the same charge for buying a keg and procuring for 25 people, or you're buying a six-pack and procuring for one person; that there's no difference in the violation of Nebraska law. [LB261 LB336 LB337]

SENATOR PIRSCH: So the law enforcement you talked to indicated that their understanding was that if you are a minor and procured alcohol... [LB261 LB336 LB337]

TOM SHARP: If you were... [LB261 LB336 LB337]

SENATOR PIRSCH: ...or, I'm sorry, if you're an adult and you... [LB261 LB336 LB337]

TOM SHARP: Right. [LB261 LB336 LB337]

SENATOR PIRSCH: ...procured alcohol for 1 minor you could be charged only with one violation, but if you're an adult and there's 25 minors and you procured alcohol for those

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minors, they believe you could only be charged with one procuring? [LB261 LB336 LB337]

TOM SHARP: That is...with one violation. That's what they... [LB261 LB336 LB337]

SENATOR PIRSCH: Okay. Well, that's interest... [LB261 LB336 LB337]

TOM SHARP: Yeah. [LB261 LB336 LB337]

SENATOR PIRSCH: That's not how we do it. I think when you...well, I appreciate your input. [LB261 LB336 LB337]

TOM SHARP: Sure, that's...yeah, that's what I was...so...and anyway, they told me that if we're going to go to all the trouble to talk, make sure that at least that was addressed and there was a clear understanding of that. [LB261 LB336 LB337]

SENATOR PIRSCH: Uh-huh. Okay. Now it says, though, in 53-180, which is the way...that's page 3, line 10, that's kind of the operative language that we're looking at. And it says... [LB261 LB336 LB337]

TOM SHARP: Uh-huh. [LB261 LB336 LB337]

SENATOR PIRSCH: ...no person shall sell, give away, basically procure... [LB261 LB336 LB337]

TOM SHARP: Right. [LB261 LB336 LB337]

SENATOR PIRSCH: ...any alcoholic liquor to any minor. And so the way they interpret that is to mean, no matter if it's 1 or 30, that you can't charge each one as a separate violation of that statute? [LB261 LB336 LB337]

TOM SHARP: That's...that was my understanding from the state patrolman that was...yes, that was my understanding. [LB261 LB336 LB337]

SENATOR PIRSCH: Yeah. You may want to check with him again about that specific point. [LB261 LB336 LB337]

TOM SHARP: Okay. [LB261 LB336 LB337]

SENATOR PIRSCH: In Douglas County I can tell you we do file individual charges. [LB261 LB336 LB337]

TOM SHARP: You do that. Okay. [LB261 LB336 LB337]

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SENATOR PIRSCH: If there's 30 individuals there, we'd have 30 separate charges. [LB261 LB336 LB337]

TOM SHARP: All right. So...well, there was...okay. [LB261 LB336 LB337]

SENATOR PIRSCH: Yeah. Very good. [LB261 LB336 LB337]

TOM SHARP: Appreciate that. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you, Tom. [LB261 LB336 LB337]

TOM SHARP: All right. [LB261 LB336 LB337]

SENATOR ASHFORD: Proponents on LB261. And if you desire to talk about the other bills as well, go right ahead. (Laughter) [LB261 LB336 LB337]

KATHY BURSON: (Exhibit 6) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name is Kathy Burson, B-u-r-s-o-n. I am the co-executive director of PRIDE-Omaha, an organization with a 29-year history of dedication to the prevention of alcohol, tobacco, and other drug use. I am here today representing the volunteers and staff of PRIDE-Omaha in support of LB261, the bill that eliminates the current state exemption allowing minors to consume alcohol in their homes. Alcohol is the number one cause of preventable death among adolescents in the state of Nebraska. It is the number one drug of choice among our state's children. The most recent Nebraska Risk and Protective Factor Student Survey of 2005 found that 79.1 percent of Nebraska high school seniors reported having consumed alcohol. With these numbers, clearly every child in Nebraska is at risk to use alcohol and to have alcohol-related problems in their lives. LB261 offers one solution to help our state reverse the tragic trend of rampant underage alcohol use. Currently, Nebraska state statute allows children to consume alcohol in their place of permanent residence. While our natural tendency is to say, let's stay out of people's homes, our society no longer has the luxury of such reluctance. In our work with many law enforcement agencies over the years, PRIDE-Omaha has found that many police officers report that children today are so savvy that when these children are caught in public, are under the influence of alcohol, they routinely say, I drank the alcohol at home. These children know the law and they can avert the consequences of breaking the law by simply saying they drank the alcohol at home. LB261 offers the ability to plug this one loophole in Nebraska law. For those who say that children should be able to drink at home or under their parents' supervision, our answer is simple. We know of no safe level of alcohol use by children under the age of 21. Research has never established that. It is the duty of the Legislature to protect the health and well-being of the citizens of the state of Nebraska. Our youngest citizens are most vulnerable and most deserving of this protection.

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PRIDE-Omaha urges you to pass this bill out of committee and on to the floor so that we can start finally addressing the enormous problem of underage alcohol use. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Kathy. Any questions of Kathy? Thank you. Other proponents? [LB261 LB336 LB337]

DIANE RIIBE: We are on LB261. Is that correct? [LB261 LB336 LB337]

SENATOR ASHFORD: We are. [LB261 LB336 LB337]

DIANE RIIBE: All right. Again, Diane Riibe... [LB261 LB336 LB337]

SENATOR ASHFORD: I feel badly enough, so... [LB261 LB336 LB337]

DIANE RIIBE: Well, (laugh) no, that's fine. I... [LB261 LB336 LB337]

SENATOR ASHFORD: But you're right, we are on LB261. (Laugh) [LB261 LB336 LB337]

DIANE RIIBE: I just...that's okay. Just everything was tossed aside and we kind of are starting new. Diane Riibe with Project Extra Mile. And like Kathy Burson with PRIDE-Omaha, we would support LB261 and again really thank Senator Kruse. This has been a difficult issue for those of us who work in the field for many years. As we kind of refer to it, the home exemption piece of the statute has caused really great angst amongst law enforcement and prosecutors. We hear, and in fact we just finished a law enforcement training, training over 53 law enforcement agencies across the state in the last month, and we heard and hear consistently that that part of the law and that part of the statute is a difficult one to get around. Kids understand that they just simply have to kind of plead that "I was drinking at home" argument and really it's very difficult to pursue the case after that. So we would, just to put it short, support LB261. And thank you to Senator Kruse for bringing it forward. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Diane. Any questions of Diane? Thank you. LB261, Jim? [LB261 LB336 LB337]

JAMES MOYLAN: No, LB336. [LB261 LB336 LB337]

SENATOR ASHFORD: Anybody else on LB261? Opponents? Okay, let's go to LB336. Jim, did you want to speak on that one? [LB261 LB336 LB337]

JAMES MOYLAN: Mr. Chairman, members of the committee, Jim Moylan, M-o-y-l-a-n, appearing on behalf of the Nebraska Licensed Beverage Association, here in support of

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LB337, excuse me. [LB261 LB336 LB337]

SENATOR ASHFORD: No, it's fine. [LB261 LB336 LB337]

JAMES MOYLAN: Got the wrong number. We just think it...we'd like a little insurance for the retailers that confiscate IDs of minors or persons with false IDs, and this would give it to them. Many of them do it now and many of them save them in a box and when they get them, if they ever get cited for a minor, they take them down to the Liquor Commission and show them, you know, what they...they're doing their best to prevent minors from purchasing alcoholic liquor. So we highly support that bill. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you. Thanks, Jim. Any other proponents for LB336? [LB261 LB336 LB337]

(MAN): Are you hearing LB336 or LB337, Senator? We need to testify on... [LB261 LB336 LB337]

SENATOR ASHFORD: Well, LB336 is what we're doing now, but I... (Laugh) [LB261 LB336 LB337]

JAMES MOYLAN: I got the wrong number. [LB261 LB336 LB337]

SENATOR ASHFORD: That's okay. Thanks, Jim. My clerk just indicated that it was chaos, that it was worse than I thought, so I apologize. But I think we're getting the testimony, but go ahead. I'm sorry. [LB261 LB336 LB337]

ROBERT SCHMILL: (Exhibit 8) Senator Ashford and members of the committee, my name is Bob Schmill, and that's S-c-h-m-i-l-l. I'm the father of Matt Schmill, who was killed by a drunk driver on April 24, 2004. The reason of my support of this bill is that someone that night bought alcohol for the 19-year-old young lady that killed my son, as he was crossing the street after celebrating his birthday with his friends. That one act of providing alcohol to that minor extended far beyond just the minor and the minor's family, but to our immediate family, and it also included 50 to 60 other families and friends of ours and our son. One-fifth of the individuals in this room will be affected by a drunk driver in their lifetime. We will never know who the person was that provided beer for the young lady that night. At the present time it's not really as serious of a crime in Nebraska to buy for a minor, but we are told not to do it when we go to the courts. And in monitoring the courts in the last year that I've done, I've seen that providing alcohol for...by an adult for a minor has been anywhere between a month probation, if probation at all, or \$100 fine. I did also notice this morning when I was reading through the bill that we had made the store employee, if it happened to be a store that sold it, exempt from punishment if he sold to a minor. I see this as a loophole which we're trying to close on

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these, but a loophole that, well, if I'm not going to get punished for it then why really check. I guess that's the way I'm viewing it. I may be wrong on that, but that's the way I view it. The dreams of our son and that our family and friends are gone because someone provided alcohol to a minor. We've been told that adults need to be in control themselves, as well as the youth in our community, with excess alcohol. Many say it's the individual's responsibility to know they should not drink and drive. And the young lady who killed our son, in the case of the young lady who killed my son, it's been reviewed she went over and over. That happened four times, but it didn't seem to make a difference. Someone needs to be...to help adults be responsible and part of that is controlling the sale of alcohol. I hope that you vote and send this bill back to session for...to become law. Any questions? [LB261 LB336 LB337]

SENATOR ASHFORD: Sorry about your son, Bob. [LB261 LB336 LB337]

ROBERT SCHMILL: Thank you, Senator. And you and I know each other from... [LB261 LB336 LB337]

SENATOR ASHFORD: We know each other and I...for, what, about 55 years? [LB261 LB336 LB337]

ROBERT SCHMILL: Uh-huh, and I've known your parents. [LB261 LB336 LB337]

SENATOR PIRSCH: Yeah, and I'll tell you, your message is very close to home, literally. You live just a few blocks away, so it's the same neighborhood. You said in here kind of she had received a message four times before. You mean this particular individual had four prior DUIs? [LB261 LB336 LB337]

ROBERT SCHMILL: Right. I've got testimony for all the other ones, too, but that she had three prior MIPs, was on probation for DUI at the time she killed my son, and still had her license. [LB261 LB336 LB337]

SENATOR PIRSCH: Well, thank you for coming down here today. [LB261 LB336 LB337]

ROBERT SCHMILL: Thank you. [LB261 LB336 LB337]

SENATOR PIRSCH: Appreciate it. I'm sorry for your loss. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. Any other proponents on LB336? Come on up. Good afternoon. [LB261 LB336 LB337]

MADISON FARRIS: Good afternoon. I'm Madison Farris, M-a-d-i-s-o-n F-a-r-r-i-s. Just begin? [LB261 LB336 LB337]

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SENATOR ASHFORD: Go ahead, sure. [LB261 LB336 LB337]

MADISON FARRIS: Okay. Underage drinking is a problem not only in my community but in the entire state of Nebraska. The majority of my classmates drink on a regular basis and some of them do get their alcohol straight from the retailer. In a survey that myself and my friend conducted, we found that about 28 percent of the kids in my high school bought their alcohol from the retailer the last time they consumed alcohol. Though this means that the majority of my peers get their alcohol from either a friend over the age of 21 or from their parents, I still believe that employers should be subject to the same punishment as other people for supplying to minors. In our survey we discovered that only 7 percent of kids in my high school got their alcohol from their parents or someone else's parents who were drinking with them. I feel that the best way to reduce the underage drinking problem is to cut it off at the roots, and the root of underage drinking is the supplier, and the only real benefit that a supplier could get may be somewhat of a profit but I believe that it would be...not be worth it to the supplier to keep supplying if he or she knew that he or she might lose their ability to legally drive for 90 days. I, myself, have chosen to live a drug-free lifestyle, but many of my friends do not choose to live the same lifestyle that I have chosen, but I'm here today to ask you to help me and my friends in a battle to reduce underage drinking and help us to reduce the temptation of consuming alcohol by cutting it off at the source. That's all. [LB261 LB336 LB337]

SENATOR ASHFORD: How old are you, Madison? [LB261 LB336 LB337]

MADISON FARRIS: I'm 17. [LB261 LB336 LB337]

SENATOR ASHFORD: Where do you go to school? [LB261 LB336 LB337]

MADISON FARRIS: Nebraska City High School. [LB261 LB336 LB337]

SENATOR ASHFORD: And you have a group of students that you work with on this issue? [LB261 LB336 LB337]

MADISON FARRIS: Just me and my friend. [LB261 LB336 LB337]

SENATOR ASHFORD: So you did a survey of your other classmates, is that...? [LB261 LB336 LB337]

MADISON FARRIS: That's correct. [LB261 LB336 LB337]

SENATOR ASHFORD: And you did it, the survey, just on your own? You decided to do it? [LB261 LB336 LB337]

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MADISON FARRIS: Yeah. [LB261 LB336 LB337]

SENATOR ASHFORD: That's good work. [LB261 LB336 LB337]

MADISON FARRIS: Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Any questions of Madison? Thanks for coming down today. [LB261 LB336 LB337]

MADISON FARRIS: Oh, my pleasure. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Madison. [LB261 LB336 LB337]

MADISON FARRIS: Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Any other proponents on LB336? Opponents? [LB261 LB336 LB337]

KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n, and I represent the members of the Nebraska Grocery Industry Association here in opposition to this bill. But it's sort of a strange opposition because we've seen the amendment and the amendment is okay, but I think you have to come in, in opposition of the actual bill, as it was introduced. So it's kind of a strange opposition. We don't have a problem with the amendment. So if you adopt that amendment, then we're okay. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. [LB261 LB336 LB337]

KATHY SIEFKEN: And one of the things that I do want to add is that if our members are caught selling to minors, they are punished and they are punished very harshly. The fines can be thousands of dollars and, in some cases, it is so...the fines are so high that it could literally put someone out of business, and the fines are high like that because you get their attention and they shouldn't be selling to minors. But people do make mistakes. We believe in training our people. We do not want to sell to minors. There is no profit that is large enough that would make that an acceptable practice. So if you have any question, I'd be happy to try to answer. [LB261 LB336 LB337]

SENATOR ASHFORD: Any questions of Kathy? Thank you. [LB261 LB336 LB337]

KATHY SIEFKEN: Thanks. [LB261 LB336 LB337]

SENATOR ASHFORD: Any other testimony on LB336? [LB261 LB336 LB337]

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HOBERT RUPE: In neutral? [LB261 LB336 LB337]

SENATOR ASHFORD: Neutral. [LB261 LB336 LB337]

HOBERT RUPE: Senator Ashford, members of the Judiciary Committee, my name is Hobert Rupe, executive director of the Nebraska Liquor Control Commission. We want to thank the senators for doffing their coats first so that I felt...I was able to, although I see that Senator Pedersen is still soldiering through. [LB261 LB336 LB337]

SENATOR ASHFORD: I think we have one fan somewhere. I don't know. [LB261 LB336 LB337]

