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Judiciary Committee  
March 03, 2011

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[LB660 LB667 LB675 LB693]

The Committee on Judiciary met at 1:30 p.m. on Thursday, March 3, 2011, in Room 1113 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB693, LB667, LB675, and LB660. Senators present: Brad Ashford, Chairperson; Steve Lathrop, Vice Chairperson; Colby Coash; Brenda Council; Burke Harr; Tyson Larson; Scott Lautenbaugh; and Amanda McGill. Senators absent: None.

SENATOR ASHFORD: Good afternoon, everyone. I think we're going to get a little bit of a jump-start on the day here if we could, so if I could have your immediate attention, welcome to the Judiciary Committee. My name is Brad Ashford. I'm from Omaha and I'm the Chair. Senator Amanda McGill, to my right, is from Lincoln; and LaMont Rainey, to my right, is the legal counsel; and Ollie VanDervoort is the committee clerk. We have four bills today, or five, four, four bills today. I'm going to limit testimony on each bill to absolutely no more than an hour for each bill, so I would try to keep...so the last, the fourth bill, we're not going so late that people don't have an opportunity to talk on it and have to leave at 5:00, and I understand all that. So I want to give everybody a chance through 5:00 so we're going to get done as close to 5:00, 5:30 as we possibly can. Many of you have been here before, I know that, but those who have not, we are asking each testifier, except for the introducer, in this case, in the case of LB693, Senator Carlson will have...take whatever time you like, Senator Carlson, obviously to introduce the bill, but those others who are testifying, we ask you to limit your testimony to three minutes. The light system will indicate when...for you...the time to sum up with the yellow light. And then we'll open it up for questions. With that, well, I don't even know if I can...we can start. Senator Carlson, would you like to come up and introduce LB693? And I'm sure the other members will be coming in as you...

SENATOR CARLSON: Where does this go?

SENATOR ASHFORD: Yeah, Matt is here and he'll...

SENATOR CARLSON: (Exhibit 1) Good afternoon, Senator Ashford and members of the Judiciary Committee. I am Tom Carlson, spelled C-a-r-l-s-o-n, representing the 38th District here to introduce LB693. It's my pleasure to introduce this bill for Michelle and Anna Jo Cowan, who along with others will follow me with their testimony concerning dram shop laws. LB693 adopts the Liquor...Alcoholic Liquor Liability Act. The purposes of the act are to prevent intoxication, related injuries, deaths and other damages, and to establish a legal basis for obtaining compensation for persons suffering damages as a result of service of alcoholic liquor under certain circumstances. Specifically, the bill creates a cause of action in addition to those available in tort law against a bartender or licensee who serves liquor by the drink to an intoxicated person when the server knew or should have known that the customer was intoxicated or knew or should have known that the person would become intoxicated. Long-term members of this committee have

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heard this bill or similar pieces the past few years, last year by me and previously by Senator Lowen Kruse, who was an advocate for liquor liability legislation. Forty-two states currently have some type of dram shop legislation on their books. Dram shop laws do not decrease personal responsibility. Creating a cause of action against an overserving establishment does not mean that the individual is not also held responsible. Rather, punitive damages for both drinking drivers and serving establishments serve similar purposes to show them the penalties that come with their actions and to cause them to rethink their practices. Studies show that states that have a high level of dram shop liability have more publicity about the impacts of liability and have more servers and managers who are aware of liability. Nebraska's present law states that adults not buy, procure, give, or sell beverage alcohol to those less than 21 years of age. If a minor causes an accident or damage, the adult who provided the alcohol has civil liability for damages and can be sued by the injured party. Liquor licensees have no such liability under present law, as regulations pertaining to them apply to serving adults over age 21. The Nebraska Liquor Control has several server training courses available on-line but has no requirements for training. Now some of the arguments the opposition will dwell on will include the personal responsibility of the buyer. I have no argument with that. Number two, a decision by an individual to obey or not obey the law, again with personal responsibility. I have no objection to that. As an example, though, if there's a vehicle accident at an intersection and one was there first and was broadsided, neither one is 100 percent liable. Both share some liability. Both have personal responsibility, whether or not the accident was fair or unfair. Selling liquor by the drink to an intoxicated person, an obviously intoxicated person, or continuing to allow that person to buy is not showing responsible service. Now there is responsibility on the part of the buyer, but in this case the server at that point is demonstrating a lack of responsibility and should be guilty of negligence. My interest in the dram shop bill in Nebraska came about with the realization of a few instances, not many but a few instances, where a drunk driver kills an innocent person or persons and there is probability that those who served the alcohol by the drink should have taken action which possibly could have prevented the accident. My feelings of anger are heightened whenever I see an article where someone was killed in an accident where a drunk driver was involved, and it's especially frustrating when the intoxicated driver had several prior DUIs. What's wrong? Could this tragedy have been avoided or prevented? You have some information I believe that gives information about Maine and Rhode Island concerning liability insurance and some responsible business practices defense, and I don't want to go over those individually but I would ask you to look at those. I think they're good suggestions of what New Hampshire and then the state of Maine does. And the other sheet that you have, if you would look at this one, and I'll just take a minute to go through it with you, summarizes the dollars involved in Maine's program as well as Rhode Island. And I don't know specifically the details of how their programs work, but I thought these statistics were interesting. There were 2,055 policies issued in the state of Maine and the amount of premium collected was \$1,539,000. There were 45 claims, and this is in 2009, and the amount of the claims was \$1,159,000. So the

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average premium to cover the liability was \$749. I don't think that's a premium that would cause heartache or headache to too many establishments. The average claim was \$25,758. So I would assume and believe that the limit on liability is above \$25,000, certainly above \$25,000 in those states. The claims as a percentage of premium is 75 percent. That's a livable amount for a company to cover that kind of liability and still be profitable. And then if you look at the state of Rhode Island again, the average premium was \$1,921. It's a higher premium. The average claim was almost \$40,000. And again, but in Rhode Island they're probably charging too much. The claim as a percentage of premium was only 27 percent. So that's just a little bit of an example of what some other states are doing. With that, I will conclude my remarks and I would ask the pages to pass out a simple amendment that I would recommend to go with this bill. And I would ask, Senator Ashford, that you allow Athletic Director Tom Osborne and then the Cowans to give their testimony following mine. Thank you for your attention. I would try to answer questions you may have. I would suggest, if you wouldn't mind, hold your questions until I close on this so we give the testifiers more time. [LB693]

SENATOR ASHFORD: Thank you, Senator Carlson. [LB693]