HOBERT RUPE: I was contacted by Senator Kruse's office, primarily to bring forth to sort of...although LB336 deals with the criminal side, sort of to illuminate the committee on what happens on the civil side of these actions as well. Generally what will happen is when there's a sale to a minor not only will there be a criminal case possibly filed against the, say in this case, the clerk, that's who we would deal with, the clerk who supplied the alcohol, but then there's also an administrative sanction which will be filed with the commission. The commission operates under a theory of progressive discipline. In other words, you get caught more than...the more you get caught, the more you're getting hammered. As you're aware, the commission cannot technically fine people. We can suspend and then the statute allows them to pay off days of suspension, either \$50 per day if they've never had a violation before, or \$100 per day they've had violations. Typically, say in a compliance check, what will happen, as you're aware, compliance checks are when a cooperating individual will go into a store using their own identification. They're trained that they can't lie about their age. They have to use their own ID there. They can't act or dress older than they are. They have to be...look age appropriate. And they make a sale. If they fail compliance check, often the county attorney or the city attorney's office will file the criminal charge against the clerk, but then the licensee will also be subject to sanction by the commission. If it's their first offense, generally they're looking at a 10- to 20-day suspension, generally. Depends on whether they check the ID or not. There's some guidelines. If they didn't even ask for the ID, they're looking at a 14-day suspension, which is either a \$50 a day fine they can pay off if they've never had anything before, or \$100 a day. So they can, even for first offense, be looking at a \$1,400 fine that the licensee is going to have to be paying. For subsequent offenses, depending on how close in time they are, the law actually allows for provisions of mandatory closure where, like, for two to seven days where they can't even be open for the sale of alcohol during that day. And some...I remember we just gave one the other day. I think it was 7 days plus 52. So in other words, you were looking at 7 days when they could not sell alcohol at all, plus a \$5,200 fine. Just wanted to let you know what the sanctions are happening on the administrative side of this. The commission is neutral on the criminal side. That's, you know, if anything. I just wanted to

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be here if there was any questions on how the administrative sanctions worked. [LB261 LB336 LB337]

SENATOR ASHFORD: Any questions? Thanks for...Pete, do you have...I'm sorry. You have a question? [LB261 LB336 LB337]

SENATOR PIRSCH: Not at this time, no. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. Thanks. I thought you were... Thanks for your help on that. [LB261 LB336 LB337]

HOBERT RUBE: Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Diane. [LB261 LB336 LB337]

DIANE RIIBE: Thank you. Again, Diane Riibe with Project Extra Mile. We're here in neutral, originally here in support, but with the amendment, contrary to the testifier before, the amendment itself pretty much takes us out of the ball game, primarily because of the piece of the amendment that talks about exempting retail employees from, quite frankly, the primary pieces of the sanctions. Just to go back, to follow up on Hobie's comments in terms of the administrative, I can also tell you that we see too often, and we won't spend your time today giving you all of that, but too often we see the kinds of cases where the sanctions before the Liquor Control Commission on the administrative end are extremely lax, such as the Ogallala Kwik Stop, where a young man purchased alcohol there and went on to die in a single vehicle crash, alcohol-related crash, later in the evening. That business ultimately had a \$750 fine. So for Senator Kruse, we are very grateful for his understanding that there needs to be some increased sanctions for those who would provide in any fashion alcohol to minors and serious injury or death might result as a part of that. So we would hope that we would get both to the social and the retail. It's interesting, the young student's comment, because he was right on target, so Nebraska City and his small group sample actually was perfect. I will tell you this morning I spent all morning with a researcher from the Highway Safety Research Center out of University of North Carolina, Chapel Hill, as we're working on our project with them, and in fact those are exactly the numbers. Young people get access from...to alcohol about 20 to 30 percent of the time in a retail outlet, and the rest of the time it's social; not often parents. It's usually those just above 21. So, yes, it's an absolute need. We have to look at it, but we ought not to separate a large segment of the availability and exempt, in any fashion, any adult, no matter where they're at. If they have provided and we find that serious injury or death is part of that involved event, I'm not sure why we would exempt them. So we're extremely supportive of the idea. We would be opposing it if that portion of the amendment stayed and remained in the bill. And that's really it. [LB261 LB336 LB337]

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SENATOR ASHFORD: Thanks, Diane. Any questions? Yes, Senator Pirsch. [LB261 LB336 LB337]

SENATOR PIRSCH: Just a quick...you supported the underlying bill originally? Is that right? [LB261 LB336 LB337]

DIANE RIIBE: We did, Senator. [LB261 LB336 LB337]

SENATOR PIRSCH: Yeah, just calling your attention to page 2 of the original bill... [LB261 LB336 LB337]

DIANE RIIBE: Not to say we couldn't have missed something, so... [LB261 LB336 LB337]

SENATOR PIRSCH: Oh, yeah. (Laugh) [LB261 LB336 LB337]

DIANE RIIBE: Yeah, go ahead. [LB261 LB336 LB337]

SENATOR PIRSCH: Line 11, the beginning of that, subsection (b) under 53-180.05... [LB261 LB336 LB337]

DIANE RIIBE: Uh-huh. [LB261 LB336 LB337]

SENATOR PIRSCH: ...and this is new language apparently. [LB261 LB336 LB337]

DIANE RIIBE: And I may be on the wrong, so I'll try to catch you. Go ahead. [LB261 LB336 LB337]

SENATOR PIRSCH: Oh, no, go right ahead if it takes you a second to get there,... [LB261 LB336 LB337]

DIANE RIIBE: Okay. [LB261 LB336 LB337]

SENATOR PIRSCH: ...but it begins: "Any person violating section 53-180 is guilty of 12 a Class IV felony... [LB261 LB336 LB337]

DIANE RIIBE: Uh-huh. [LB261 LB336 LB337]

SENATOR PIRSCH: ...if the alcohol provided in violation of such 13 section is consumed by any minor who subsequently is injured or 14 commits an act which causes serious bodily injury." Is...I guess why is there, in your mind or in your position maybe this isn't something you haven't thought of, a differential between the person, the minor who consumed, who subsequently...there's different language I guess I'm going

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point. A minor who subsequently is injured or commits an act in which somebody is serious bodily injury or death, so there's a differential. It's kind of different. [LB261 LB336 LB337]

DIANE RIIBE: I understand your... [LB261 LB336 LB337]

SENATOR PIRSCH: One is injured, which may be...it's minor, more minor, and that's to the youth,... [LB261 LB336 LB337]

DIANE RIIBE: Uh-huh. Right. [LB261 LB336 LB337]

SENATOR PIRSCH: ...but it doesn't cover him if he's, apparently, death, because we're using different language. Yet if it happens... [LB261 LB336 LB337]

DIANE RIIBE: And you're absolutely right. [LB261 LB336 LB337]

SENATOR PIRSCH: ...to another individual,... [LB261 LB336 LB337]

DIANE RIIBE: Right. [LB261 LB336 LB337]

SENATOR PIRSCH: ...it would be serious bodily injury and/or death. [LB261 LB336 LB337]

DIANE RIIBE: And that probably needs to be clarified. You're actually completely on target. I would agree. [LB261 LB336 LB337]

SENATOR PIRSCH: That's about all I wanted to just kind of explore. That's in the amendment as well, I can tell. [LB261 LB336 LB337]

DIANE RIIBE: Uh-huh. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you, Senator Pirsch. Any other questions? Thanks, Diane. [LB261 LB336 LB337]

DIANE RIIBE: Thanks. [LB261 LB336 LB337]

SENATOR ASHFORD: That ends the testimony, I believe, on LB336. LB337, do we have any testimony on LB337? [LB261 LB336 LB337]

HOBERT RUPE: Once again, Senator Ashford, my name is Hobert Rupe. I'm the executive director of the Liquor Control Commission, and the commission is actually in support of LB337. It sort of codifies what we've been sort of telling the licensees they should do anyway if they have a fake ID issue brought before them. Last year there was

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a similar bill which was brought forth. I believe Senator Synowiecki had brought that forth, and we were a lot more skittish about that one because that allowed them much...it allowed them to sold of hold the person, much like a shoplifting, and we thought that was sort of a dangerous condition, especially if you're looking at a bar or something that it might be uncontrollable. The one thing we would ask, I guess, a couple technical corrections we would like to LB337 if it is forwarded out from the committee: Currently, the bill is seeking to amend Section 53-101, which is the primary...this is what the Liquor Control Act is, and we've tried to keep people from just sort of slopping everything in on that one. It probably would be more appropriate to change this to 53-1123, that would follow the statute which allows minors to aid law enforcement in cooperative...in a cooperative fashion during compliance checks. That way it would just...that way you wouldn't have to change 53-101. Like I say, 53-101 is the Liquor Control Act. And then you would just have to change it to...from 53-101 to 53-1123. The only other concern we would have is we would ask that perhaps language be considered. They say they shall turn the identification over to the peace officer. We...I guess we want to throw in "in altered form," and I guess we'll...I'll throw in a little story on that one. During a compliance check up in Omaha a couple years ago, a cooperating individual went in. The store owner got quite upset that he was trying to, quote, screw with his license, how dare you, you little expletive; took the license and cut it in half and said, here. Well, the only problem was they already had 12 more compliance checks using that cooperative individual planned for afterwards. The horrible part about it is they taped it together and they still got two more people still to sell to him, even though it was taped together with scotch tape. (Laughter) The other situation which came up was during a compliance check, was the clerk took the ID and he threw it into the lock safe where he didn't have access to it. You know, nobody can get it till the next day. And that clerk knew that he was messing with law enforcement that time. He knew it was a compliance check. He knew that they were trying to sting him, as they call it, and he took it and he threw it in there to sort of screw it up. And so, so long as it's clear by the statute that if they seize the license, they're going to contact law enforcement and they're going to hand it over to the peace officer when they come, you know, when they show up, and in an unaltered form, I guess we would have...we wouldn't have a problem with that. Those are some of the games some of the licensees are playing during compliance checks. We already know about the calling trees. You know, the first...it's amazing how licensees will sort of tattle on each other if they think they're getting an unfair advantage, but they'll call everybody else once the compliance check crews are going out and often the licensees know the compliance checks are taking place that night before the cooperating individual even gets to the next location. But overall, we think it's a safe...it's a safe way. We've always told them that take the license, say, you know, I think tis is a fake ID; I'm going to call the cops; you're more than welcome to wait for them, till they show up. And if it is a fake ID usually they're beating feet out the door and there you've taken a fake ID off the streets. If it is a legitimate ID they'll generally wait and the law enforcement officer can clear up any issues on it. So we would be in support of LB337. [LB261 LB336 LB337]

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SENATOR ASHFORD: Senator Pirsch. [LB261 LB336 LB337]

SENATOR PIRSCH: And you would have the most experience with this. In such situations, is there a possibility for an escalation up to the extent that physicality may take place? [LB261 LB336 LB337]

HOBERT RUPE: There is, and I guess that's one reason why in the last year with the similar bill, which allowed them to sort of hold them, much as a shoplifter can be held, we thought that would have been an escalation. Here all they're doing is they're calling law enforcement right away. Hopefully they'll be coming over. I mean I...you know, it's...there might be a risk of it, but I think most people, if they are using a fake ID, are going to leave. And if they know the cops have been called anyway, I can't really see them escalating into violence at that point. I'm not saying it would never happen, but I'd say it would be probably a chance. [LB261 LB336 LB337]

SENATOR PIRSCH: So you think it's a minimal chance of that. [LB261 LB336 LB337]

HOBERT RUPE: I think there's a minimal chance. [LB261 LB336 LB337]

SENATOR PIRSCH: Is...how many currently, if you have an idea of a retailer, this is going on right now, though there's no specific statute, correct, to your knowledge? [LB261 LB336 LB337]

HOBERT RUPE: They have done that, yeah. There are some who do that, but then generally they call the cops anyway. And our concern is that they're going to get themselves in a conversion problem. They're taking someone else's property. [LB261 LB336 LB337]

SENATOR PIRSCH: Sure. I just wanted to ask you, what percentage of the time do...where this is, where the retailer feels that this is an underage person? Do you have the sense or idea percentagewise how often this is occurring, or not? [LB261 LB336 LB337]

HOBERT RUPE: Most of the licenses which actually be seized would be primarily at your college-age bars where the people are trying to get in with the, you know, the out, you know, hey, I really am from Alabama. See, look at my license. I'm 42. Yeah. But...and those get seized when usually that happens. Mostly it doesn't happen in compliance checks because if they successfully pass a compliance check, most of the clerks have figured it out right away and they're not surprised to see the Patrol and the police come in right afterwards. There are some licensees which give their employees bounties, you've heard, pulling this fake IDs off. [LB261 LB336 LB337]

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SENATOR PIRSCH: Yeah. [LB261 LB336 LB337]

HOBERT RUPE: You know, there's...and so it's...you know, it is a problem but it's usually...the fake ID problem is generally at certain bars which appeal to a college-age demographic. [LB261 LB336 LB337]

SENATOR PIRSCH: Okay. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Senator Pedersen. [LB261 LB336 LB337]

SENATOR PEDERSEN: Thank you, Senator Ashford. I'm in general support of everything we've heard today, but there's part of this bill here that I have a real fear of. Come this Friday, I'll be working in an institution where there's five young men who have shot people, two of them killed. Do we want to take that risk of taking something from them that is theirs and holding it and hoping the cops are able to get there before something else happens? [LB261 LB336 LB337]

HOBERT RUPE: Well, there is a risk. I believe there's a minimal risk, but I'm not going to say that there's no risk, and I agree that is the concern. I think it's weighing off. You have to weigh the fact that, you know, the clerk will probably use his best judgment. I think, if somebody is going to be violent or something like that I can't see them escalating it. But at the same time, it serves as an opportunity to try to get some of the fake IDs out of the system they might look at. Because as you said earlier, you know, usually the sanctions get the licensees for failing this is enough, you know... [LB261 LB336 LB337]

SENATOR PEDERSEN: I don't have any hang-up with trying to get the fake IDs off the market. I support that any way we can do it. But I really have a hang-up with telling these clerks, who have no training and no expertise in this kind of field, to take somebody's license and say, hey, I'm going to hold this. I know kids who wouldn't let them hold that, and these are kids. [LB261 LB336 LB337]

HOBERT RUPE: Well, I mean...I mean these same clerks oftentimes have the right, if they think somebody is shoplifting, to hold the person under those acts,... [LB261 LB336 LB337]

SENATOR PEDERSEN: And I don't approve of that either, but it's... [LB261 LB336 LB337]

HOBERT RUPE: ...and that's even more of an escalation than merely holding the license. I guess which one way...last year, where it was sort of patterned off of the shoplifting motive, we thought especially if you're going into a...every (inaudible) difference. It was, like, a convenience store. Our problem was, it was a bar where

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somebody is going to go in and then it would escalate, not so much because of those people there but some of the surrounding people, hey, you're trying to mess with my buddy who owns this bar. So we didn't want them holding the person there, but holding the license. I understand and share your concerns and... [LB261 LB336 LB337]

SENATOR PEDERSEN: I'm just worried about the safety issue here. [LB261 LB336 LB337]

HOBERT RUPE: Yeah. [LB261 LB336 LB337]

SENATOR PEDERSEN: That it's not...not the underlying issue of what we're trying to get to here. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Hobert. LB337, are there proponents? [LB261 LB336 LB337]

DIANE RIIBE: Diane Riibe with Project Extra Mile. We would support the proposal as it is, with some of the same caveats that Hobie had. We would ask that if a law enforcement officer requests the return of the ID, that it not only come back unaltered but immediately, because we have seen a number of delays. And his depictions were precisely right. That is what we see oftentimes. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks, Diane. [LB261 LB336 LB337]

DIANE RIIBE: You're welcome. [LB261 LB336 LB337]

SENATOR ASHFORD: Any questions of Diane? Seeing none, thank you. Bob. [LB261 LB336 LB337]

ROBERT SCHMILL: (Exhibit 9) Senator Ashford, committee, again, my name is Bob Schmill. Pretty much I'm in favor for this, the reason being is more it's going to enable the business to be part of the solution and not part of the problem. And they're not necessarily part of the problem all the time but...because there's a lot of ways to be able to get alcohol, but I see them as being to help...being part of the enforcement of minors. I do have the same concern that the past two have had, that the license or the identification not be altered and not be put into a timed safe to where they can't get it, because now it's the young person who is helping law enforcement with the compliance checks now is breaking a law if they have to drive their car if they don't have a license. So we don't really want to do that. So that was the only thing. Just was kind of dittoing everything else. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Thank you, Bob. Bob, just hold on a second. [LB261 LB336 LB337]

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ROBERT SCHMILL: Sorry. [LB261 LB336 LB337]

SENATOR ASHFORD: Does anybody have any questions of Bob? Thank you. [LB261 LB336 LB337]

ROBERT SCHMILL: Thanks. [LB261 LB336 LB337]

SENATOR ASHFORD: Proponents? Kathy, are you proponent? [LB261 LB336 LB337]

KATHY SIEFKEN: Kathy Siefken, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association, and we are here in support of this bill. There are...we hold training workshops across the state. They're called "we card" workshops. And right now during that training we suggested that the clerks do not try to confiscate the driver's license because of the liabilities, and this law would change that. During those workshops, we would change the training to teach our clerks how to confiscate a license, when to do it, when to let it go, that type of thing. We do one-on-one training with clerks across the state. What this would do is it would basically stop the run. We have minors right now that start on one end of town. They've got a license and they'll go until they get somebody to sell to them. It's one of those things where we try to...we've got our own compliance checks program, compliance check program here in Lincoln, and our compliance in the city of Lincoln is 92 percent. So what we're doing is actually working. But when you get a minor that starts on one end of town and keeps attempting to purchase until they get the alcohol, you can stop that if you're able to confiscate the driver's license. And then Hobie was talking about a calling tree and I want to clarify what some of my members do. Every Friday night, regardless of whether there is compliance checks taking place or not, they do their own calling trees. And what they do is on Friday night the managers take turns and they call every store within their group of stores and they remind them, you need to card, you need to do the math, you need to stop the sale. And so there could be some of that that's taking place at the same time that compliance checks are taking place, but it is a proactive program that a lot of them are using. So if you have any questions, I'd be happy to try to answer. [LB261 LB336 LB337]

SENATOR ASHFORD: Thanks for your testimony, Kathy. [LB261 LB336 LB337]

KATHY SIEFKEN: Thanks. [LB261 LB336 LB337]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Senator Kruse. [LB261 LB336 LB337]

SENATOR KRUSE: Thank you, Mr. Chairman. And you don't make me nervous at all by mixing all three of these together. It makes it a more friendly party, so... [LB261 LB336 LB337]

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LB337]

SENATOR ASHFORD: Oh, I think it was good testimony, so hopefully it was okay.
[LB261 LB336 LB337]

SENATOR KRUSE: It was. I really appreciate those coming forward with it and I think you can tell from the nature of that testimony that we've talked to a lot of these persons and they have participated in the construction of these bills, and we're really grateful for it. Little comment on each bill: LB261, I'd remind you of the heart of this to me is a keg party and the issues about, you know, drinking at home are set aside when, at present, they're saying, I got drunk at home. And there's none of these excuses that they've got that can cover getting drunk at home or at church or someplace else. No. No, no. The question is why are they looped at a keg party. And we think this LB261 will stop that gaming. On LB336, would comment there was a discussion back and forth. The felony part is new, just to acknowledge that. And a comment to Bob Schmill, who has been a wonderful advocate on all of our behalf. He goes around the state trying to gain public support for good law enforcement. He does a lot of this. He was a little anxious that we were taking the seller off the hook of present law. We are not. That seller has many sanctions, and Kathy testified to it and, you know, Hobie. If somebody sells to a minor now, they are breaking the law and/or a Liquor Control regulation, and they are subject to all kinds of mischief. So those...and primary pieces, the primary piece is added of the felony. I don't know if you want to do that. Again, my feeling is that the person selling ought not to have a mandatory jail sentence. So that's why we took that out, and you might find other ways to work around that. On the LB337, I have a note here that the law enforcement says, please don't have it so they can throw the ID into a timed safe because there's all kinds of problems, and that's already been spoken to. I did not say in my opening that some clerks do this now. That made me a little bit anxious, and that's been described here. There's a certain liability to it, but I know quite a few clerks, because I've had one even tell me about it--I'm just not going to put up with this crap; I just take their...I take their ID and call the police. I don't know how some of that fits together, but...and this would be to Senator Pedersen, who is concerned about the personal safety of it. First, these are not untrained persons. As of March 1, they are all to be trained by a course that we set up. So that server has a training. Second, we have put in there the word "may" confiscate. It is not "shall." And if in their judgment this person is a dangerous or, you know, intoxicated or they really don't want to handle with the person and get into a fuss with them, why, they don't have to do that. Another comment in...back to the keg parties, I guess, Senator Pirsch, it's a little bit intimidating to do all of this with you sitting on the committee. (Laugh) You like to intimidate somebody, don't you, even an old geezer? As I am sure you all know, Senator Pirsch has prosecuted thousands of these cases and he knows some of the ins and outs. In working with this statewide, we've discovered a few things. And like on the multiple thing, we received that one with the minimal amounts, and we were having trouble defining that and it had the multiple counts. We found out that, you know, we can't just

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document it, but we're pretty suspicious that some county prosecutors just plea this down real fast to one count, so that's easier that way. And the Patrol is frustrated because they've brought in all these kids and all they get is one count. So they're, some of them, are assuming that that's not allowed within law, and I am presuming that is allowed within law. But again, I defer to Senator Pirsch and others here who are well-acquainted with that. But that's where that little ripple comes in from. Finally, I will quote this young person from Nebraska City. The root of underage drinking is, and I'll substitute his last word, an adult. And so what I said to begin with, my objective here is to drop procurers over, Mr. Chairman, a metaphorical cliff. (Laugh) And I appreciate all the help you can give us in doing that. Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Well, thank you, Senator Kruse, for your information. Any questions finally of Senator Kruse? Thanks, Lowen, very much. [LB261 LB336 LB337]

SENATOR KRUSE: Thank you. [LB261 LB336 LB337]

SENATOR ASHFORD: Okay. Senator Lathrop. Senator Lathrop is up. LB258. [LB258]

SENATOR LATHROP: Good afternoon, members, Chairman Ashford and members, fellow members, of the Judiciary Committee. My name is Steve Lathrop, L-a-t-h-o-p. I represent the 12th District in Omaha and I'm here to testify on LB258, which is in keeping with our theme today of underage drinking. LB258 has a very simple purpose. It is to provide for the suspension of the operator's license for a minor in possession of alcohol. The duration of the suspension would be, for the first violation, not less than 60 days nor more than 6 months; for the second violation, 12 months; and for a third and any subsequent violation, a period of two years or until the violator reaches the age of 21 years. The reason we have introduced this, or taken this approach, is...and you may be interested to know, currently 29 states have mandatory license revocation laws; 10 states have discretionary laws; and Nebraska is 1 of only 12 states with no provision for the suspension of a minor's license. They have found in studies, and I have a bit of testimony from Kevin Quinlan, chief of the Safety Advocacy Division of the National Transportation Safety Board, testified the most significant intervention for teen drinking is the loss of a driver's license. I think this is an effective way to address the problem. You have heard a lot of statistics today about underage drinking. This, I think, is an effective approach to underage drinking. [LB258]

SENATOR ASHFORD: Thank you, Steve. Senator Chambers, welcome. [LB258]

SENATOR CHAMBERS: It's good to be here. [LB258]

SENATOR ASHFORD: Thank you. [LB258]

SENATOR CHAMBERS: Senator Lathrop,... [LB258]

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SENATOR LATHROP: And I'm certainly glad you arrived... [LB258]

SENATOR CHAMBERS: Thank you. [LB258]

SENATOR LATHROP: ...just in time. [LB258]

SENATOR CHAMBERS: Have you ever heard of a sporting event called the Indianapolis 500? [LB258]

SENATOR LATHROP: Yes, I have. [LB258]

SENATOR CHAMBERS: Do you know what the 500 refers to? [LB258]

SENATOR LATHROP: I think it's the miles that they travel on the track. [LB258]

SENATOR CHAMBERS: Or the number of laps. Is each lap a mile? [LB258]

SENATOR LATHROP: I don't know that much about it. [LB258]

SENATOR CHAMBERS: Okay. [LB258]

SENATOR LATHROP: I'm not a NASCAR... [LB258]

SENATOR CHAMBERS: Somebody is nodding yes. Okay. Well, this is the "suspend or impound the minor's driver's license for something that has nothing to do with driving" 500. It's been around this track so many times and I've opposed it strenuously every time, as I will do this time if it makes it to the floor. But is this a priority bill? [LB258]

SENATOR LATHROP: No. [LB258]

SENATOR CHAMBERS: I can relax. I don't have any questions. Thank you, Senator Lathrop. [LB258]

SENATOR LATHROP: All right. Okay. (Laughter) [LB258]

SENATOR ASHFORD: We have our ways, though, Senator Chambers. [LB258]

SENATOR CHAMBERS: I'll deal with that when the time comes. (Laughter) [LB258]

SENATOR LATHROP: I was aware that it wasn't an original idea, but I do think that it has merit, notwithstanding your concerns. Thank you. [LB258]

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SENATOR ASHFORD: Thank you, Senator Chambers. Thanks, Senator Lathrop. Yes, Jim. [LB258]

JAMES MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, appearing again on behalf of the Nebraska Licensed Beverage Association in support of LB258. I think Senator Lathrop said it right. If you want to get to the minors, if you want to keep minors from drinking, just tinker with their driver's license. They'll be much more careful and a lot of them will probably not drink. Apparently we've tried everything else in the world, but minors just keep drinking and drinking, but this one, you know, it would stop. Number one, a driver's license is a privilege and I think a privilege could be taken away regardless of whether it's related to driving or not. So I would recommend that we pass this bill and get to it. These kids are old enough to get a license. They're old enough to be in high school, be out on their own, consciously, intently, intentionally purchase alcohol beverages. Now if they purchase it from a retailer, generally it's just a negligent act on the retailer's part. And so when they intentionally do it, I think they ought to take the penalty that everybody else does. Now DUIs, they take adult's driver's licenses regularly for DUI. And number two, another action that they take driver's license is for nonpayment of child support, and this has nothing to do with driving a motor vehicle. So it's not unheard of to take a license from a person even though it doesn't relate to operating a motor vehicle. Any questions, I'd be happy to try to answer them. [LB258]

SENATOR ASHFORD: Thanks, Jim. Any questions of Jim? Yes, Senator. [LB258]

SENATOR CHAMBERS: Mr. Moylan, as an attorney you know that just because the Legislature has the power to do something, because it has plenary authority to legislate, does not automatically mean that the Legislature ought to do that particular thing. [LB258]

JAMES MOYLAN: I understand that, yes. [LB258]

SENATOR CHAMBERS: Okay. Now if threatening to take the driver's license is going to stop these young people from drinking, are you willing to do something that would make me support the bill, and that's to put the same punishment on adults who attempt to purchase alcoholic liquor for children or who will purchase it, or who supply it to them? Are you willing to do the same thing to adults? [LB258]

JAMES MOYLAN: Well, I think that's what that LB336 pretty much intended to do. It would allow the suspension of driver's licenses for anybody who...the procurers, you might say, and it applies to everybody except a person in an establishment that is compliance checked. Then the suspension would not apply to him. But it does apply to the other one. I would say parents and other procurers, yes, but I don't think retailers ought to be included in it because... [LB258]

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SENATOR CHAMBERS: Wouldn't it make retailers more careful? [LB258]

JAMES MOYLAN: I think they're more careful, they're trained, and they... [LB258]

SENATOR CHAMBERS: No, no, you're missing my question. If we would put this on them, wouldn't it make them more careful? [LB258]

JAMES MOYLAN: I would imagine it probably would, but they're very careful anyhow. [LB258]

SENATOR CHAMBERS: But if they're careful now, it makes them more careful, and we want to stop the supply of alcoholic beverages to young people, shouldn't we put it on anybody in a position to supply the alcohol, including people who run these establishments? I know they're your clients, so you... [LB258]

JAMES MOYLAN: Yeah. [LB258]

SENATOR CHAMBERS: ...you cannot speak well against your clients' interests. Correct? [LB258]

JAMES MOYLAN: No, I wouldn't. But as far as, you know, parents and other adults who are not suppliers, I would highly recommend it, but, you know, not suppliers. [LB258]

SENATOR CHAMBERS: You said everything has been tried. How about putting them in stocks? [LB258]

JAMES MOYLAN: In what? [LB258]

SENATOR CHAMBERS: Stocks in the public, because people are willing to do any and everything to humiliate young people, to treat them in a way that will destroy their self-respect, their self-confidence, their self-esteem. So humiliate them all the way. That will do it. And if it doesn't, so what? Would you be willing to give that a try? [LB258]

JAMES MOYLAN: Well, I don't feel that this humiliates a minor. It just takes a privilege away from him... [LB258]

SENATOR CHAMBERS: Well,... [LB258]

JAMES MOYLAN: ...and makes him think, you know? [LB258]

SENATOR CHAMBERS: Well, the stocks will make you think, too, and it takes a privilege away, the privilege to be free from humiliation. [LB258]

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JAMES MOYLAN: Probably would. [LB258]

SENATOR CHAMBERS: See, we haven't tried everything. You said we've tried everything. [LB258]

JAMES MOYLAN: Well, I would think then the same theory would follow through on persons who do not pay their child support and get their driver's license suspended. I imagine you were doing the same thing to them,... [LB258]

SENATOR CHAMBERS: Except... [LB258]

JAMES MOYLAN: ...destroying their humility and... [LB258]

SENATOR CHAMBERS: Except, Mr. Moylan, the federal government mandated that. It's not that the Legislature or anybody else suddenly was struck by a feeling of nobility. They were told, if you don't do this, you're going to lose some highway funds. So it had nothing to do with morality, nothing to do with being concerned about collecting child support, but saving that federal money. So this has nothing to do with a federal mandate. Now this is my final question, because I don't...they like it when I don't come to the committee because they get so much done and get on out of here. If this bill is not passed, how long after the date that this bill would have a chance to pass, and that date passes and it hasn't passed, how long after that will the world come to an end, just rough calculation? [LB258]

JAMES MOYLAN: Oh, I'd have to get a calculator out and spend some time on that one, but... [LB258]

SENATOR CHAMBERS: Okay. Would the year be odd or even? [LB258]

JAMES MOYLAN: It could be the day the session ends maybe. [LB258]

SENATOR CHAMBERS: Okay. (Laughter) [LB258]

JAMES MOYLAN: All right. Because we hadn't done anything to keep minors... [LB258]

SENATOR CHAMBERS: And this bill, not being prioritized, what chance do you think it would have of passing? [LB258]

JAMES MOYLAN: Oh, I'm not much of a gambler, but I'd say probably 100 to 1. You want to put your 100 out and I'll put my 1 out? [LB258]

SENATOR CHAMBERS: Okay. I don't have any more questions. I just didn't want you

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to think I don't care about you, so I had to ask you something. [LB258]

JAMES MOYLAN: Thank you. [LB258]

SENATOR CHAMBERS: That's all I had. [LB258]

SENATOR ASHFORD: Thanks, Jim. Further proponent testimony on LB258? [LB258]

HOBERT RUPE: Good afternoon again, senators. My name is Hobie Rupe. I'm the executive director at the Nebraska Liquor Control Commission. For the last three or four years the commission, in its legislative letter, has supported this concept. I'm aware in the past that these have come around that they have been derailed by Senator Chambers primarily. The purpose is you have to remember under the current existing law a person who sells could be charged with a Class I misdemeanor. The minor in possession is much lower than that already, is a Class III underneath the act or, if it's violated under a local ordinance, it's a much lower sentence. And the commission decided to take this position because we kept hearing from the licensees, you know, who were coming in when their clerks are being sentenced to a Class I misdemeanor, they're facing thousands of dollars of fine from the commission, and the minor who illegally went in and sold got a \$100 fine and is holding sort of a badge of honor that he, you know, hey, I'm like all my other buddies, I've now got an MIP. And the most of the research we've been able to look at from a national standard--I mean as Senator Lathrop said, a lot of other states have it--is they found this to be one of the main deterrents. You know, this hurts more the kid more than \$100 fine will that the judge is going to give under a city ordinance or under the Class III misdemeanor. And so therefore we support that because we are trying to reduce the underage access to alcohol. So if there's any questions... [LB258]

SENATOR ASHFORD: Yes, Senator Pirsch. [LB258]

SENATOR PIRSCH: And just by way of background, are you an attorney? [LB258]

HOBERT RUPE: Yes, I am. [LB258]

SENATOR PIRSCH: Okay. Are you familiar with the criminal penalties that are associated with, as you said, the procuring and minor in possession? [LB258]

HOBERT RUPE: Yeah, 180 by statute, in violation of 180 is a Class I misdemeanor; 180.01 through I believe 180.05 is a Class III misdemeanor; although there's also a provision which allows a local ordinance for minors in possession as well. [LB258]

SENATOR PIRSCH: Okay. So this would be viewed as it's located in this additional penalty of the license, driver's license. I think it's described as a suspension in the