SENATOR CARLSON: Thank you. [LB693]

SENATOR ASHFORD: Coach, do you want to...Senator Carlson has delineated you as the lead. [LB693]

TOM OSBORNE: (Exhibit 2) He punted to me, yeah. Thank you. Thank you, Mr. Chairman and members of the committee. My name is Tom Osborne, O-s-b-o-r-n-e. I'm here to testify in favor of LB693. It's important to distinguish, at least for my own case, that I am not speaking for University of Nebraska, my employer, or any other organization. I'm here representing myself. And as Senator Carlson mentioned, we were originally contacted by Anna Jo Cowan and her mother Michelle, both of whom are here today, and Anna Jo's father, Michelle's husband, was killed by a drunk driver in a head-on crash a couple of years ago. They lost a father, a husband, and chief family provider, and Anna Jo wanted her father's memory to stand for something and so she asked me if I could help locate a senator that would introduce some legislation, and we're very grateful to Senator Carlson for his support, his introducing the legislation. Also want to thank Senator Harms and Senator Howard for their support. The woman who killed Mr. Cowan had been drinking for an extended period of time in a bar, left the bar intoxicated, and killed Mr. Cowan in a head-on crash. Had the crash occurred in Iowa, Michelle and Anna Jo could have recovered damages from the bar as Iowa has a dram shop law. Nebraska doesn't, and since most people who drive drunk have very few financial resources, often the victims are left with a great deal of expense and no monetary recompense. The bill holds drinking establishments liable for serving a patron to the point of intoxication who then later injures or kills someone. The bill requires drinking establishments to carry liability insurance to cover incidents such as the

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Cowan's. The bill will save Nebraska taxpayers from having to assume payment for injuries of many individuals who are permanently disabled or who have extended periods of hospitalization and treatment due to the actions of drunk drivers. I think we're all very conscious of those costs and how devastating that they can be. Forty-three states have some type of dram shop law. Nebraska is one of only seven that doesn't. So 86 percent of the states have some type of dram shop law; 14 percent don't. And I find it odd and rather embarrassing that we're one of the 14 percent who don't. Dram shop laws have shown through research the following facts: nearly a 6 percent decrease in fatal crashes in those states initiating such laws. We have about 100 deaths a year from traffic accidents related to alcohol and about 6 percent of those would be due...could be prevented, according to national statistics, by such a law, so that would be 6 a year; ten years, that's 60 people. And then you start adding in the serious brain injuries, the paralysis, the serious injuries on top of that. It's a very heavy price to pay. A decrease in low-price drink promotions, like twofers and so on usually result. The bar crawl, somebody is 21 years old and they give them a huge amount of alcohol very cheaply. And then more thorough ID checks. And then this is a big one--a reduction of drinks per sitting of 1.6 per person on average. So if the average person drinks 5 drinks in a sitting, that would reduce that from 5 to about 3.4, which is fairly major. So the bartenders do pay attention, they do begin to exercise some personal responsibility. We've already talked about the role of personal responsibility. Senator Carlson addressed that. I'd like to just mention a couple of things. The person serving drinks is in the best position to know when overconsumption of alcohol is occurring. So for instance, if somebody has consumed five or six mixed drinks in one hour, the bartender should know that, should recognize that irrespective of symptoms, and so that person is in the best position to say enough is enough at some point. It would be irresponsible to provide a mentally impaired person with a loaded gun and then allow that person to interact with the public. It's similarly irresponsible to allow someone to drink to the point of intoxication and then get behind the wheel of an automobile. So we think that the drinking establishment does assume some liability in this case. So the net result of passing the bill will be fewer alcohol-related deaths and injuries, less drinking to the point of intoxication, less public expense to care for victims of drunk drivers, and better financial resources for victims of drunk drivers. I urge its passage and would be glad to answer any questions that you might have. [LB693]

SENATOR ASHFORD: I don't see any, Tom. [LB693]

TOM OSBORNE: Okay. Thank you. [LB693]

SENATOR ASHFORD: Thanks. [LB693]

TOM OSBORNE: Thank you for allowing me to testify. [LB693]

SENATOR ASHFORD: Well, thanks for coming back. [LB693]

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TOM OSBORNE: It's always a pleasure to see you, Senator. [LB693]

SENATOR ASHFORD: It's good to see you too. Next?` [LB693]

ANNA JO COWAN: (Exhibit 3) My name is Anna Jo Cowan, C-o-w-a-n. My dad calls me on his way to Fremont to make sure I had a ride to work that evening. I tell him yes and we end our conversation. My last phone call with my dad was less than a minute long because I thought we had the rest of our lives for conversation. Well, obviously, I was wrong. He didn't come home that night and not only did his life end abruptly, a part of mine did too. March 30, 2009, was a day that changed my life forever by a drunk driver who killed my innocent father. That drunk sat all day at a bar that overserved her and then continued to let her drive drunk. He was buying my mother a new vehicle that day so she could be safer in the winter with all-wheel drive. I won't forget that night and I definitely won't forget the pain. According to the Nebraska State Patrol investigative report, on March 30, 2009, two vehicles crashed head-on near milepost 19 on Highway 36 in Douglas County. Both drivers were killed. Troopers determined that the cause of the crash was that Linda Therien drove left of the center line. Autopsy results revealed that she had a blood alcohol level of .146, nearly twice the legal limit. Investigative reports indicate that Therien was drinking at Ko Zee Lounge prior to the crash. A hidden camera interview of the bartender, Susie Burgess, at Ko Zee Lounge by Channel 6 News reporter Justin Joseph revealed that Susie served mixed drinks to Linda knowing that she was already taking prescription pain meds. Therien gave Leland Wood a ride home in her pickup that night. Then Therien was seen at Phillips 66 gas station pumping gas. The crash happened around 6:58. Although Ko Zee Lounge bartender suggested to the officer that the crash...suggested to the crash officer that she may have gone to Cabin Inn after she left Ko Zee Lounge, the officer wrote in the report that is not logical due to the fact that the eyewitness to the crash indicated that her vehicle came south on 60th Street and then turned west on Highway 6, and the Cabin Inn is located off of Highway 36 and 42nd Street, east of the crash site. Troopers found no evidence that Linda Therien was drinking in the vehicle, so it is logical to presume that the alcohol in her system was consumed at Ko Zee Lounge. Bar owners will argue insurance costs, but a restaurant/bar in Iowa only pays \$1,000 to \$1,200 each year for dram shop insurance. But does that outweigh the costs involved for the victim? Why should Nebraska tax dollars have to pay for medical costs to the victim? Every other business has to have some form of liability insurance. Why should that exclude the bar industry? Responsibility starts with the person consuming the alcohol, but after you become intoxicated you begin to make senseless decisions. The bartender then has some decisions herself to make. They can keep serving them to make more money or they can make sure the person gets the responsible help they need. It takes two to tango and it takes two to drive drunk. Thanks to the careless and negligent bartender and the drunk driver, my father is no longer with me, and my mother lost her husband who was only trying to do something special for her that day. Cherish your moments