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statement of intent, but it's really an impoundment, correct? There's a... [LB258]

HOBERT RUPE: I believe it would be...I believe it would be a suspension because I don't believe there's an impoundment at the time. The way I understand the bill, would be after there is a finding of criminal guilt, it is imposed as part of the penalty. So therefore I believe...because an impoundment I would believe takes place right away, like under the ALR statutes, whereas this would be...they would probably keep their license until they are found guilty in a criminal court. [LB258]

SENATOR PIRSCH: Well, and that's an important thing I guess to look at, too, because there are distinctions between the terms "impoundment," "suspension," and "revocation." And so I guess that's something I'll...would like to take a look at. But... [LB258]

HOBERT RUPE: I could be a little bit wrong on the language, because you said this is a...the change in this is looking at the...under the driver's control act. I just was bringing up the possible penalties I think you face under Chapter 53. [LB258]

SENATOR PIRSCH: Okay. Be that as it may, yet it's an additional penalty that would fall within the same sections, 53-180, correct, the minor in possession? [LB258]

HOBERT RUPE: That is correct. [LB258]

SENATOR PIRSCH: Is...and I don't know if you have, because...an opinion, but is this a...essentially these suspensions...let me phrase it this way. In the context of drunk driving, we have a impoundment penalty as well. [LB258]

HOBERT RUPE: Uh-huh. [LB258]

SENATOR PIRSCH: And in that particular section for the driving, drunk driving, we have an impoundment. We have certain main line penalties, but then we, as a fallback, say but even if granted probation, a suspension of or an impoundment of no less than. And I suppose the reason for that is there's...and judicial discretion is such that a judge can interpret the statute such that they believe through probation they can bypass the impoundment. Is that something that you believe would apply to this, or is this something that you believe a judge would, in all instances, must order should there be a conviction? [LB258]

HOBERT RUPE: Well, the statute, as written, appears to use a "shall," which is a mandate. So in addition to the penalties described in subsection (1), any person violating shall be subject to the impoundment of his or her license as defined under the...it seems to me to be mandatory. If there's a guilty conviction, the impoundment would take place. I don't believe it would be discretionary. [LB258]

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SENATOR PIRSCH: So you don't think the member of the judiciary, having its own powers, has that power to bypass that through executing a probation? [LB258]

HOBERT RUPE: I don't believe...well, a lot of the thing is going to depend on how the probation is going. I mean if we're going to talk about the possibility of pretrial diversions being utilized, which is also utilized quite a bit in these cases, where the...whether it's going to be (inaudible) or postcharge, how it's going to come out... [LB258]

SENATOR PIRSCH: But diversion isn't a power of the judiciary. [LB258]

HOBERT RUPE: Yeah. [LB258]

SENATOR PIRSCH: That's the...I mean that's the... [LB258]

HOBERT RUPE: Yeah, you're exactly right. It's more of a county attorney position, prosecutor position. [LB258]

SENATOR PIRSCH: ...prosecutor's function. [LB258]

HOBERT RUPE: I think the way I would read this is that if there's a...it seems to place a mandatory burden upon the judge of sentencing, if they are sentencing them for a violation of, in this case, probably possession by a minor, of the Class III misdemeanor, that the license suspension would be mandated. So I'm not sure if probation would do it or not. I think, you know, once again you're looking at a difference. There's a difference between a fine or incarceration under the criminal code, and versus the...either how we're going to use either impoundment or suspension of the driving privileges at the time. I think you... [LB258]

SENATOR PIRSCH: So you don't think we need to follow the structure of the...if that's your...if that is the intent of the bill, to in all instances mandate a...such a suspension, that you don't think it's necessary like we do in the drunk driving statutes, specifically expressly indicate that in the instance where probation is granted such suspension must also be imposed? [LB258]

HOBERT RUPE: Okay. I'm not sure. I mean, the way I'm looking at it, and maybe Senator Lathrop could clarify his bill on it, I'm seeing it's after he's found guilty by the courts. Have gone to court and it's part of the sentence. I mean he may be put in probation, but I it's, you know, maybe you might want to allow the judge more discretion, but I'm, you know, I'm going back to my law school, "shall" means shall, and "may" means may. This is they shall impose a sanction as well. [LB258]

SENATOR PIRSCH: Thank you very much. I appreciate it. [LB258]

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SENATOR ASHFORD: Thanks, Senator Pirsch. Thanks, Hobie. Yes, Senator Chambers. [LB258]

HOBERT RUPE: Senator Chambers. [LB258]

SENATOR CHAMBERS: Is it mandatory that the person's driver's license be impounded? [LB258]

HOBERT RUPE: The way I'm reading this, and once again I'll defer to Senator Lathrop since it's his bill, is that, you know, he's changing the warning which is contained within the Liquor Control Act, and he's also changing the sanctions. As I stated earlier, the sanction is either Class I misdemeanor or, more appropriately for a minor, a Class III misdemeanor, and it says for the first, you know, this penalty describes shall be subject to impoundment of his or her operator's license. [LB258]

SENATOR CHAMBERS: So does the word "subject" mean that it's not necessarily so? [LB258]

HOBERT RUPE: I believe they would be subject, but only after they're...as part of the sentence after trial. I'm not sure that the license, and I'm, you know, can be impounded prior, you know, say when the child is...when the minor is arrested, at that time. It would be as part of a...the sentence, if he's found guilty of being a minor in possession, as well as paying whatever fine the judge or probation the judge may order. He would also have to order the suspension of the license at that time. [LB258]

SENATOR CHAMBERS: So this notice that is published is not really accurate by saying, and subject to possible impoundment, rather than mandatory impoundment. Because if you are going to be assessed a penalty of \$500 fine and/or three months in jail, that can only be done if you've been convicted. Would you agree? [LB258]

HOBERT RUPE: I agree. [LB258]

SENATOR CHAMBERS: Then the impoundment would be mandatory, so it shouldn't say "and possible impoundment," but "mandatory impoundment of your driver's license, if the warning is to be consistent with the statutory language. Or do you disagree with that? Or is it unclear in your mind? [LB258]

HOBERT RUPE: I think it might be unclear because, you're right, it does change the warning, which says "may be possible," and so then you have to look at under the language of shall be subject to the intent payment (sic). Is it shall be subject, you shall be subject to the possibility, or you shall be...have it done? [LB258]

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SENATOR CHAMBERS: Now... [LB258]

HOBERT RUPE: I would read the "shall," if I was drafting this, I would say "and may be subject" to the impoundment of his license if it is the intent would be discretionary. [LB258]

SENATOR CHAMBERS: You mean in the language of the statute. [LB258]

HOBERT RUPE: In the language of the statute. [LB258]

SENATOR CHAMBERS: Okay, the way... [LB258]

HOBERT RUPE: I think if you were changing it to "may" then you would be...I think you would have to change it either in the alterations of the warning or in the...on page 4, line 2, I think, to just make it more clear. [LB258]

SENATOR CHAMBERS: Now when we're talking about a fine or imprisonment, we're dealing with a criminal statute and a crime. [LB258]

HOBERT RUPE: You are correct. [LB258]

SENATOR CHAMBERS: And criminal statutes must be narrowly construed. [LB258]

HOBERT RUPE: Yes. [LB258]

SENATOR CHAMBERS: And if there's any doubt in the statute, it's resolved in favor of the accused, but if there's ambiguity then that statute, if it's a criminal statute, may not stand. Is that true? [LB258]

HOBERT RUPE: You are correct, sir. [LB258]

SENATOR CHAMBERS: Okay. So there could be...and you didn't draft it, there could be an ambiguity here because you have a mandated warning to the public. The public, since this is required by law, should be able to count on that being accurate, an accurate reflection of what the law is. [LB258]

HOBERT RUPE: You are correct. [LB258]

SENATOR CHAMBERS: So if you have a mandated warning or notice that a statute which provides a punishment more severe than what is in the notice, then the notice misleads the public, who will be served with this notice? [LB258]

HOBERT RUPE: I would agree that it's conceivable, by reading the current language,

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there could be an ambiguity as to the wording. [LB258]

SENATOR CHAMBERS: And I know it could be corrected. [LB258]

HOBERT RUPE: And I'll be the first to say that I'm not sure if Senator Lathrop wanted a mandatory suspension as part of it, or was (inaudible) discretionary. I think there might be...but I agree that the warning should accurately reflect what the statute finally is going to entail. [LB258]

SENATOR CHAMBERS: Okay, now another subject. Who did you say you're connected with and what is your position? [LB258]

HOBERT RUPE: I'm the executive director of the Nebraska Liquor Control Commission. [LB258]

SENATOR CHAMBERS: And what does the Liquor Control Commission do? [LB258]

HOBERT RUPE: We regulate the importation, sale, and licensing of those individuals who receive licenses to do business selling, in the business of selling the alcohol in the state. [LB258]

SENATOR CHAMBERS: Okay, so they grant and withhold licenses to... [LB258]

HOBERT RUPE: We grant/withhold licenses. [LB258]

SENATOR CHAMBERS: And do they classify alcoholic liquors, beverages, in certain ways? [LB258]

HOBERT RUPE: Yes, we do. [LB258]

SENATOR CHAMBERS: Did this Liquor Control Commission classify flavored alcoholic beverages as beer? [LB258]

HOBERT RUPE: We the commission decided that there was a federal issue before TTB has been how do deal with these issues. TTB originally was going to treat these flavored malt beverages, if they receive more than one-half of 1 percent of their alcohol as a distilled spirit, if they were getting most of their alcohol from flavoring. Trade and Tax Bureau then decided to adopt a different rule and regulation which treated if you were receiving 51 percent of your total alcohol content from the brewing process as opposed to the distillation process, and you had no more than 6 percent total alcohol, they will be treated and classified as a beer. There was confusion at the federal level and how that percolated down to Nebraska was our statute was ambiguous. I mean our statute, 53-101, which defines these terms, never dealt with these, what I like to call

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platypus drinks, because they had both nature's undistilled spirits and of beers within them. Traditionally, the commission has followed the classifications that the formerly BATF and currently TTB follows in classifications, how they classify them is how we've classified them. [LB258]

SENATOR CHAMBERS: Okay, that's clear to me now. But that is no federal mandate. The state doesn't have to accept the same definition that the fed...the state doesn't have to follow the federal definition at all. [LB258]

HOBERT RUPE: Actually there, in another portion of the statute, there is a...under the powers and the abilities, we can regulate the marketing, not really the marketing, the labels and the sale of products not inconsistent with federal statute, and the Attorney General's Office offered an Opinion that not only was 53-101 ambiguous as to its classifications, there appeared to be a strong legislative mandate that...in this area that we should follow and be in compliance with the federal regulations. They didn't say it was a mandate, you're right, but they said that there was at least an indication within the statute that would be consistent with the federal's. [LB258]

SENATOR CHAMBERS: If an attempt was made to persuade the Legislature to classify these flavored beverages as beer, and there was a lengthy discussion and the Legislature rejected that, isn't that indicative of what the legislative intent is with reference to this specific beverage? [LB258]

HOBERT RUPE: I believe that the bill didn't go anywhere. I mean I believe it was on General File, the bill you're speaking of, and didn't go forward. The legal opinion was as to the applicability of 53-101 was not asked by the commission but was asked by Senator Janssen at that time. However, although the request came from Senator Janssen's office, once...you know, the commission felt it was incumbent, being a state agency, to operate in conformity to the AG's Opinion. So although, I mean I...the mere fact that the bill did not pass which would clarify the issue, I don't believe shows that there's legislative intent one way or the other. [LB258]

SENATOR CHAMBERS: Well, if there's an ambiguity, that cannot be used as a basis for the Liquor Control Commission to change or give a definition which the Legislature has specifically rejected, does it? That make sense to you? It could be fish or fowl, and the Legislature said it's not going to be fowl. Then the Legislature is not saying it shall not be fish. So you're going to say the Legislature clearly said it shall not be fowl so the Liquor Control Commission is going to say, therefore, it shall be. [LB258]

HOBERT RUPE: Well, I might agree with you, Senator, if the bill had been voted upon and was rejected and had not passed. It is my understanding the bill died. It just wanted forwarded up. As you're aware, many bills, as you stated earlier, whether this bill that we're actually speaking on was going to be a priority bill, didn't go forward. [LB258]

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SENATOR CHAMBERS: Did you...was the legislative history of that bill studied by the commission? [LB258]

HOBERT RUPE: Yes, it was. [LB258]

SENATOR CHAMBERS: And from studying the debate on that bill the commission got the impression that had that bill been voted on it would have advanced? [LB258]

HOBERT RUPE: I can't say that. Long ago I stopped trying to (inaudible). I do believe that when the bill stopped being pushed forward, I believe you had 21 amendments pending on it, Senator. [LB258]

SENATOR CHAMBERS: Who was one of the main persons against that bill going forward, if you know? [LB258]

HOBERT RUPE: You were. [LB258]

SENATOR CHAMBERS: Now it would be just as easy to make it clear that when it comes to defining these beverages that should be taken away from the Liquor Control Commission and left with the Legislature. That would take away ambiguity, wouldn't it? [LB258]

HOBERT RUPE: Well, as I stated, the problem is, is that the...currently 53-101 has a clear definition of beer and has a clear definition of what a distilled spirit is. The problem with these, they can fit into both of those definitions. Therefore, the question is, how will we...how do we proceed? [LB258]

SENATOR CHAMBERS: But if it's beer, there's a lesser tax. Isn't that true? [LB258]

HOBERT RUPE: You're absolutely right. There's a lower tax. [LB258]

SENATOR CHAMBERS: And that's what the liquor industry wanted, isn't it? [LB258]

HOBERT RUPE: Well, you'd have to ask the liquor industry. I know that they were...they would be...I know that they were in favor of treating it as a beer, I would say. [LB258]

SENATOR CHAMBERS: Well, let me ask you this. Have you ever been aware of the liquor industry supporting a higher tax on a product? [LB258]

HOBERT RUPE: I believe they did a couple years ago. [LB258]

SENATOR CHAMBERS: And why did they do that? [LB258]

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HOBERT RUPE: I believe that during the budget crisis there was a raise on the taxes and they were maybe not in support but I don't believe they came in, in opposition at all. [LB258]

SENATOR CHAMBERS: And they...because they thought it would be in their best interests to stay out and leave that alone... [LB258]

HOBERT RUPE: You would have to ask the liquor industry. [LB258]

SENATOR CHAMBERS: ...because something worse would have happened to...I was there. Now these... [LB258]

HOBERT RUPE: Well, as I say, you know, I represent the Liquor Commission, not the liquor industry, so I'm not sure how. You know, you have to ask them. [LB258]

SENATOR CHAMBERS: But the liquor industry, I'm sure, asked for that Attorney General's Opinion, because the commission did not ask for it. [LB258]

HOBERT RUPE: That is correct. [LB258]

SENATOR CHAMBERS: And if the commission had not asked for it, they wouldn't have had that Opinion. [LB258]

HOBERT RUPE: That is...the commission was going to proceed as to a differing view. [LB258]

SENATOR CHAMBERS: But let me ask you this so that I won't get off the track. Beer is taxed at a lower rate than spirits. [LB258]

HOBERT RUPE: That's correct. [LB258]

SENATOR CHAMBERS: And if these flavored liquors were classed as spirits, there would be a higher tax. [LB258]

HOBERT RUPE: That is correct. [LB258]

SENATOR CHAMBERS: That would increase the price. [LB258]

HOBERT RUPE: That is correct. [LB258]

SENATOR CHAMBERS: And young people wouldn't be as likely to be able to afford it. [LB258]

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HOBERT RUPE: I think you'd have to...I mean the costs would be higher. I'm not sure if it would be high enough to dissuade somebody, who wanted to purchase it, from buying it. [LB258]

SENATOR CHAMBERS: Have you seen the advertisements for these liquors? Have you seen the way they're advertised? [LB258]

HOBERT RUPE: For the flavored malt beverages? Yes. [LB258]

SENATOR CHAMBERS: And have you seen or are you...I don't want to ask the question in a way that sounds insulting or patronizing. Are you able to discern when an advertisement is pitched toward younger people? [LB258]

HOBERT RUPE: I will be the first to admit that I have serious reservations regarding the current way that the liquor industry targets what they would identify as the 21- to 24-year-old drinking market. [LB258]