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with your own family and make sure today's conversation isn't the last by making Nebraska roadways safer with dram shop. Thank you. [LB693]

SENATOR ASHFORD: Thanks, Anna Jo. Do we have any questions? I don't see any. Thanks. [LB693]

MICHELLE COWAN: (Exhibits 4 and 5) Michelle Cowan, C-o-w-a-n. I'm a widow and mother trying to save lives. I come before you without the help of a large industry and its partners who can afford strong lobbyists to be the voice for their interests. My voice is for my late husband, Joe Cowan, who was killed by a woman who spent the day drinking beyond the point of intoxication, and prior to the crash she was at a licensed liquor establishment in Omaha. Our emotional loss has been difficult. I lost my husband that I had been with for almost 19 years of my life. The biggest loss is for my daughter who, at 15 years old, lost her father. She will graduate this May and her dad will not be there. Can you imagine how hard this has been for me to deal with my own grief and to parent a grieving child? Our sense of safety has been stripped from us. My daughter's innocence has been destroyed. Can you imagine how I felt as a state patrolman came to my home and told me that Joe was dead and I looked over and saw Anna Jo fall to the floor sobbing and crying out for her dad? Joe's 82-year-old widowed mother has lost one of her sons--she only had two--and the support that he gave his elderly mother. His brother has lost his only sibling. My family has suffered as well as they not only lost Joe but, in a way, they lost part of me and part of my daughter because none of us are the same anymore. Part of each one of us died that day, and why? Because a bartender overserved someone who was intoxicated. On top of the great emotional loss, we have suffered financially as well. We lost Joe's income, our health insurance that he carried, and unexpected funeral costs. Our family vehicle was destroyed, as well as Joe's retirement potential. My family is paying the price of others' deadly decisions, both emotionally and financially. Fortunately, my husband took care of us in the event that he would pass away, but others are not so fortunate. I often think about what would have happened if Joe would not have been prepared. We would have lost our home because I could not have afforded on my salary to take care of us in the home that we have. What if it had been a father of several children and his wife worked outside the home? How would that family survive not only the emotional loss but the financial loss of the income? By not having this law, who benefits from it? Who is controlling the well-being and safety of the innocent victims on Nebraska roadways? Is it the alcohol industry and its partners? The bar owners say the law could cause them financial loss if they were sued, but the real victims are the innocent who die and are injured. The bar owners would not be sued if they would just serve responsibly. I find it interesting that when I did a quick search of the Nebraska Accountability and Disclosure Commission, I noted that the highest office in the state of Nebraska accepted tens and tens of thousands of dollars in campaign contributions from two businesses in the alcohol industry, and this was just one page of one year of one state elected official that I looked at. I wonder how many others in elected positions have accepted money from the alcohol industry and I

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wonder how these sorts of contributions to campaigns play a role in whether or not this bill will be passed. [LB693]

SENATOR ASHFORD: Michelle, could you sum up, please? [LB693]

MICHELLE COWAN: Okay. Senators, you have a social conscience to do the right thing. You and only you have the power to change the lack of a dram shop law and allow innocent victims and their families the right to hold negligent behaviors of bar owners civilly accountable for their role in death and injury, but most importantly you have the power to make a difference in saving lives. Lastly, I would like to address the Nebraska liquor industry. You... [LB693]

SENATOR ASHFORD: Michelle, I'm not...I'm going to have to ask you to stop. Do we have any questions of Michelle? Seeing none, thank you, Michelle. Other proponents? [LB693]

ANTHONY CATO, JR.: Good afternoon, Senators. My name is Anthony Cato, Jr., C-a-t-o Jr. On September 7, 2007, my life was drastically changed by an underage drunk driver. I'm here today basically in support of LB693 for one reason and one reason only--most victims can't come here. Most of you in this room, which I want to thank, includes Coach Osborne, who taught me very many lessons while I was at the university, I want to thank you for taking care of me. I am now worth \$1.8 million of your money. That's a crock. You shouldn't have to pay for me. You shouldn't have...the taxpayers of Nebraska should not have to pay my expenses for me to live. I'm too young to be retired. I am too young not to be able to move freely like I used to. I'm too young not to play basketball anymore. \$1.8 million, and here's the best part, counting; \$1.8 million and counting. Last year I had my eighth surgery. I have two more upcoming at the taxpayers' expense. Now, as I said, the young man was 20 years old, uninsured. He got served at Mustang Sally's in Omaha, Nebraska. Now I understand that the senator's bill says there's some personal responsibility there. That's correct, but the bar has some as well. They could be more diligent in who they serve, who they card, who they don't card. But the taxpayers should not have to pay \$1.8 million and counting for the rest of my life. Now I'm fortunate because I was told I'd never walk again and, by the grace of God, I am walking, but I still suffer every day. I have pains in my back. I can't...have balance issues. And as I said, I still have to have two more surgeries. One might put me back in the chair for a little while. And the taxpayers and you senators are paying for it. There's no one in this room that wants to pay for me. They shouldn't have to. So in the end, Senators, you have an obligation to make sure that someone besides the driver is financially responsible. If the state is broke, then everybody has to pitch in and, therefore, by the law in 43 other states, we should have it here. Thank you for your time. [LB693]

SENATOR ASHFORD: Thanks, Anthony. Any questions of Anthony? Thank you, sir.

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Next proponent. [LB693]

ED RAMSPOTT: (Exhibit 6) Chairman Ashford and members of the Judiciary Committee, my name is Ed Rampsott, that's R-a-m-s-p-o-t-t. I'm from Blair, Nebraska, and I'm speaking on behalf of LB693. I worked for 35 years at the University of Nebraska Medical Center and am assistant director for finance and administration at the Eppley Cancer Institute at the Med Center. I want to clarify that I am not speaking on behalf of Eppley or the Med Center. I'm speaking on behalf of myself. And I want to thank Senator Carlson for introducing the dram shop bill for the state of Nebraska. The effect of not having such a law has touched me both in a very personal and professional manner in the last several years. The far-reaching effects of both have changed my life forever. On a personal level, almost seven years ago my youngest son was killed in an accident involving a third offense drunk driver who did not stop at an accident scene as he claimed he did not know that he hit a 180-pound young man on a bicycle. This happened in another state that also does not have a dram shop law. Unless you have had to experience the loss of a child, there really is no way for me to convey to you how that's changed my life. More currently, almost two years ago my coworker, Mr. Joe Cowan, was killed in a traffic accident in north Omaha involving a drunk driver who crossed the center line and collided with Mr. Cowan, killing him instantly. The woman who hit him, as you heard, had spent a significant amount of her day at the Omaha drinking establishment and had just come from the bar prior to the accident. Her blood-alcohol content was almost twice the legal limit. Mr. Cowan had worked for me for almost 15 years and was trusted, loyal, very bright, and a dedicated employee. He supervised our accounting department. I received a call the evening of his death and I knew that my workplace would never be the same. First, I had to deal with my own personal shock of this event, and then I had to deal with the effects of his coworkers and other individuals who had depended on him for doing his job. It's extremely difficult to hire somebody and train somebody and so on. I see the light is on here but I want to thank Senator Carlson. [LB693]

SENATOR ASHFORD: No, just take your time and sum up, Ed. [LB693]

ED RAMSPOTT: Okay. All right. Obviously, the work must go on and I've had to retrain a person for Joe's job and that had to happen immediately, and all of this had to happen while I dealt with the personal loss of Joe as a friend and as a coworker. I've worked in the cancer area for a long time and I've heard of lots of new programs and things that have changed the health and life of thousands of people. I'm hoping that someday soon we have something that can be put in place so that we can change the life of this and that this does not happen again. Again, I take this opportunity for...I thank you for allowing me this opportunity to testify on behalf of this bill, and if you have any questions I'd be glad to answer them. [LB693]

SENATOR ASHFORD: I don't see any questions. Thanks, Ed, very much. Diane.

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[LB693]

DIANE RIIBE: Good afternoon, Senator Ashford, members of the committee. My name is Diane Riibe. I'm the director of Project Extra Mile. We're a network of ten coalitions across 11 counties in Nebraska and we're here really to support the bill, to thank Senator Carlson, thank Coach Osborne, and to encourage you to move the bill forward. Particularly, as many of you know, some of you know, it's a bill and a proposal that's been going on for the better part of two decades. Several years ago there was an attempt to move it forward when we passed the dram shop for young people, for those under 21, and it just makes good common sense. You've heard the data. You certainly know it simply saves lives and it's an accountability that's an appropriate one for the state. So we would urge your support of it. Thank you. [LB693]

SENATOR ASHFORD: Thank you, Diane. [LB693]

SENATOR LATHROP: Can I ask just one question? [LB693]

SENATOR ASHFORD: Yeah, sure, Senator Lathrop. [LB693]

SENATOR LATHROP: Diane, can you tell me, can you point to any practical effect of that Minor Alcoholic Liquor Liability Act? [LB693]

DIANE RIIBE: At this point, Senator, we're not aware of any individual family that's used it. I can tell you that we've tracked probably as many as a dozen cases where they could use it, but we have not had a family use it. We don't seek those families out. [LB693]

SENATOR LATHROP: Okay. Thanks. [LB693]

SENATOR ASHFORD: So you did...there have been 12 incidents involving a minor. [LB693]

DIANE RIIBE: That's an approximate. There's been...and again, we're not attorneys, so as we track those cases... [LB693]

SENATOR ASHFORD: But we don't know if those have been filed or... [LB693]

DIANE RIIBE: I would assume they've not. [LB693]

SENATOR ASHFORD: Have not been filed. Okay. Thanks. Yes, Senator Larson. [LB693]

SENATOR LARSON: Thank you for coming and testifying, Ms. Riibe. Do you have any

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idea what percentage of alcohol-related crashes stem from those being served at bars and not their own consumption at home? [LB693]

DIANE RIIBE: Actually, the majority, over 50 percent, actually do come from on-premise locations. That's what the research tells us. [LB693]

SENATOR LARSON: What research? Could... [LB693]

DIANE RIIBE: I'd be happy to provide it to you. [LB693]

SENATOR LARSON: That would be great. [LB693]

DIANE RIIBE: Yeah. [LB693]

SENATOR ASHFORD: I think part of the thinking, too, that this committee had when we passed the Minor Liability Act was, to some degree, the ability to observe a young person who's intoxicated. The thought was generally that that is somewhat easier than an adult who may be...but it's not a reason not to do the other, but I think that's why, one of the reasons why we addressed the minor liability. So hopefully someone uses it because it's out there. Thank you. [LB693]

DIANE RIIBE: Yeah. Thank you. [LB693]

SENATOR ASHFORD: Next proponent. [LB693]

ROBERT MOODIE: Thank you, Mr. Chairman, members of the committee. My name is Robert R. Moodie, M-o-o-d-i-e. I am testifying on behalf of the Nebraska Association of Trial Attorneys. The members of my organization, while not having the personal experience of many of the people who have already testified, are frequently called upon to assist and represent the people who have been injured as a result of negligent actions by intoxicated individuals. I cannot speak from their personal experiences but I can and I will try to point out a couple of things that I think are helpful from an attorney's standpoint with regard to this proposed statute. The first point is that this does not shift responsibility for these accidents away from the drunk driver. The drunk driver is still, by law, going to be called upon to be responsible for his negligent actions. This should not be interpreted as attempting to shift responsibility from the drunk driver to the bar operator, because it doesn't do that. Likewise, it is not what lawyers would refer to as a strict liability situation. This is not the situation where anybody who has been in a bar who then is involved in an accident is going to lead to a claim against the bar. In fact, it creates a relatively high standard of proof that the person who brings a claim for compensation under this action must meet. The claimant must be able to establish that the licensee, the liquor licensee, served alcoholic liquor by the drink to an intoxicated person when the licensee knew or should have known that that person was intoxicated,

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so that will be a burden of proof on the person who makes the claim. This is not one that establishes absolute liability on the part of the bar owner. Finally, it would be our position that the laws of the state and the regulations of the Liquor Control Commission already impose a duty on licensees not to overserve. So this is not creating a new responsibility that they don't already have. What this establishes is a consequence for...an additional consequence for not observing that obligation. We would encourage the committee to support and pass through the bill. [LB693]

SENATOR ASHFORD: Thanks, Bob. I don't see any questions. Thank you. [LB693]