SENATOR CHAMBERS: And even younger kids are getting it. It's in high schools and that's been crystal-clear. So with all of these kind of bills, where we're going to take licenses from young people, and you're here representing the Liquor Control Commission and you favor this, but you all--and when I say you, you don't make that decision, but you're a part of that operation--you all are in favor of facilitating making more available to these younger people an attractive alcoholic beverage. So why shouldn't the Liquor Control Commission be in here telling you to support a bill that would classify those flavored liquors as spirits? They won't do that, will they? [LB258]

HOBERT RUPE: That issue did not come up. [LB258]

SENATOR CHAMBERS: If I offer a bill to do that, will the commission support it? [LB258]

HOBERT RUPE: I'd have to run it by the three commissioners. [LB258]

SENATOR CHAMBERS: What do you think? [LB258]

HOBERT RUPE: I don't know. The problem that they've got right now is, honestly, Senator, is this issue on how to classify those was a national issue. Most other states, in fact I think all other states, there is some litigation, I think in California as well, have sort of followed behind with the TTB compromise was, and that's really...I'll be the first, that's what it was. Trade and Tax Bureau came up with a compromise. They said, so long as more of your alcohol content is coming from brewing process as opposed to distillation, we're going to treat you as a beer. If it's the other way, they're treated as a distilled

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spirit. [LB258]

SENATOR CHAMBERS: And that's because the liquor industry has a lot of influence at the federal level, or aren't you aware of that? [LB258]

HOBERT RUPE: I believe actually the big fight at the federal level was between two separate entities of the liquor industry. [LB258]

SENATOR CHAMBERS: But it is the liquor... [LB258]

HOBERT RUPE: You had liquor on one side and you had big beer on the other side. [LB258]

SENATOR CHAMBERS: But it's the liquor industry as in, if I can put everybody in that term, those who sell alcoholic beverages, we're talking about the liquor industry. And through their clout, they were able to push this federal agency into reaching a compromise. [LB258]

HOBERT RUPE: You're right, because there were two competing elements in that industry who each wanted it treated differently. [LB258]

SENATOR CHAMBERS: And the interest of the industry was to be in a position to make as much money as possible from the sale of its beverage and pay as...have as little tax collected on its beverage as possible. [LB258]

HOBERT RUPE: Well, as I say, I mean it's a little difficult for you to say liquor industry when Anheuser-Busch, as an example, was one of the biggest proponents not to have these treated as only, if they had more than a de minimis amount, to being a distilled spirit because, well, and honestly because they thought that more people will buy more beer if these other products weren't available at that price. So I'm not trying to paint them as any (inaudible). [LB258]

SENATOR CHAMBERS: Exactly. That's what I said, that that price is enough to stop some of these people from buying it. The tax increases the price to...and it results in that outcome. And you had said earlier you weren't sure that it would make that much difference if the tax were added, and I don't want to quibble with that. Here's what I want to get to. If we had two elements of the liquor industry battling and it was through their battling that a compromise was reached, because these two are fighting, no consideration was given to these organizations that tried to prevent drinking by minors. They weren't in the negotiations, were they? [LB258]

HOBERT RUPE: Not that I'm aware of. [LB258]

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SENATOR CHAMBERS: Right. So what they came up with at the federal level as a compromise does not necessarily comport with the policy of the state of Nebraska as expressed in various laws designed to restrict, because it's not going to stop, drinking of alcoholic beverages by young people. [LB258]

HOBERT RUPE: Well, Senator, one thing you have to be clarify...clear, that all these products are considered alcoholic beverages and they're all only supposed to be legally consumed by those 21 years or over. [LB258]

SENATOR CHAMBERS: But if you tax one and it raises the price, then the youngsters are going to get the one that's cheaper because they can get it and they can get more of it. So if you take this flavored beverage, which not only is cheaper and might taste better but give a little more kick, that's the one they're going to get, aren't they? [LB258]

HOBERT RUPE: Actually, by the agreement, it's not going to have any more kick. It's got no... [LB258]

SENATOR CHAMBERS: And you trust the liquor industry. [LB258]

HOBERT RUPE: Well, I trust it going to TTB because they have to have...because when they go...those things are tested by TTB for total alcohol content under their licensing, and under the act which created the 51/49, capped the total alcohol at 6 percent, which is at or...which is at the general accepted most your regular beers. In fact, many bills are over 6 percent total alcohol content. You know, the problem about this wasn't the level of alcohol in them, but it had to do with where the alcohol was coming from into the drinks. [LB258]

SENATOR CHAMBERS: Right. [LB258]

HOBERT RUPE: And so the one thing which did not exist before the decision by TTB was the 6 percent cap. [LB258]

SENATOR CHAMBERS: If a bill is brought that would classify those flavored beverages as spirits, can you inquire with the commission and see what their opinion on that would be? [LB258]

HOBERT RUPE: I can inquire. More than likely any time there's a change that is purely within the Legislature for the definition, they will appear neutral. But I will...can inquire as to their position. I don't believe they would be in... [LB258]

SENATOR CHAMBERS: Are you here neutral on this bill? [LB258]

HOBERT RUPE: No, we're in support of this bill. [LB258]

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SENATOR CHAMBERS: Why? [LB258]

HOBERT RUPE: We're in support of this bill because the amount of minors getting alcohol is a very, you know, the commission can only deal with the licensees. We were trying to...but we support the concept of having an appropriate sanction to someone who is illegally consuming, because that's, you know, we receive disparity in sanctions. The clerk is subject to a Class I misdemeanor... [LB258]

SENATOR CHAMBERS: Okay. I understand that. [LB258]

HOBERT RUPE: ...as well as sanctioned by the fine. The current MIP statute is, you know, minimal for sanction. [LB258]

SENATOR CHAMBERS: But on the one hand, while wanting sanctions that might dissuade these young people from drinking, they classify a product which is going to be more alluring and appealing to these youngsters, when they could have just as easily have classified it as spirits and not only brought more taxation to the state, more tax money, but may have deterred some young people from consuming it. [LB258]

HOBERT RUPE: Well, as I.. [LB258]

SENATOR CHAMBERS: And they don't see any inconsistency in what they're doing? [LB258]

HOBERT RUPE: Well, Senator Chambers, have you read the Attorney General's Opinion on this matter? [LB258]

SENATOR CHAMBERS: The Attorney General's Opinion are just words on paper. I've read other Opinions from that office and they are politicized. And when you have an Attorney General who's interested in running for a higher office and there's an industry that spends a lot of money, that industry will be accommodated. I'm saying that on the record, and let me be challenged. These politicians are very amenable to the industries they regulate. Do any of the people who are liquor commissioners accept campaign contributions... [LB258]

HOBERT RUPE: No. [LB258]

SENATOR CHAMBERS: ...from anybody associated with the liquor industry? [LB258]

HOBERT RUPE: They can't. [LB258]

SENATOR CHAMBERS: Okay. Now... [LB258]

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HOBERT RUPE: There's a specific statute which requires them from getting anything of value from a licensee. [LB258]

SENATOR CHAMBERS: Oh, I agree. Now why do you think that statute is there? Do they think the judgment of the commissioners might be influenced by those who give contributions? [LB258]

HOBERT RUPE: Oh, for the first thing, you know, there won't be any political contribution unless there's some other office in that the commissioners are appointed, not elected, by the Governor and confirmed by the senate...by the Legislature. But the statute, you know, oftentimes that statute there exists to go back to the horrible things which came out of Prohibition where there were...was influence peddling and attempts to influence, you know, in this case, regulatory officials. [LB258]

SENATOR CHAMBERS: Can they receive gifts? [LB258]

HOBERT RUPE: No. [LB258]

SENATOR CHAMBERS: Well, whether you're appointed or not, I mean you don't have to be running for an office, why can't they receive gifts? [LB258]

HOBERT RUPE: They cannot receive a gift from anyone associated with the Liquor Control...with a liquor licensee or they are subject to criminal sanction. [LB258]

SENATOR CHAMBERS: And that's because they don't want their judgment influenced by the ones they regulate. Is that reasonable? [LB258]

HOBERT RUPE: That is correct. And just to let you, I am also subject to that same statute, so... [LB258]

SENATOR CHAMBERS: And that's...they feel that's reasonable. There's a reasonable connection. [LB258]

HOBERT RUPE: Yes. [LB258]

SENATOR CHAMBERS: Okay. There's no restriction like that on the Attorney General, is there? [LB258]

HOBERT RUPE: I'm unaware of one. [LB258]

SENATOR CHAMBERS: Me too. And I don't want to seem to be badgering you. This is my last question and there will be a follow-up. (Laughter) In order for a person to

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receive...well, I have to do it in two parts. Is it...is there a requirement in the statute that before a person can receive a liquor license he or she must be a person of good moral character? [LB258]

HOBERT RUPE: Yes. It's actually good character and reputation in the community in which he resides, is the language. [LB258]

SENATOR CHAMBERS: What does good moral character have to do with peddling liquor? That seems to me to be an oxymoron. But that's all I will ask. Thank you. You've been very helpful. [LB258]

HOBERT RUPE: Thank you. [LB258]

SENATOR CHAMBERS: And forthright, I might add. [LB258]

HOBERT RUPE: Thank you. [LB258]

SENATOR ASHFORD: Where are we, proponents? Proponents. Still on LB258. How many other testifiers do we have on LB258? And do we have any opponents? Go ahead. [LB258]

NEIL DeVORSS: (Exhibit 10) My name is Neil DeVorss, That's spelled N-e-i-l D-e-V-o-r-s-s. And you might be wondering why a 17-year-old is up here supporting a bill that affects driving privileges. My reasoning is underage drinking is a very big problem in my high school and my community. Sometimes just getting a minor in possession offense just isn't enough to stop one of my friends picking up another alcoholic beverage. Some people will argue that sports will stop students from getting caught with alcohol because they get suspended from a few games if they get caught. That's not enough. I don't think this is true. Many of my classmates (inaudible) risks of drinking as much as (inaudible) involved in a sport, but when they're out of the sport nothing is stopping them from drinking, no punishment. And what about the students who aren't involved in extracurricular activities, where they can (inaudible) punished through? The punishment for an MIP right now is just a fine and most of the time, from my friends' point of view, they tell me that their parents end up paying that fine. We asked some of our peers who drink illegally to participate in a survey and, according to the survey, 86 percent of students who drank would not drink as often even if...at all even, if the penalty for an MIP was to lose your license for a period of 60 days. I believe this bill was...I believe if this bill was passed then we would see a number of underage drinkers dwindle. Please support LB258. [LB258]

SENATOR LATHROP: Okay. Senator Chambers. [LB258]

SENATOR CHAMBERS: I applaud you for participating in a governmental activity.

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[LB258]

NEIL DeVORSS: Thank you. [LB258]

SENATOR CHAMBERS: So I'm glad that you came. [LB258]

NEIL DeVORSS: Thanks. [LB258]

SENATOR LATHROP: Thank you very much. [LB258]

NEIL DeVORSS: Thank you. [LB258]

SENATOR LATHROP: Do we have...we do. Come on up. [LB258]

KATHY BURSON: (Exhibit 11) Good afternoon, members of the Judiciary Committee. My name again is Kathy Burson, B-u-r-s-o-n. I have testified once today so I won't go in as far as other than I am co-executive director of PRIDE-Omaha. We appear today to support LB258, the bill that adds driver's license denial for minors convicted of consuming, purchasing, attempting to purchase, or possessing alcohol. Driver's license denial discussion has been ongoing, as Senator Chambers has stated, for decades in these chambers, but I guess our question is how many Nebraska adolescents have died while the state of Nebraska has continued to look the other way? LB258 offers one solution to help our state reverse the tragic trend of rampant underage alcohol use. Anyone who knows any teenager or young adult knows how much teens value their driver's license. The possible loss of that valued license could be a very effective deterrent to keep that child from breaking alcohol laws. Some would question the nexus of aligning driver's license with alcohol consumption laws. Courts throughout the United States have held this is not a problem. It would not be a problem here in Nebraska either. LB258 would help establish one additional tool in Nebraska's arsenal to combat underage drinking. PRIDE-Omaha would remind the Judiciary Committee and the Nebraska Legislature how important it is that this bill would pass, but also that the Legislature examine a comprehensive approach to the problem of underage drinking. The bill does address young people. However, young people do not manufacture the alcohol, they do not market this drug, they do not profit from its sale. So we urge you also to pass legislation that holds people accountable who do provide alcohol to children. In the meantime, PRIDE-Omaha urges you to pass this bill out of committee, on to the floor, and address this problem of underage drinking. Any questions? Yes. [LB258]

SENATOR LATHROP: Very good. Thank you. Are there any? Senator Chambers. [LB258]

SENATOR CHAMBERS: I'm courteous with the gentlemen, but I try to be courtly with

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the ladies, so I don't have a great number of questions to ask you. Can a minor be jailed now for driving drunk? [LB258]

KATHY BURSON: As far as beyond MIP but actually driving drunk? [LB258]

SENATOR CHAMBERS: Uh-huh. [LB258]

KATHY BURSON: I believe that, yes, they can be. [LB258]

SENATOR CHAMBERS: Now if the threat of going to jail for driving drunk won't stop a young person from doing that, because there are those who do it, why do you think that if the license is taken the young person won't drive without a license? [LB258]

KATHY BURSON: Again, I'm not saying that this is the magic bullet, but we're trying to identify every possible deterrent to those youths. [LB258]

SENATOR CHAMBERS: But here's what I'm getting to. I'm not even going to argue with that aspect of it. Currently, the conduct described in this bill would not result in a youngster losing a driver's license. Do you agree? [LB258]

KATHY BURSON: Correct. [LB258]

SENATOR CHAMBERS: Now with this bill another basis for taking a youngster's driver's license will be brought into play. A person driving without a license can go to jail. Are you aware of that? And if stopped on the street, the person can be taken to jail and the car can be towed. We're creating a new class of offenders with this bill that has nothing to do with driving initially. You get them for what you can get them for now, but with this bill you can punish them in a way that you can't punish them now. That new punishment leads these young people into a set of circumstances where they can be convicted of another crime that has nothing to do with drinking. So it seems to me, and it's why I don't like these bills, that the idea is to heap the punishments on young people that would not...never be tolerated if adults were treated the same way. That's one of the points that I'm trying to get to. I don't condone a lot of things that young people do, but I'm not in favor of making criminals out of them because of the things they do that we don't think they should do, because we don't criminalize everything an adult does that we think the adult should not do. That's all that I will have of you, but if you wanted to respond then you can because I'm not trying to cut off your comment. [LB258]

KATHY BURSON: And certainly I don't think that the intent of the law is to demonize children. I think that basically we are just trying to emphasize they have to be accountable for their actions. That's all. [LB258]

SENATOR CHAMBERS: To a greater extent than adults. We're making them more

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accountable than we do adults. Isn't that true? [LB258]

KATHY BURSON: And maybe we should address adults as well then. [LB258]

SENATOR CHAMBERS: And we're taking those who are...who have lesser experience, lesser knowledge, lesser judgment, and holding them to a higher standard than those who are more experienced, should have better judgment. So it seems to me we've got it reversed. Where much is know much is required. We're saying the less you know the harsher we're going to make the criminal penalties against you. That's the direction that I'm going with. That's all I would have. Thank you. [LB258]

KATHY BURSON: Thank you. [LB258]

SENATOR LATHROP: Thank you. [LB258]

KATHY BURSON: Thank you. [LB258]

SENATOR LATHROP: Any other questions? Okay. [LB258]