ROBERT MOODIE: Thank you. [LB693]

SENATOR ASHFORD: Next proponent. Robert. [LB693]

BOB SCHMILL: (Exhibit 7) Senators, my name is Bob Schmill and that's S-c-h-m-i-l-l. I am the founder of the Matt's Dream Foundation and father of Matt Schmill who was killed by a drunk driver here in 2004. Our son had just turned 23 at midnight and was killed at 12:30 on his birthday as he was walking home. As a member of the Voices of Drunk Driving Victims, a victims' advocate organization, which as far as for the citizens of our state that were to support...were with the support of families and victims of crime, we are in favor of this bill, which may not only...which will make not only the intoxicated person but the retailer and licensee responsible for the damages. Nebraska is one of the few states that don't have the adult alcohol liability act, as we all know. I play in a band and we perform in several of the bars in a two-state area. We see from time and time again that someone has obviously had too much to drink. Twenty-five percent of these bars that we've watched that have...actually take it on themselves to police themselves and to cut that person off, but we also observe that 75 percent of those people are continually served, and it seems to be the only reason why is the amount of money that they are going to make that night. The thing is, is the person that's...that group that's 25 percent, they see those people that are in there, in the bar, as customers and they want to make sure those customers come back. I'm not sure what the other 75 percent are looking at. We are told that after a certain age we are responsible adults and I think everybody in this room is a responsible adult, but to this day, as we play in those bars, I have not yet seen a responsible drunk. It is up to...even though we're supposed to be responsible, it's up to those that are serving us those drinks that need to help us be responsible adults and to be able to be a customer for that bar for a long time. The Matt's Dream Foundation was organized not to only change the laws that pertain to drinking and driving in Nebraska and Iowa but to also educate the adults and teens on the reality of what happens to a family when someone is killed by a drunk driver. I thank you for your time this afternoon. [LB693]

SENATOR ASHFORD: Thanks, Bob. [LB693]

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BOB SCHMILL: You're welcome. [LB693]

SENATOR ASHFORD: Just a second. Hold on. [LB693]

BOB SCHMILL: Oh, sorry. [LB693]

SENATOR ASHFORD: Does anybody have any questions of Bob? Seeing none, thank you. [LB693]

BOB SCHMILL: Thank you. [LB693]

SENATOR ASHFORD: Thanks for all your work. We have two more proponents and then we'll go to the opponents. [LB693]

PAUL CARTER: Senator Ashford, committee members, Paul Carter, C-a-r-t-e-r. I'm the executive director of PRIDE-Omaha. Many of you are aware that we are a drug prevention organization focused on keeping our children safe and drug free. I think it is imperative that as a proponent for this legislation that we realize that in this state about 35 percent of our crashes are alcohol related. When we're killing five people...or killing a person every five days or so, we need to understand that, yes, the person who is drinking in a bar is responsible for their own behavior. They make the choice to get behind the wheel. But I think that the bar owner should also have that responsibility in terms of serving. I think it's imperative that we move not only where we've protected our young people now with a dram shop law, that we also need to protect our citizens as whole and take away this burden that we put upon the state. Thank you. [LB693]

SENATOR ASHFORD: Thanks, Paul. Any questions of Paul? Thank you, sir. Next proponent, and this will be the last proponent and then we'll move on to the opponents. [LB693]

SIMERA REYNOLDS: (Exhibit 14) My name is Simera Reynolds, S-i-m-e-r-a, Reynolds, R-e-y-n-o-l-d-s, and Mothers Against Drunk Driving is here in support of LB693. Most of what I wanted to articulate was already done by Dr. Osborne so I won't go over too much of it other than I do think it's important to know that last year 88 people died in our state due to alcohol-related crashes. There are more than 13,000 arrests and our average alcohol BAC for arrestees is .16. We know from the research, as Dr. Osborne stated, that 6 percent...we could have a 6 percent reduction with the passage of a dram shop law; also, that if you are at .15 or higher you are 380 times more likely to be involved in a fatal crash than a nondrinking driver. I think that's important to state. The last part kind of goes to Mr. Cato's testimony and that is that for every fatality Nebraskans spend at least \$3.5 million, according to the National Highway Transportation Safety Administration. So taking those facts into consideration, Mothers Against Drunk Driving would ask that you would look favorably upon this legislation and

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push it forward. Thank you. [LB693]

SENATOR ASHFORD: Any questions of Simera? Yes, Senator Council. [LB693]

SENATOR COUNCIL: Thank you, Ms. Reynolds. I was reading your testimony. It just triggered a question. In the third paragraph it says, "Recent studies of arrested drinking drivers shows that over half of all drivers arrested reported having their last drink in a bar, restaurant, or other licensed establishment." Does the questioning go beyond the last drink or do you have the data that shows it? [LB693]

SIMERA REYNOLDS: Well, that particular information comes from national research so...but I know, for instance, Lincoln, Lancaster County, the LPD does collect last drink data and we know where their last drink was on people that are housed at the Detox Center. [LB693]

SENATOR COUNCIL: Do we have any percentage? Do we have any data? [LB693]

SIMERA REYNOLDS: I can get it for you. [LB693]

SENATOR COUNCIL: And I guess...and the crux of my question went to, I mean, do we do any other questioning? I mean the whole... [LB693]

SIMERA REYNOLDS: Oh, they did do other questioning, right, right, whether you were at home or whether you...and whether you drank at home prior to going to another establishment. I mean all of those would, of course, be compounding factors for a research study. So they were asked but I didn't...I can get that for you though, Senator Council. [LB693]

SENATOR COUNCIL: Okay. I'd be curious to know. Thank you. [LB693]

SENATOR MCGILL: I would too. [LB693]

SIMERA REYNOLDS: Yeah, okay. [LB693]

SENATOR MCGILL: Pass that along. Thanks. [LB693]

SIMERA REYNOLDS: Yeah. [LB693]

SENATOR ASHFORD: Thanks, Sim. [LB693]

SIMERA REYNOLDS: Okay. [LB693]

SENATOR ASHFORD: The opponents, do we have any opponents to this bill? Jim.