ROBERT SCHMILL: (Exhibit 12) The Chairman is away. So, Mr. Chairman, as far as...and members of the committee, I've been up here twice before and I think it was more or less I gave a lot of the information before, but for the two that weren't here, my name is Bob Schmill, and it's S-c-h-m-i-l-l. I'm the father of Matt Schmill, who was killed by a drunk driver on April 24, 2004. The reason for my support of this bill is that, although it starts with Matt, it expands much to the citizens of the state and for all the young people that are drivers. With each person that is killed, seriously, by a drunk driver, between 50 to 60 other people are affected because...including family and friends. One in five, and that's including everybody in this room, one in five are going to be affected by a drunk driver in their lifetime. The night my son was...that night, my son was celebrating his 23rd birthday with his friends in the Benson area. He had turned 23 at midnight, and was killed at 12:30. With each of the...with him, when he was hit and killed, that with him went all of his dreams and that of his family. The car that hit Matt on the...hit Matt on the passenger side of the car. That's where Matt landed. The right side of his face his the windshield and threw him 38 feet. They drove off leaving him at the side of the road. We understand that he was killed immediately. The police found the driver four hours later. Her blood alcohol level was .134 at the time. We later learned that the 19-year-old lady, young lady, had three prior MIPs, was on probation for a DUI, and still had her license. Why after all this did she still have her license? It should have been taken way before that. There really wasn't anything that was (inaudible) go back to the judges. There needs to be stiffer punishment than just one month or six months probation. To the youth of our state, and I've talked to several because I do speak across the state, that getting an MIP ticket is a joke. It's become a, oh, look, I've got...I got 10 or 11 MIPs. Having a driver's license is a privilege, not a right, and the privilege

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needs to be taken away if the minor decides to break the law. When I first came in here last year it was for leaving the scene of an accident. At that time it was one in seven of the states it was a misdemeanor to leave the scene of a personal injury accident. From what I understand from earlier testimony is that we're 1 of 12 that don't have this law, that it more or less is that we don't take the license. So again we're...Nebraska is one of the last ones. After all, when she did break the law, after all, Matt's dreams were taken from him by a minor who was, as he was walking home. That night at the hospital I said that I would...that Matt's dreams would not die but I would continue to tell his story and what happened and that's why the Matt's Dream program exists today statewide where I speak from five to seven groups per month. What you will never know, unless you've lost a child, is the emptiness that one feels for a son that you loved and was loved by the family and...by his family and friends. In this letter...this testimony I hope to relay to you the longing we have to hold someone that you'll never see again on this earth, the dreams that will not be fulfilled, the voice that will never be heard, nor the smile that will never brighten a room. So I ask that you send this bill back to the floor. Any questions? Sir. [LB258]

SENATOR CHAMBERS: Mr. Schmill, do you think the driver of this car would not have driven if she didn't have a driver's license? [LB258]

ROBERT SCHMILL: There is...with those people that are out there that keep driving even though their license is taken is quite a few and that is a bill that needs to be...or something that needs to be looked at, I do agree that. But the chances of her...the percentage of her not having her license and not being behind the wheel and driving, and drinking and driving that night, were very high that she wouldn't have been there. My son would still be here. [LB258]

SENATOR CHAMBERS: So you think somebody that would risk jail for driving drunk would be afraid to risk jail for driving drunk without a driver's license. [LB258]

ROBERT SCHMILL: Well, hopefully we'll... [LB258]

SENATOR CHAMBERS: In other words, the additional feature of not having a driver's license you think would have stopped her from driving drunk, if she was of a mind to do so. [LB258]

ROBERT SCHMILL: I would hope that it would. [LB258]

SENATOR CHAMBERS: So she's more afraid of being caught without a driver's license than she is of being caught for drunk driving. [LB258]

ROBERT SCHMILL: Well... [LB258]

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SENATOR CHAMBERS: That's the logic that you would have to follow if you think this bill is going to do something. [LB258]

SENATOR CHAMBERS: But she, Senator, she knew she was, because of she had been in the system, she knew that when she left the scene that the state couldn't prove that she was drinking, and that's what the whole...that's why last year's bill went through...or I was here for that; that if she had...she knew that if she left the scene they couldn't prove it. [LB258]

SENATOR CHAMBERS: That's not the point... [LB258]

ROBERT SCHMILL: So that's not... [LB258]

SENATOR CHAMBERS: I'm saying, and I'll state it, I don't believe that the lifting of a driver's license is going to stop these young people from drinking. It's not going to stop them from driving without a license, whether drunk or sober. But you will create a new class of criminals because it's a crime to drive without a license and you can go to jail for that. And I think sometimes adults become so caught up in trying to force children to do things that children are just not going to do no matter what you do, that they don't care how many crimes we create. And then if that crime doesn't stop it then we'll criminalize that which is the precursor conduct to that crime. And if that doesn't stop them, we will create greater and harsher penalties. Then when they're adults and they can't get a job because they have a criminal record, then people come to somebody like me and say, isn't there something you can do so that the indiscretions of young people will not follow them the rest of their life? So I see things that others don't see also. I'm not unmindful of the pain that you might feel the rest of your life, and what you've just told us indicates that this notion of closure is just...that's just a slogan. So I don't want you to think I'm being insensitive. But I also have to think about making policy and, unlike many of my colleagues, I have a tremendous amount of concern over the continuing criminalization of conduct, trying to compel young people to do things that we're not going to compel them to do, we're not going to threaten them and stop them from doing it. We need to try to teach them, educate them, while knowing that they may not pay attention to us. So when I'm out of here, if term limits sticks, they'll be able to criminalize everything that young people do without anybody challenging it. But while I'm here, I have to be "Horatius at the Gate" and stop it, because I just don't agree with this approach, and I don't think it's going to do any good in mitigating the kind of problems that you and others have spoken about here today. This is a desperation bill, that's all I see. But that's all I would have, and I hope you don't think I was being disrespectful to you. [LB258]

ROBERT SCHMILL: No, that's fine. I understand, Senator. It's just that on this it was one of those...now I lost my train of thought. That's why I go out and speak statewide and to the youngsters. Matter of fact, the young man here from Nebraska City, next fall

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I'm going down to speak to the entire class and other schools. And they're starting to have me come in and talk to them so they understand this now, before there's a problem. [LB258]

SENATOR CHAMBERS: You know something, I didn't know that, but it indicates that your appealing to that young man's mind and his emotions or whatever it was came about through you reasoning with him. But I have yet to see young people come here and say I want this bill passed because I got arrested for MIP and I didn't think that the punishment was harsh and I think it ought to be harsher. In other words, the threat of punishment is not going to achieve what you did. Your way is slower, perhaps, but I think the result and the impact will be more lasting. [LB258]

ROBERT SCHMILL: Okay. Thank you. Any other questions? [LB258]

SENATOR ASHFORD: Thanks. [LB258]

ROBERT SCHMILL: Thanks. [LB258]

SENATOR ASHFORD: Thanks, Bob. [LB258]

DIANE RIIBE: Thank you. I'm kind of glad I'm on this side. Diane Riibe with Project Extra Mile. First of all, thank you, Senator Lathrop, for bringing the proposal forward. We're here officially supporting, and I'm going to give you the very quick, kind of bulleted reasons that we are, and then I want to speak to the larger issues. And thank you, Senator Chambers. First of all, the issue of the source of the alcohol when kids are drinking is and should be first and foremost in our minds. We know from some research that's been done out of Missouri and Pennsylvania that the loss of driving privileges for kids is effective. What it does is it reduces their crash involvement later on and their violations, in terms of number of violations. So we know that it does have some impact. Can it be made administrative so it's not the criminal piece? Absolutely. So there are other ways to be looking at it. The reason we look at these kinds of proposals at all is because kids are just overrepresented in alcohol-related crashes. They represent 8 percent of the driving population, licensed drivers in the state of Nebraska, and are involved in 17 percent of the alcohol-involved crashes. So in the end, that's why we come. Again, I think there are ways to look at it, that can make it administrative and can probably look at it in a different way. I guess I'll just say, because it's been quite an afternoons, and actually, thank you, Senator Ashford, it was good that it was a little disjointed because it helped I think, somewhat, in terms of the discussion. This really is a patchwork that we live with. Those of us who do this work rarely get to have you all call us to the table for an extended period of time to say what do you know works, what do you know happens. And so we find ourselves at these moments trying to tell you very quickly little brief bits of what we know and what we experience, and it doesn't quite work. And so we come here somewhat out of some desperation to say, oh, there's a

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little bit and it might help a little bit. And so are there other things that would be much more effective? Absolutely. Are we frustrated when we see amendments, as we saw earlier to LB336, which totally removes any real penalty for retailers and clerks who might sell to minors? That's beyond frustrating, but that's the reality that we get to live with. I guess I will also just go to a couple of statements that were made earlier. Kids sometimes use this as a badge of honor, but I will tell you, knowing what we know about their development and their brain development, that doesn't alarm me nearly as much as, quite honestly, the kinds of comments, the kinds of behavior we see when very minimal administrative penalties are given to businesses. Clerks at the criminal level see very little sentences. We see them getting \$50 fines, \$100 fines, sometimes diversion, rarely more than that. That's the reality. Again, even though the license was cancelled in Ogallala, that was a \$750 fine that that business received for selling to a minor who later died. We know that, even though it's on appeal, the case in Kearney, that business is not only still open after the commission did revoke its license--the court agreed with that decision--that business is not only still open; has a sign up that says, yep, we're open, right across from UNK. A lot of people use it as a badge of honor. I'd much rather that kids, who are still learning, haven't learned it than adults who ought to. So can we and should we sit down and look at adults? We better if we really mean it. Or we can still continue to do the patchwork. And we're happy to come every time you bring something forward, but we know a whole lot more than what's here and we're happy to share it if you desire. [LB258]

SENATOR ASHFORD: Thanks, Diane. Any questions of Diane? Thank you. [LB258]

KATHY SIEFKEN: Kathy Siefken, S-i-e-f-k-e-n, here representing the Nebraska Grocery Industry Association. I'll make this really short. We've always liked this bill. We always will like this bill. Thank you for introducing it. We think that this will keep minors out of our stores. Hopefully they won't attempt to purchase, and that's what we want. We do not want to sell to minors. Anything that we can get that will help curb that tendency to come into our stores and attempt to purchase we appreciate. So if you have any questions, I'd be happy to try to answer. [LB258]

SENATOR CHAMBERS: Ms. Siefken. [LB258]

KATHY SIEFKEN: Yes. [LB258]

SENATOR ASHFORD: Senator Chambers. [LB258]

SENATOR CHAMBERS: I often say that I could get lost in a phone booth if I'm the only one there. But anyway, your industry has no concern, and by that I meant it's not one of the issues that they fight, with how many young people who would lose driver's licenses pursuant to a bill like this, would be subsequently arrested for driving without a license. That's not any matter that comes before your group, correct? [LB258]

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KATHY SIEFKEN: We don't want to criminalize kids and as... [LB258]

SENATOR CHAMBERS: No, I'm not saying you'd...that's not what I'm asking. [LB258]

KATHY SIEFKEN: Okay. [LB258]

SENATOR CHAMBERS: There is nothing that your organization would do to find out how many kids, as a result of a bill such as this, if it took effect, would wind up being arrested for driving without a license, not in connection with being drunk or in possession of alcohol, but simply driving without a license. That is not something that would come to the notice of your group, correct? [LB258]

KATHY SIEFKEN: It probably would not. [LB258]

SENATOR CHAMBERS: Okay. [LB258]

KATHY SIEFKEN: No. [LB258]

SENATOR CHAMBERS: Okay. Thank you. [LB258]

SENATOR ASHFORD: Thank you, Kathy. [LB258]

KATHY SIEFKEN: Thanks. [LB258]

SENATOR ASHFORD: Any other proponents? Opponents? Neutral? Neutral. [LB258]

TIM REGLER: Thank you very much, Senator and committee. My name is Tim Regler, R-e-g-l-e-r. I hadn't plan to give any testimony today. It was my pleasure to drive the two young men up here from Nebraska City. I am a worker in alcohol prevention in the Otoe County area. I was up here, though, a couple of weeks ago representing my six daughters, speaking out in favor of the dram shop social host liability law, and I talked about how the door of responsibility is a door that swings both ways. And I gave examples of advertising that I believe showed that if the liquor industry wants us to be responsible parents, they need to be a responsible industry and a good citizen and not try to sell alcohol to my six children. But I wasn't planning on testifying until I heard Senator Chambers' comments. I think he brings up a very valid point, and it goes along those same lines of the door of responsibility swinging both ways. And I just saw today an example of how we were able to take three separate pieces of legislation--maybe I didn't pay enough attention in civics class when I was young but I didn't know you could do that. I thought that was pretty great what happened today and how those were combined into one. And isn't it possible then that we can combine this into the very same thing and so that we are able to present this as a door of responsibility that indeed

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does swing both ways and that we can say as a group that, no, we do not approve of young people drinking and there are consequences for young people drinking? I do want to go on record as saying I do support those consequences of forfeiting the driver's license for minor in possession, but I believe...I've seen this myself, my oldest daughter doesn't live at home with us anymore. She lives at the Masonic Home for Children in Fremont. She has been diagnosed with reactive attachment disorder from her life as an infant, before my wife and I adopted her, and the outlook does not look good. And the problem was exacerbated by alcohol, by a desire to get alcohol from peer pressure, but more so from the willingness of adults who were willing to supply her with alcohol, in a lot of cases to be the cool mom or the cool adult that had it in with kids. And you know I haven't lost her in terms of losing her life, but in a way my wife and I lose her on a frequent basis, and it's extremely painful. This seems like a good way to...and, boy, I want to put some responsibility on the adults that bought my child alcohol, because I can tell you as a prevention worker I did everything I possibly could to keep her away from that and it didn't...there wasn't enough out there, there wasn't enough to help me do that. And so we lose her. And I would ask that maybe we could then also present to the young people of this state that we're going to call upon you to be responsible, but we are also going to call upon the adults of this state to be just as responsible as we expect you to be. And I think that's a fair proposition that Senator Chambers put forth, and I would hope, Senator, that maybe it might make you more likely to support that bill that would take away driver's license privileges with an MIP if indeed we put the onus on the adult suppliers as well. And that's all I had to say. [LB258]

SENATOR ASHFORD: Tom (sic), thank you for your testimony. Any questions of Tom? Thanks for... [LB258]

TIM REGLER: Thank you. [LB258]

SENATOR ASHFORD: Thank you very much. Senator Lathrop. [LB258]

SENATOR LATHROP: I think I'll waive. [LB258]

SENATOR ASHFORD: Senator Lathrop waives. That completes the hearing. Senator Preister. And to keep going on the same track, Senator, you're going to introduce LB580 and LB585. Is that okay with you? [LB258 LB580 LB585]

SENATOR PREISTER: That is fine with me, Senator Ashford. I'll introduce one and then go on to the other. Is that your preference? [LB580]

SENATOR ASHFORD: Yes, that would be great. [LB580]

SENATOR PREISTER: Okay. I can do that. [LB580]

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SENATOR CHAMBERS: May I ask a question before he starts, because I don't want to distract him? May I ask the witness a question? [LB580]

SENATOR ASHFORD: Oh, yes, yes. [LB580]

SENATOR CHAMBERS: Oh. Senator Preister, when were you supposed to do that GQ shoot? I'm just making an acknowledgment of what I see. [LB580]

SENATOR PREISTER: Thank you, Senator Chambers. [LB580]

SENATOR CHAMBERS: All right. [LB580]

SENATOR PREISTER: Thank you, Chairman Ashford. Thank you, members of the Judiciary Committee. It's a pleasure to be before you today. My name is Don Preister, P-r-e-i-s-t-e-r, and I appreciate all compliments. Thank you, Senator Chambers. The general purpose of LB580 is to assist the state of Nebraska in its tobacco enforcement efforts under the Tobacco Master Settlement Agreement, MSA, and related state statutes. To provide a brief background, the state of Nebraska received substantial payments from participating tobacco manufacturers as part of that master settlement agreement. For example, in 2006 Nebraska received over \$34 million for its annual master settlement agreement payment. However, under specified circumstances, the MSA provides that a settling state's annual payment may be substantially reduced or eliminated if that state does not diligently enforce certain state statutes known as escrow statutes or qualifying statutes, which in Nebraska are codified at Nebraska Revised Statute 69-2702 and 69-2703. These statutes require that tobacco manufacturers who choose not to join the master settlement agreement known...and these folks are known as nonparticipating manufacturers--I know this gets a little complicated here, it isn't so complicated and we can answer questions--but they deposit money into an escrow account based on the number of their cigarettes that are sold in Nebraska as measured by state excise taxes. Many of these nonparticipating manufacturers are foreign entities, which may be difficult to sue in state court litigation. So in 2003, at the request of the Attorney General's Office, the Legislature enacted statutes which we call complimentary legislation codified at Nebraska Revised Statute 69-2704 through 69-2711. This legislation enhanced Nebraska's enforcement efforts by regulating state licensed entities over which we have more control, such as licensed wholesale dealers. A public directory was created which is maintained by the Tax Commissioner with the assistance of the Attorney General's Office and published on the Department of Revenue's web site, so everyone can see it. All manufacturers must submit certifications for listing on that directory, which consists of all the cigarette manufacturers and brands which are approved for sale in Nebraska. A nonparticipating manufacturer cannot be on the directory unless it has made all of its escrow deposits into a qualified escrow fund. It is unlawful to affix a state tax stamp, or to sell, offer, or possess for sale in this state cigarettes or a tobacco product manufacturer and brand