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[LB693]

JIM MOYLAN: (Exhibit 15) Mr. Chairman and members of the committee, I'm Jim Moylan, an attorney in Omaha representing the Nebraska Licensed Beverage Association. That's J-i-m M-o-y-l-a-n. My address is 8424 West Center Road. I think everybody here extends sympathy to anybody who has been damaged or injured by an intoxicated driver. I know our organization is and everybody else. As you know, of course, dram shop has come about...it was common law in England but it's come about in this country through court decisions and also legislative enactments. They're commonly called three-party actions versus two-party actions, which you're all familiar with, where a third party is liable for the actions of a second party who has been sued by the first party. Now we don't feel that you should shift the responsibility from the person committing the act to a third party. The person committing the act is actually the proximate cause of any accident that takes place. I think you could probably extend this much further down the road, and you've heard these arguments before, sue gun sellers because they sell a gun to somebody who goes out and shoots somebody, fast-food restaurants for the obesity problems that we have in the country, and even pharmacists who maybe have overdosed somebody and should have known that they should not be able to drive with an overdose from a pharmacist. Now the bill is lacking in social hosts. Who probably is less able to serve people than social hosts? The experienced bartenders in the state, they're familiar with intoxicated people. They know who they are and they know how to handle them. But if you have a social host who has a party, you know, and has never served much liquor and they have a big party, social hosts ought to be included if this is going to...you know, you're going to enact something like this. You got special designated licenses which are also retailers under this particular act and, as you know, many of the charities throughout the state all year long have functions in which they serve alcoholic beverages. Now they're going to be liable and, naturally, they're going to have to get heavy insurance policies, you know, to cover any activity that they have. Now I've just handed out some insurance quotes that I got a year ago and the agent said they would remain the same this year, and you can go through them and see that they run from \$750 for \$12,000 worth of liquor receipts in a year, up to \$4,000 for \$230,000 gross receipts of alcoholic beverages, which is not very high. Now the agent that I talked to also writes in Iowa and he extrapolated 4,700 licensees times \$1,200 per licensee would be \$5.5 million of premiums a year paid by the 4,700 licensees. He said if the ballpark... [LB693]

SENATOR ASHFORD: Jim. Jim, why don't we do...Jim, why don't we do this, because we're going to hold everybody up to the same standard here. [LB693]

JIM MOYLAN: Pardon? [LB693]

SENATOR ASHFORD: We have your material. So do we have any questions of Jim? [LB693]

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SENATOR COUNCIL: I just have one. [LB693]

SENATOR ASHFORD: Senator Council. [LB693]

SENATOR COUNCIL: And looking at the liquor liability renewal quotation that you sent out, that you handed out, I'm just looking at page 1, so this is apparently a business that their principal business is something other than liquor receipts because...or liquor sales because it says... [LB693]

JIM MOYLAN: Yes. [LB693]

SENATOR COUNCIL: ...liquor receipts, \$12,000; other receipts, \$200,000. [LB693]

JIM MOYLAN: Yeah. [LB693]

SENATOR COUNCIL: Is this annual? [LB693]

JIM MOYLAN: This is just annual based upon liquor sales only. [LB693]

SENATOR COUNCIL: Okay. And the premium is an annual premium? [LB693]

JIM MOYLAN: An annual premium. [LB693]

SENATOR COUNCIL: Okay. I'm just...and I'll state, I mean I think many of my colleagues and, you know, the public may know I used to own a retail liquor establishment and I wish I could have seen a premium like this. [LB693]

JIM MOYLAN: You what? [LB693]

SENATOR COUNCIL: I wish I could have seen a premium like this. [LB693]

JIM MOYLAN: Yeah. Well,... [LB693]

SENATOR COUNCIL: I'm just... [LB693]

JIM MOYLAN: ...it's rather expensive and that was a ballpark, \$1,200 for \$4,700, you know, \$5.5 million. He estimated up to \$7 million and that doesn't count SDLs. And I'll get ready to close here because I think we're getting ready to it. [LB693]

SENATOR ASHFORD: Well, no, no, we've already closed, Jim. (Laugh) [LB693]

JIM MOYLAN: Pardon? [LB693]

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SENATOR ASHFORD: In all deference, just with all due respect, you've already closed, so now we have to see if there's any other questions, and there aren't. So thanks. I get your point though. You've already...you already closed. [LB693]

JIM MOYLAN: Thank you. [LB693]

SENATOR ASHFORD: Thank you. The other...okay. How are you? [LB693]

TROY FALK: Chairman Ashford and members of the Judiciary Committee, my name is Troy Falk, F-a-l-k. I'm owner of Doc's Place here in Lincoln. First off, I'd like to say my deepest sympathies to all the families who have lost loved ones. I appear before you today as a small business owner opposed to LB693. I've held a liquor license in Nebraska for over 11 years. As a small business owner, the number one priority for my business is the safety of my employees and my patrons. I fully understand that according to Nebraska law at this present time it is illegal to serve intoxicated individuals. In order to be sure my employees do not serve intoxicated individuals, myself, my management, and my entire staff undergo certified training sessions to look for specific signs of intoxication. We take that training and pass that information along to all of the staff, doormen, everybody that's working. I take the responsibility, as a liquor licensee, very seriously. My intent is to follow the law, and this business is my livelihood. The overwhelming majority of licenseholders are just like me and are dedicated to the safety of our customers and the community. Unfortunately, there may be some bad apples in every bunch and these establishments must be dealt with and are under current law. It is important to note that there needs to be some personal responsibility for citizens to use alcohol responsibly. I believe the majority of drinkers do use alcohol responsibly and it is those who lack personal responsibility that I do not want in my business nor allow in. When we see individuals who are not personally responsible, we stop service to those customers or refuse them even entrance into. My point is the dram shop insurance is not needed. We currently have laws in place to stop this activity and most business owners do just that. And on a quick note, if it is the will of this committee to hold dram shop liability, I feel the committee should look at other licenseholders, including grocery stores, convenience stores and those entities, in a solution as well. With that, I will be happy to answer any questions. [LB693]

SENATOR ASHFORD: Thanks, Troy. Any questions of Troy? Seeing none, thank you. Next opponent. [LB693]

BRIAN KITTEN: (Exhibit 18) Chairman Ashford, members of the committee, my name is Brian Kitten, K-i-t-t-e-n, and I'm here today in opposition of LB693. I am the owner of Brewsky's. We have locations in Lincoln and in Omaha. As a liquor license with more than one location, the requirement for dram shop insurance is overwhelming. With six locations and estimates anywhere from \$5,000 to \$20,000 per year in insurance per