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which are not on this directory. The provisions of LB580 would improve this complementary legislation and, thus, the state's tobacco enforcement efforts in four ways. One, in Section 1 it clarifies that failure to provide or receive a notice of removal of a manufacturer or brand from the directory is not a defense available to licensed stamping agents for violations of the act. The notices are sent by the Tax Commissioner via e-mail, so it could be difficult to prove actual receipt of that notice if that was required for an enforcement action. Since the statutes already require the directory to be continually updated and published on the web site, the wholesale dealer must simply review the directory as part of its routine business practices in order to keep up-to-date on the products which can be sold in the state. Two, in Section 1 it also removes certain ambiguous language regarding intent to sell in this state from the prohibition of selling, offering, or possessing for sale in this state cigarettes when the manufacturer or the brand are not on the directory. Three, Section 2 provides alternative service of process on the Secretary of State for enforcement actions. If a nonparticipating manufacturer whose cigarettes are sold in Nebraska does not properly appoint an agent for service of process, or the appointment lapses, then process may be served on the Secretary of State. This provision is helpful in initiating litigation against foreign nonparticipating manufacturers. Four, Section 3 provides for an additional penalty for violation of the complementary legislation, which includes lost profits. Several weeks ago I filed an amendment to LB580 in the Journal. Assistant Attorney General Lynne Fritz will follow me to discuss this amendment and answer any technical questions you may have about the bill. With that, that would conclude my opening on this bill, Chairman Ashford. [LB580]

SENATOR ASHFORD: Thank you, Senator. Do you want to go ahead and introduce LB585? [LB580]

SENATOR PREISTER: I will do that. [LB580]

SENATOR ASHFORD: Do we have any questions, first of all, of Senator Preister on that...on this first bill? Okay. [LB580]

SENATOR CHAMBERS: Just one. [LB580]

SENATOR PREISTER: And if I could... [LB580]

SENATOR ASHFORD: Yeah. [LB580]

SENATOR CHAMBERS: We will be able to ask the person who follows you questions on both bills? [LB580]

SENATOR PREISTER: The Attorney General can answer questions on this one. The Attorney General, I don't think, is as involved, but perhaps could answer some

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questions on enforcement on the second one as well. [LB580]

SENATOR CHAMBERS: But on that first one for sure, this one that you just finished. [LB580]

SENATOR PREISTER: Right. [LB580]

SENATOR CHAMBERS: Okay. [LB580]

SENATOR PREISTER: Yes. [LB580]

SENATOR ASHFORD: Thank you, Senator. [LB580]

SENATOR PREISTER: (Exhibit 13) And if I could get a page to...I have an amendment also on this bill, not quite as long or as difficult to understand. Chairman Ashford, members of the Judiciary Committee, my name is Don Preister, P-r-e-i-s-t-e-r. I'm here as the primary introducer of LB585. LB585 changes the method in which cigarettes and tobacco products can be dispensed. The bill prohibits self-service access to these products. Under the bill, these products may only be dispensed with the assistance of an employee where cigarettes and tobacco products are sold. In general, self-service displays are used to increase product availability, visibility, and brand awareness at the retail level. Self-service displays provide for easier product availability by allowing customers direct access to the product. Banning self-service displays will help reduce youth access to cigarettes and tobacco products by requiring each purchaser to interact with a clerk. A 1994 study by the Institute of Medicine found that a ban on self-service displays significantly increased the checking of young purchasers' identification by clerks and, thus, discouraged younger kids from attempting to buy tobacco. A 2001 study published in the American Journal of Public Health found that up to 50 percent of youth smokers have shoplifted cigarettes at least once. The study also found that stores with counter self-service displays may be nearly 40 percent more likely to experience shoplifting than stores without counter displays. Conclusion: LB585 is another prevention tool that can be used to help keep cigarettes and tobacco products from our youth with the hope that Nebraska's youngsters will never become addicted to tobacco. I have an amendment that I passed out which would...it was also, as I said, published in the Journal this week, and it has two provisions. It exempts cigars, cheroots, and stogies from the self-service restriction. Young purchasers primarily purchase cigarettes rather than cigars. This would clarify that cigars, which are generally sold in cigar stores and displayed right next to a clerk, could still be accessed by purchasers without going through a clerk directly. And two, through a drafting error, the language in the original bill on page 2 actually would have made all vending machines accessible to youth. That was not my intention, therefore, the word "except" has been changed to "including" on lines 13 and 21. This clarifies that the current ban on vending machines to dispense cigarettes and tobacco products remains in effect. The only exception is for vending

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machines which are located in establishments with liquor licenses, or in nonpublic places. This exception has been in statute for a number of years. I would just mention that this is one of the very first bills that I introduced in the Legislature and it...access to tobacco products has been a concern of mine for years. At this point, I believe the opposition that has been there through the years has now gone away and, to my understanding, I have support from the industry for the bill. With that, I'd be happy to entertain any questions that the committee members may have. [LB585]

SENATOR ASHFORD: Thank you. Senator Schimek. [LB585]

SENATOR SCHIMEK: Just a comment. Thank you, Mr. Chairman. Senator Preister, as the person who sponsored the vending machine bill, I'm very glad that you brought that to our attention and corrected it. Thank you. [LB585]

SENATOR PREISTER: You're welcome. Thank you. [LB585]

SENATOR ASHFORD: Thank you, Senator Schimek. Thanks, Senator Preister. [LB585]

SENATOR PREISTER: You're welcome. [LB585]

SENATOR ASHFORD: Do you wish to remain and close? [LB585]

SENATOR PREISTER: I will probably waive closing. I will wait and hear, and if there were some things I would be available. [LB585]

SENATOR ASHFORD: Thank you, Senator. [LB585]

SENATOR PREISTER: Thank you. [LB585]

SENATOR ASHFORD: Lynne. [LB580 LB585]

LYNNE FRITZ: (Exhibits 14, 15) Mr. Chairman, members of the committee, my name is Lynne Fritz, F-r-i-t-z. I'm an Assistant Attorney General and chief of the Public Protection Bureau in the Nebraska Attorney General's Office, and in that capacity I'm involved in tobacco enforcement efforts for the state of Nebraska. I'm appearing in favor of LB580 and the amendments offered by Senator Preister. However, unless there are questions, I intended to limit my testimony to the amendments which the Attorney General's Office asked Senator Preister to offer to improve our enforcement efforts. These amendments do not change the revisions that are contained in LB580. Rather, the amendments clean up certain ambiguity and omissions that are in the complementary legislation. We believe these amendments would make the complementary legislation more effective and a better tool for our tobacco enforcement

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efforts in the Attorney General's Office. There are basically four provisions in our amendments which I'll briefly describe. First of all, our experience has proven that requiring escrow payments by nonparticipating manufacturers quarterly during the year in which the cigarettes are sold is much more efficient than waiting to require the escrow deposits on April 15 after the year of sale, which is the way it was originally written. So these amendments would clarify the circumstances under which these quarterly escrow payments would be required or on which the escrow payments would be required on a quarterly basis. Quarterly payments would be required for a full year after a nonparticipating manufacturer is first listed on the directory, and if the manufacturer was for any reason removed from the directory for failure to pay escrow and then later put back on the directory after having become compliant, the quarterly escrow requirement would be in effect for a full year after the manufacturer was put back on the directory. The second provision, the second amendment, would clarify that a nonparticipating manufacturer and their brands could be removed from the directory if they fail to make quarterly escrow payments. Currently the law provides that they can be removed from the directory if they fail to make that annual April 15 payment, but if the quarterly requirement is going to be effective we have to be able to remove that manufacturer from the directory for their failure to make the quarterly payment. Then the third provision is that nonparticipating manufacturers would agree, as part of the certification process, to consent to be sued in Nebraska state courts for any violation of the escrow statute. Some manufacturers have argued that they're beyond the jurisdiction of our courts, and that has made it difficult to enforce this requirement. And finally, the amendment ensures that any changes that would go into effect as a result of this legislation would be effective immediately and it wouldn't wait until changes are made to the department of...the Revenue Department's regulations. So those are the four amendments that we've offered to LB580. We believe that that bill, as introduced by Senator Preister, with these amendments, are important to Nebraska's tobacco enforcement efforts, which in turn are important to maintaining the maximum stream of money from the MSA, the master settlement agreement, payments. We ask the committee to adopt the amendments that are offered by Senator Preister and to advance the bill with the amendments to the full Legislature. [LB580 LB585]

SENATOR ASHFORD: Thanks, Lynne. I'm not sure we have the amendments, but...or... [LB580 LB585]

LYNNE FRITZ: Oh, I have a copy here. [LB580 LB585]

SENATOR ASHFORD: Oh. Oh, okay. Great. Cora, could we get the amendments? Ms. Fritz, thanks. [LB580 LB585]

LYNNE FRITZ: Sorry. I should have done that to begin with. So if there are any questions, I'll be glad to address those. [LB580 LB585]

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SENATOR ASHFORD: Well, there might be when we get...just one...unless, Senator Chambers, do you, by some sort of telepathy, know what the amendments are or do you... [LB580 LB585]

SENATOR CHAMBERS: Well, her presentation was so interesting, it jammed my other thought processes. (Laughter) [LB580 LB585]

LYNNE FRITZ: I appreciate the fact it's a rather technical area. [LB580 LB585]

SENATOR CHAMBERS: Here's one question I want to ask, though, on the bill itself, LB580. Do you have a copy of the bill? [LB580 LB585]

LYNNE FRITZ: Yes. I do. [LB580 LB585]

SENATOR CHAMBERS: It's very...it's just one word on the last page, 11, in line 6. After the word "other" we would insert "applicable," instead of saying these penalties are cumulative, and it goes on to the remedies of penalties available under all other laws of this state. So if we put "applicable" then it would indicate that we're not just talking about any law where a penalty or remedy was available, but those that pertain to what we're talking about here. [LB580 LB585]

LYNNE FRITZ: I think that would be appropriate. [LB580 LB585]

SENATOR CHAMBERS: Okay. I don't want to mess with Senator Preister's bill too much, but while we're at it I'd like to ask you one other question. [LB580 LB585]

LYNNE FRITZ: Okay. [LB580 LB585]

SENATOR CHAMBERS: On that same page in line 5, instead of saying "are cumulative with," if we're going to use that construction then that might can be smoothed out. "To" would be a better word proposition instead of "with," "are cumulative to," rather than "with" each other, because they have that word "to" further along the line. And that whole construction might could be made better when you try to make the remedies cumulative. We may not have to say to each other or...but if it's going to be that way, I think they're cumulative "to" rather than "with." [LB580 LB585]

LYNNE FRITZ: I have no problem with that suggestion, with that change. [LB580 LB585]

SENATOR CHAMBERS: Okay. And that's all I have. And we just got the amendment so I don't have anything to say (inaudible). [LB580 LB585]

LYNNE FRITZ: Okay. Sorry about that. [LB580 LB585]

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SENATOR CHAMBERS: That's (inaudible). [LB580 LB585]

SENATOR ASHFORD: Thanks, Lynn. [LB580 LB585]

LYNNE FRITZ: Thank you. [LB580 LB585]

SENATOR ASHFORD: Senator Schimek. [LB580 LB585]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Lynne, I want to just make sure I understand this. In your explanation you said the third amendment inserts language which would require as part of the directory certification that all nonparticipating manufacturers consent to be sued in Nebraska. [LB580 LB585]

LYNNE FRITZ: Yes. [LB580 LB585]

SENATOR SCHIMEK: What's the directory certification? That's done through the Department of Revenue, right? [LB580 LB585]

LYNNE FRITZ: It is. All tobacco product manufacturers are required to submit a certification to the Department of Revenue and to the Attorney General's Office for the purpose of showing that they're either a participant in the master settlement agreement or they're a nonparticipating manufacturer that has made all of their escrow payments. And they submit that certification. It's reviewed, and if we determine that it's accurate then they're listed on this directory... [LB580 LB585]

SENATOR SCHIMEK: Okay. [LB580 LB585]

LYNNE FRITZ: ...which is published by the Department of Revenue for the manufacturer and the brands. [LB580 LB585]

SENATOR SCHIMEK: And in order to get that certification, then what you're saying then, they have to consent to be sued... [LB580 LB585]

LYNNE FRITZ: Right. [LB580 LB585]

SENATOR SCHIMEK: ...or they don't get the certification. [LB580 LB585]

LYNNE FRITZ: Right. [LB580 LB585]

SENATOR SCHIMEK: Okay. [LB580 LB585]

LYNNE FRITZ: So that we could sue them in Nebraska. [LB580 LB585]

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SENATOR SCHIMEK: Okay. Thank you. [LB580 LB585]

LYNNE FRITZ: Uh-huh. Certainly. [LB580 LB585]

SENATOR ASHFORD: Thanks, Lynne. Senator Pirsch. [LB580 LB585]

SENATOR PIRSCH: I just kind of...this is kind of interesting, maybe a side point, but what is...how is it that some companies have decided they want to participate in the agreement and others decide not to, just kind of on an ongoing basis? Is there a...is it...what are the considerations that kind of dictate whether not you as a company would do that? Is it a financial thing that if you reach some sort of critical mass it makes more sense to enter into the agreement, in your opinion? [LB580 LB585]

LYNNE FRITZ: Well, there's definitely economic considerations that each company has to resolve as to whether or not it's in their best interest to really as...what they're doing is they're...the state is releasing their claims. They're agreeing to pay money to the state and we are releasing all claims that we have against the manufacturer. And I guess I don't have a specific enough answer. I think it's just in every manufacturer they have to determine whether it's in their economic best interest. The MSA has advertising restrictions, for example, they can't, manufacturers, can't target youth and so manufacturers may decide not to agree to those provisions and not to agree to make the payments for a variety of reasons, but I would think that the most is probably their economic self-interest. [LB580 LB585]

SENATOR PIRSCH: Do we have a lot of...so the nonparticipating manufacturers are apparently not bound to those restrictions that the participating are. Is there...and that would include advertising to youth, whatnot. [LB580 LB585]

LYNNE FRITZ: That's correct. That's correct. [LB580 LB585]

SENATOR PIRSCH: Does that go on in the state, to your knowledge, by these nonparticipating manufacturers? [LB580 LB585]

LYNNE FRITZ: I don't know the answer to that. I don't believe that that occurs a lot, Senator, frankly because a lot of the nonparticipating manufacturers try to make their niche in the market by having lower-priced cigarettes. And so they try to...and so advertising costs ordinarily aren't a large part of the business of those types of cigarette manufacturers. [LB580 LB585]

SENATOR PIRSCH: Do you know what the percentage are participating in terms of market share, participating manufacturers versus nonparticipating? Is it a large percent? [LB580 LB585]

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LYNNE FRITZ: In the...nationally? [LB580 LB585]

SENATOR PIRSCH: No. No, just here in Nebraska, because that's where we have the program. I would assume the larger ones are...participate, the R.J. or Philip's kind of...Liggett. [LB580 LB585]

LYNNE FRITZ: The...yes, the original participating manufacturers were Philip Morris, R.J. Reynolds, Lorillard, and Brown & Williamson. Since that time, since the MSA was originally enacted, there are not about 40 manufacturers that have joined the MSA. Some of them are very small and some of them are, you know, the larger ones that I just mentioned. And the nonparticipating manufacturers, they're all smaller than the original participating manufacturers I mentioned, but they vary in size also. There's some that are larger than others. I would say nationwide, you know, I'm not for sure but I think that the participating manufacturer percentage of the market would be maybe 95 percent. [LB580 LB585]

SENATOR PIRSCH: Okay. Thank you. That helps. [LB580 LB585]

LYNNE FRITZ: That's a guess. [LB580 LB585]

SENATOR ASHFORD: Thanks, Lynne. [LB580 LB585]

LYNNE FRITZ: You're welcome. Thank you. [LB580 LB585]

SENATOR ASHFORD: Ron. [LB580 LB585]

RON JENSEN: Chairman Ashford, members of Judiciary Committee, my name is Ron Jensen. I'm appearing before you this afternoon as a registered lobbyist on behalf of Altria Corporate services, which is a service corporation for Philip Morris USA, and in support of LB585. I think that Senator Preister did a very complete job of summarizing the reasons for the bill and some of the research that is out there that documents that it will be, can be, a tool to help prevent youth access to tobacco. We simply urge your favorable consideration of it and ask you to advance it to General File. If there are questions, I'd be happy to try to answer them. [LB580 LB585]

SENATOR ASHFORD: Thanks, Ron. [LB580 LB585]

RON JENSEN: Thank you. [LB580 LB585]

KATHY BURSON: (Exhibit 16) Good afternoon, Chairman Ashford and members of the Judiciary Committee. My name again is Kathy Burson, co-executive director of PRIDE-Omaha. I appear today representing the volunteers and staff of PRIDE-Omaha

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in support of LB585, but having learned of the amendment, we could not support the amendment. Tobacco is the second leading drug of choice among our Nebraska children. The 2005 Nebraska Risk and Protective Factor Student Survey results found that 50.6 percent of our high school seniors report having tried cigarettes, and 27.3 report having tried chewing tobacco. We know that children can become addicted to tobacco as early as their third cigarette. We know that the average age of first use of tobacco is 12 years of age in Nebraska. Tobacco remains the number one preventable cause of death for all Nebraskans. LB585 provides one solution as we attempt to prevent Nebraska youth from ever starting to use tobacco. LB585 would simply mandate that tobacco products be placed out of the reach of children. Today it is not illegal for tobacco products to be placed at children's eye level in open displays, waiting for young people to simply lift them off the shelf, place them in their pocket or purse, and walk out of the door. Several communities in Nebraska have responded to the citizens' request and have passed product placement laws similar to LB585. These communities include Omaha, Valley, Bellevue, Ralston, Papillion, LaVista, and Plattsmouth. The rest of the state's children are not protected against the practice of help-yourself drugs. LB585 is a common-sense bill that will help address one problem involving adolescents' early use of tobacco in Nebraska. So PRIDE-Omaha urges that you pass this bill out of committee and on to the floor for debate. [LB580 LB585]

SENATOR ASHFORD: Thanks, Kathy. [LB580 LB585]

KATHY BURSON: Yes. [LB580 LB585]

SENATOR ASHFORD: Yes, Senator Chambers. [LB580 LB585]

SENATOR CHAMBERS: Is the part of the amendment to LB585 that PRIDE objects to the exemption of cigars, cheroots, stogies, and whatever else it...they put here? [LB580 LB585]

KATHY BURSON: Correct. We are encouraging that this law would place all tobacco products out of the reach of children. [LB580 LB585]

SENATOR CHAMBERS: Okay. I just wanted it clear which part. [LB580 LB585]

KATHY BURSON: Yes. [LB580 LB585]

SENATOR CHAMBERS: Because it also would contain that part where it made it clear that they're including these vending machines rather than excepting them. Okay. I just wanted to focus on the part that you disagree with. [LB580 LB585]

KATHY BURSON: You are correct. [LB580 LB585]

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SENATOR CHAMBERS: Okay. [LB580 LB585]

KATHY BURSON: Yes. [LB580 LB585]

SENATOR ASHFORD: Thank you, Kathy. [LB580 LB585]

KATHY BURSON: Thank you. [LB580 LB585]

SENATOR ASHFORD: Jim. Are you the last testifier? [LB580 LB585]

JAMES MOYLAN: I hope. I don't know. (Laughter) [LB580 LB585]

SENATOR ASHFORD: Well, I was just trying to...we're trying to determine if you're the last testifier at the last hearing on the last day. No? Oh, do we have opponents back here? Oh, I'm sorry. [LB580 LB585]

JAMES MOYLAN: I'm not the caboose? I'm sorry. [LB580 LB585]

SENATOR ASHFORD: You're not the end. (Laughter) You are not the end, but proceed anyway. [LB580 LB585]

JAMES MOYLAN: Mr. Chairman, members of the committee, I'm Jim Moylan, M-o-y-l-a-n, appearing in behalf of R.J. Reynolds Tobacco Company, formerly, now known as Reynolds American Inc. We support LB580 and think it's a proper approach with regard to the nonparticipating manufacturers. It's been well explained by Senator Preister and Ms. Fritz. If you have any questions, I'd be happy to try to answer them. [LB580 LB585]

SENATOR ASHFORD: Yes. [LB580 LB585]

SENATOR CHAMBERS: Were you only speaking with reference to LB580, or LB585 also? [LB580 LB585]

JAMES MOYLAN: Well, I was just speaking to LB580. [LB580 LB585]

SENATOR CHAMBERS: Okay. [LB580 LB585]

JAMES MOYLAN: So... [LB580 LB585]

SENATOR ASHFORD: Thank you, Jim. [LB580 LB585]

JAMES MOYLAN: Thank you. [LB580 LB585]

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SENATOR ASHFORD: Okay, any other proponents? Opponents? Come on up. [LB580 LB585]

TED WRIGHT: Can I borrow a pencil? [LB580 LB585]

SENATOR ASHFORD: Pencil. [LB580 LB585]

SENATOR LATHROP: Certainly. [LB580 LB585]

TED WRIGHT: Thank you. [LB580 LB585]

SENATOR CHAMBERS: Leave a dollar by the cup when you get through. (Laughter) I'm kidding. [LB580 LB585]

SENATOR LATHROP: Chambers retirement fund. [LB580 LB585]

TED WRIGHT: Ted Wright, W-r-i-g-h-t. I testify in behalf of Ted's Tobacco here in Lincoln. Certainly appreciate considering the exemption of cigars, stogies, and cheroots. Our merchandise is completely different from cigarettes. It's kind of like going into the grocery store at a vegetable and fruit stand and selecting what you want. You try the new fruit, the new vegetable, whatever. They want to pick it up, look at it so the merchandise is completely different. And minors don't use this product. I don't have minors that tempt me to sell to them. They just don't come in. And I have a sign on the humidor, which is 250 feet, which may not seem a lot, but it's a lot for a clerk to cover. And the signs say no one under 18 allowed, I mean not by law or anything but according to me. Now I don't want to provide the straw that breaks the camel's back, but I have one other product which is pipe tobacco. And I weigh it out and I measure it, most of it, and I sell most of it bulk. I do have some tin for the exotic taste. But I don't know what problem that would present as far as marketing that product. So I guess what I'd like to see and, once again, appreciate considering the other amendment, is to apply pipe tobacco because that also is "adultish." I don't have minors that attempt to buy it from me. Are there any questions? [LB580 LB585]

SENATOR ASHFORD: Senator Schimek. [LB580 LB585]

SENATOR SCHIMEK: Yes, thank you, Mr. Chairman. Am I to understand that you do not sell cigarettes at all? [LB580 LB585]

TED WRIGHT: I sell very few and I'd just soon not do it. But I have...I'm next to Village Inn, you know, and a few other places and it's just for the local people that don't want to drive across town to buy a pack. And I just carry a few brands, but I don't have any issue with putting that behind the counter or anything because it's a nonissue to me. And I sell some loose-leaf chewing tobacco, but I don't sell the...oh, the different names

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for it. I guess some would call it snuff or like the Key and the Copenhagen and that. I don't sell that. [LB580 LB585]

SENATOR SCHIMEK: Thank you. [LB580 LB585]

TED WRIGHT: You're welcome. [LB580 LB585]

SENATOR ASHFORD: Thank you, Ted. [LB580 LB585]

TED WRIGHT: Can I finish this back there and then put it up there? [LB580 LB585]

SENATOR ASHFORD: Oh, absolutely. [LB580 LB585]

TED WRIGHT: Yeah, thank you. [LB580 LB585]

KATHY SIEFKEN: Senator Lathrop and members of the committee, my name is Kathy Siefken, S-i-e-f-k-e-n. [LB580 LB585]

SENATOR ASHFORD: That's a compliment that I accept (laughter). [LB580 LB585]

KATHY SIEFKEN: Sorry. [LB580 LB585]

SENATOR ASHFORD: No, no, no. I take anything I can get, Kathy. [LB580 LB585]

KATHY SIEFKEN: It's been a long day. And you know, those chairs are getting really hard (laugh). Anyway, here representing the Nebraska Grocery Industry Association in opposition to LB585. Senator Preister brought this to our attention many years ago. And maybe I should have gone back to him and told him that we were listening to him because we have been. We have opposed this bill in the past because we have asked for time for us to put these products behind the counter as our stores remodel. And if you go through the city, you will find that these products are behind the counter or they're locked up in cabinets. We've listened. We can't afford to have these products shoplifted. They're too expensive and, again, don't want minors to have access to them. One of the other things that has drive the trend to put tobacco products behind the counter is the fact that the big tobacco companies have contracts with all of our members. And when you sign the contract, you are required to put those products behind the counter or you don't get to sell Marlboros. The problem has been taken care of. The only people that I can find that have not put products behind the counter, and that's why I'm here, are those very, very small stores in rural Nebraska. They are the people that have one cash register. They got one aisle up and one aisle back. They're in very, very small stores. There's no place behind the counter to put the tobacco. What they've done is they put it right up next to the cash register and it's not behind the counter, but the customer picks up the pack of cigarettes and puts them right down on

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the counter. They are within line of sight. They're not being shoplifted. Now I talked to other small stores that have gradually made the change. And the tobacco companies have actually provided doors for their shelving so that they can just put on Plexiglas doors and lock them up. And those tobacco companies have provided that free of charge. And so there are incentives for everybody to put the tobacco behind the counter. They're doing it. You don't need this bill. That's why I'm in opposition to it because of the very small stores that don't have a choice. They'll have to stop selling the product. I guess that's about all I have other than the fact that someone else had said earlier that there are local ordinances that have been passed like in the Omaha area. And frankly, when Omaha first came up with that ordinance, we polled our members and in Omaha everybody was already putting it behind the counter so there was no opposition to doing that. If you have any questions, I'd be happy to try to answer. [LB580 LB585]

SENATOR ASHFORD: Thank you, Kathy. Any questions? Thank you. [LB580 LB585]

KATHY SIEFKEN: Thanks. [LB580 LB585]

SENATOR ASHFORD: Do we have any neutral testifiers? Then officially you are the last unless Senator Preister wishes to speak. [LB580 LB585]

WILLIAM PETERS: Mr. Chairman, members of the committee, my name is Bill Peters, registered lobbyist for the Cigar Association of America, appearing in opposition to the bill. My comment would be, though, that the introducing senator has made a good step forward with the suggested amendment. I would second what Mr. Wright is saying. We think the language should be cigars and pipe tobacco. Stogies and cheroots are simply a cigar. They're covered in the term "cigars." He's picking up that language from some of our old tax statutes I think. But the term "cigar" would be sufficient and then we could save the space by simply inserting "pipe tobacco." Neither of these are products that our youth are using. And as Mr. Wright said, the merchandising of cigars and pipe tobacco would be totally disrupted for no reason other than to help drive them further out of business. Now again, even the lower cost cigars, these are items that are so expensive that the prudent shop owner isn't about to promote shoplifting. And I don't believe that retailers promote shoplifting in any circumstance. But the cost has gotten such that there's heightened economic incentive. My other observation is I've been representing tobacco for a couple of years and certainly it's changed. As I go around, I can only know of one place in Lincoln where cigarettes are not behind the counter. It's a smoke shop and there are several of those. With that, I would conclude my testimony and urge you that if you are to advance the bill you add the word "pipe tobacco" to the senator's otherwise well thought-through amendment. [LB580 LB585]

SENATOR ASHFORD: Thanks, Bill, appreciate it. [LB580 LB585]

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WILLIAM PETERS: Thank you. [LB580 LB585]

SENATOR CHAMBERS: Mr. Peters, I don't know much about these products. What is the difference between the texture of pipe tobacco and the tobacco that is in cigarettes that you can roll yourself? [LB580 LB585]

WILLIAM PETERS: Generally, the pipe tobacco has a much coarser texture, though there are some pipe tobaccos that in the past, the Prince Albert... [LB580 LB585]

SENATOR CHAMBERS: In the can...let him out. [LB580 LB585]

WILLIAM PETERS: ...in the can was the tradition. And the pouch, that could be used for rolling tobacco and people smoked that. But under the federal definitions, it's usually the intent that the tobacco is designed for. [LB580 LB585]

SENATOR CHAMBERS: And probably people are not going to put pipe tobacco then in the cigarette paper and smoke it as a cigarette. [LB580 LB585]

WILLIAM PETERS: Not for very long. [LB580 LB585]

SENATOR CHAMBERS: Okay. I just didn't know. Thank you. [LB580 LB585]

SENATOR ASHFORD: Senator McDonald. [LB580 LB585]

SENATOR McDONALD: Do people still roll their own cigarettes? [LB580 LB585]

WILLIAM PETERS: Yes. There are not many and you need machines that are sold that don't work. I've tried them...to roll your own. That was back in the days when I was really promoting the industry. There's always a flurry every time there's a substantial tax increase. People are going to avoid that tax by rolling their own. And those sales, I think, last for about two to three weeks. And when they figure out it takes a skill, those sales fall off. [LB580 LB585]

SENATOR McDONALD: Thank you. [LB580 LB585]

SENATOR ASHFORD: Thanks, Bill. [LB580 LB585]

WILLIAM PETERS: Thank you. [LB580 LB585]

SENATOR ASHFORD: Senator Preister, do you wish to? [LB580 LB585]

SENATOR PREISTER: Senator Ashford, I just have to be memorialized or something to that effect. [LB580 LB585]

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SENATOR ASHFORD: You are so noted. You are memorialized. [LB580 LB585]

SENATOR PREISTER: Thank you. I did want to comment to Senator Chambers that I appreciate looking at the bill. And if there are grammatical or other kinds of changes, I certainly welcome your going over those or the committee as well and would be happy to work with the committee. Other than that, I thank you. I congratulate you for getting this far through the session and going through all the bills that this committee has to deal with. [LB580 LB585]

SENATOR ASHFORD: 175? Oh, 142. I thought it seemed like 175. Thank you. [LB580 LB585]

SENATOR CHAMBERS: I have one question. What about the pipe tobacco issue that was raised? [LB580 LB585]

SENATOR PREISTER: I see the retailers' interest and concern with that, and I don't think that really affects kids that much. I don't think they're going to use that to chew or substitute it for chew. I don't think they're going to roll their own or try to make it into anything so I'm okay with that as well. And that amendment was really to accommodate Mr. Peters and so I thought we had addressed everything. But we didn't quite use the right language and we didn't quite get it so I'm okay with that. [LB580 LB585]

SENATOR CHAMBERS: And the pipe tobacco was from the gentleman who has a tobacco shop. And Mr. Peters, though, he was showing that collegiality, brothers in whatever it is they are brothers in, supporting that so that's why I thought I would ask how you felt about it. [LB580 LB585]

SENATOR PREISTER: Sure. And I would note you did not see the convenience store operators here in opposition. You did not see Walt Radcliffe here in opposition. So by virtue of the fact that they're not here, there are additional people that at least didn't testify against this bill which... [LB580 LB585]

SENATOR CHAMBERS: I can't help but ask you, Senator Preister, one other question. What time by the clock are their keepers instructed to release them from the cells where you have them incarcerated? (Laughter) [LB580 LB585]

SENATOR PREISTER: I'm sworn not to answer that. (Laugh) [LB580 LB585]

SENATOR ASHFORD: Thank you so much. That concludes the hearings, all of them. (See also Exhibit 17) [LB580 LB585]

SENATOR PREISTER: Wonderful. Pat yourselves all on the back. [LB580 LB585]

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Disposition of Bills:

LB258 - Held in committee.
LB261 - Held in committee.
LB336 - Held in committee.
LB337 - Held in committee.
LB580 - Advanced to General File, as amended.
LB585 - Held in committee.
LB685 - Held in committee.

Chairperson

Committee Clerk