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location, it is plausible that I could face over \$50,000 in insurance premiums per year. It is reasonable to assume that with a substantial increase in overhead I would be forced to downsize our work force and lay off employees. With less employees, customer service is affected. But most importantly, oversight for our customers will be weakened. Right now, our staff has direct oversight over each and every customer we have. If LB693 were to pass, we would have far less oversight over these customers. From a liquor retail perspective, LB693 puts an erroneous burden on us to detect signs of intoxication because sometimes there are no signs. If someone buys a bottle of beer and the person has no signs of intoxication but leaves and harms another third party, I think I will have a lawsuit on my hands. Whether that person showed enough signs of intoxication to win a lawsuit is another story. The insurance company will most likely settle and my insurance premiums will increase substantially. Thank you for your time, and I will be happy to answer any questions that you may have. [LB693]

SENATOR ASHFORD: Any questions of Brian? No. Thanks, Brian. [LB693]

BRIAN KITTEN: Thank you. [LB693]

SENATOR ASHFORD: Next opponent. [LB693]

JIM PARTINGTON: (Exhibit 16) Chairman Ashford, members of the committee, my name is Jim Partington, P-a-r-t-i-n-g-t-o-n. I'm the executive director of the Nebraska Restaurant Association. I appreciate the opportunity to appear before you to testify in opposition to the Alcoholic Liquor Liability Act. The stated purpose of the Alcoholic Liquor Liability Act are to prevent intoxication of related traumatic injuries, deaths, and other damages, and to establish a legal basis to obtain compensation for persons suffering damages as a result of the provision or service of alcoholic liquor. Our concern with the proposed legislation is that it establishes unlimited liability for a third party not directly involved in an incident and it does nothing to keep intoxicated drivers off the road. The sole basis for assigning this liability is the serving of alcoholic beverages to a noticeably intoxicated individual, a very subjective standard. People go to restaurants to enjoy a meal and drinking alcohol is just incidental to this. Wait staff in a restaurant typically serve hundreds of patrons in the course of an evening and have no knowledge of where they were before they arrived in the restaurant or where they go after they leave, and they're certainly not aware of any alcoholic beverages consumed off site. The involvement of a patron in an incident after leaving a restaurant could require an appearance in court at great expense, even if no liability is established. We believe that this imposes an undue burden on the hospitality industry and relieves the individual of responsibility for his behavior. We strongly support preventing excessive drinking and keeping intoxicated drivers off of our roads. To this end, we propose considering two existing programs that have great potential for contributing to this goal. The National Restaurant Association has developed an effective training course for alcohol servers that can be provided on-line or in a classroom environment for a cost of about \$40. It is

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available with modifications that cover Nebraska laws and regulations, as well as more general issues relating to the safe serving of alcohol, and there are similar courses approved by the Nebraska Liquor Control Commission provided by other agencies as well. A greater emphasis on training with positive incentives for licensed beverage servers to provide such training to their employees could be very effective. We also support an initiative proposed as part of LB668, which you'll be hearing later today which would make ignition Breathalyzer interlocks mandatory for first-time DWI offenses. We would like to open a discussion about this issue with the goal of developing effective legislation that will truly keep intoxicated drivers off our roads without imposing undue third-party liability to the hospitality industry. The two initiatives previously mentioned could provide a starting point for the discussions. This completes my formal testimony, Mr. Chairman. I'd be pleased to answer any questions you or the members may have. [LB693]

SENATOR ASHFORD: Thanks, Jim. Any questions? Senator Council. [LB693]

SENATOR COUNCIL: Yes. Mr. Partington, in your testimony your objection to LB693, you made reference to your opinion that the sole basis for assigning liability under LB693 is the serving of alcoholic beverage to a noticeably intoxicated individual. Is that your understanding of the only time liability would be, that the standard would be noticeably intoxicated? [LB693]

JIM PARTINGTON: That is my understanding of what the bill says. [LB693]

SENATOR COUNCIL: Okay. Well, the bill reads "when the licensee knew or should have known." [LB693]

JIM PARTINGTON: Okay, I stand corrected, "knew or should have known." [LB693]

SENATOR COUNCIL: Okay. [LB693]

JIM PARTINGTON: The noticeably intoxicated was the questionable term in my mind because it's such a difficult thing to tell under all circumstances. [LB693]

SENATOR COUNCIL: Okay. So when you say "difficult," I mean that's what you're discussing,... [LB693]

JIM PARTINGTON: Yes. [LB693]

SENATOR COUNCIL: ...the "should have known." [LB693]

JIM PARTINGTON: Yes. [LB693]

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SENATOR COUNCIL: Okay. Thank you. [LB693]

JIM PARTINGTON: Because on some occasions that's very difficult. [LB693]

SENATOR COUNCIL: Okay. Thank you. [LB693]

SENATOR ASHFORD: Thanks, Jim. I don't see any other questions. Thank you. [LB693]

JIM PARTINGTON: Thank you. [LB693]

SENATOR ASHFORD: Kathy. [LB693]

KATHY SIEFKEN: Senator Ashford and members of the committee, my name is Kathy Siefken, K-a-t-h-y, Siefken is S-i-e-f-k-e-n. I am the executive director of the Nebraska Grocery Industry Association here today in opposition to LB693 simply because we are one amendment away from being included in the bill. My condolences go out to the people that testified in support of this bill. Those are heartbreaking stories and I wish that that kind of pain didn't have to be felt by anyone. A couple of years ago Senator Lathrop was involved, and some of the other members of this committee, was involved in passing liquor liability legislation and so the comments we've heard so far from the proponents, that there are 43 states that have liquor liability laws and we're not one of them, we are one of them. We did pass legislation a few years ago and Senator Lathrop was very good at shepherding that through the Legislature. One of the other reasons that we heard or one of the other comments we heard was that this does not shift liability away from the retailer, and actually it does, because it shifts the liability to deeper pockets. And when the retailers are involved, they're going to go after the people with more money, and that's just the way it usually works out. In addition to that... [LB693]

SENATOR ASHFORD: But there's nothing in this bill that covers... [LB693]

KATHY SIEFKEN: What? [LB693]

SENATOR ASHFORD: There's nothing in this bill that covers your clients. [LB693]

KATHY SIEFKEN: Not yet, but we're one amendment away. [LB693]

SENATOR ASHFORD: Well, okay, but there isn't any... [LB693]

KATHY SIEFKEN: I mean you heard... [LB693]

SENATOR ASHFORD: ...there isn't anything in here that covers your clients. [LB693]

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KATHY SIEFKEN: Not yet. [LB693]

SENATOR ASHFORD: But you're anticipating that it will or... [LB693]

KATHY SIEFKEN: And I'm anticipating that that will happen, and the reason I am is because you heard testimony just a few people ago that said that everybody ought to be involved in this, not just the bars. [LB693]

SENATOR ASHFORD: Okay. Fair enough. I just...it's just that you're not in here and I don't know of any...Senator Carlson proposing any such amendments. But go ahead. [LB693]

KATHY SIEFKEN: And a few years ago, when Senator Kruse introduced the legislation, we were part of this issue. And the thing is, when people come through a grocery store, we've got about six seconds to look at them to determine whether they are intoxicated or not. We do take this very seriously. We train our people. We've set up compliance checks in Omaha and in Lincoln that are very, very cost-effective for our members and we're trying to take that program statewide. Again, with the turnover that we've got in the grocery industry, which is over 100 percent, that training is very important and it's something that we continue to work on. And I want you to know how seriously we take all of this and there is an answer and it's called interlock ignition. And if interlock were passed in this state and everyone that has a first offense would be required to install interlock, you wouldn't have second offenses. You would keep those people off the road. With that, I'd be happy to answer any questions. [LB693]

SENATOR ASHFORD: Let me just comment briefly and then I'll turn it over. I think the argument Senator Carlson makes, and I think he makes a good argument, is that the...clearly, if you've got an offense and there you can do interlocks, you can do all sorts of things, and we'll hear more about that in a few minutes, but we're talking about people who are in an establishment, theoretically not one of your clients' establishments so it doesn't apply to you, but people who spend some time and they are able to be observed and they are sort of that first line of defense against someone who is quite intoxicated, like the case we've heard now here today and last year. I do see a significant difference between that and your clients. In fact, I don't even see any...but I appreciate your... [LB693]

KATHY SIEFKEN: Given the history... [LB693]

SENATOR ASHFORD: ...I'm not being argumentative. I just...I think Senator Carlson, I believe, and I don't want to speak for him, is talking about something not...not what you're talking about. But, yes, Senator. [LB693]

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SENATOR COUNCIL: Yes, Ms. Siefken, through your association, what is the extent of the...let's use Iowa, your association follow what goes on in Iowa... [LB693]

KATHY SIEFKEN: In Iowa? [LB693]

SENATOR COUNCIL: ...with regard to dram shop? [LB693]

KATHY SIEFKEN: They do have dram shop over there, yes. [LB693]

SENATOR COUNCIL: Okay. Does it apply to retailers? [LB693]

KATHY SIEFKEN: I believe it does, because when I talk to my retailers about this that have stores in Iowa, they informed me that their insurance was ten times higher in Iowa than in Nebraska because of dram shop. [LB693]

SENATOR COUNCIL: Thank you. Thank you. [LB693]

SENATOR ASHFORD: Yes, Senator Lautenbaugh. [LB693]

SENATOR LAUTENBAUGH: Thank you for coming today. So you can see the bill, as written, doesn't apply... [LB693]

KATHY SIEFKEN: Uh-huh. [LB693]

SENATOR LAUTENBAUGH: ...to your industry currently. But we have a dram shop that applies to minors. [LB693]

KATHY SIEFKEN: Uh-huh. [LB693]

SENATOR LAUTENBAUGH: And this would be an expansion to adults. [LB693]

KATHY SIEFKEN: Correct. [LB693]

SENATOR LAUTENBAUGH: And years...a couple years back it was proposed to cover your industry as well. [LB693]

KATHY SIEFKEN: Uh-huh. [LB693]

SENATOR LAUTENBAUGH: So the basis of your concern is we're not very far away from including you as well. Is that... [LB693]

KATHY SIEFKEN: Correct. [LB693]

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SENATOR LAUTENBAUGH: And there's a historical precedent for it being talked about at least. [LB693]

KATHY SIEFKEN: Correct. Uh-huh. [LB693]

SENATOR LAUTENBAUGH: And it was talked about today. [LB693]

KATHY SIEFKEN: Uh-huh. [LB693]

SENATOR LAUTENBAUGH: Thank you. [LB693]

KATHY SIEFKEN: Yes. [LB693]

SENATOR ASHFORD: Thanks, Kathy. Next opponent. [LB693]

TIM KEIGHER: Good afternoon, Chairman Ashford, members of the committee. My name is Tim Keigher, it's T-i-m K-e-i-g-h-e-r. I appear before you today in opposition to LB693 on behalf of the Nebraska Petroleum Marketers and Convenience Store Association, and, yes, we do understand that this bill, as written, does not include us, but we feel because of the way that other bills have been drafted in the past we have been included. And as the gentleman with the bar owners, you know, if he's going to be in, he'd like everybody else to be in too. So I'm not going to waste any more of your time. That's all I'd like to say. Thank you. [LB693]

SENATOR ASHFORD: Thanks, Tim. Any questions? Seeing none, thanks. Next opponent. [LB693]

JIM OTTO: Senator Ashford, members of the committee, my name is Jim Otto, O-t-t-o. I'm president and registered lobbyist for the Nebraska Retail Federation. Same "me too" from the last two testifiers. We totally recognize this bill does not include us; however, this would be, as Senator Lautenbaugh stated, the basis for including us some time in the future. [LB693]

SENATOR ASHFORD: But, Jim, remember, though, when we're talking about minors, you can't serve to minors. [LB693]

JIM OTTO: I agree. [LB693]

SENATOR ASHFORD: So, you know, this is...and Senator Lautenbaugh makes a great...asked appropriate questions, but the reason we...we're not talking about...we're talking about serving to adults who we can sell liquor to. [LB693]

JIM OTTO: I agree. I'm just saying... [LB693]

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SENATOR ASHFORD: So it's quite a difference. I wish we could just stay on the bill that we're talking about is all. And I'm not...you can say whatever you want, but I just...thanks. [LB693]

JIM OTTO: At some point in the future, there will be...if this were to pass,... [LB693]

SENATOR ASHFORD: Well, okay. [LB693]

JIM OTTO: ...there would be an attempt and it would be based on this bill. [LB693]

SENATOR ASHFORD: Something could always happen some day. [LB693]

JIM OTTO: So we have...I guess since I'm so old I know that. [LB693]

SENATOR ASHFORD: Yeah. No, I...no, that's a fair comment. I just... [LB693]

JIM OTTO: I would just suggest a couple things and then I'll be very brief and get out of here. Senator Carlson mentioned, and we totally agree, I guess I'd like to state all the things I agree with, we agree with on the proponent side. First of all, we totally agree that if these tragedies, as Senator Carlson stated, if these tragedies could be avoided or prevented, I mean that is what we all want to do. Dr. Osborne stated that the server is in the best position. We totally recognize that. What we really think this bill is lacking is any emphasis or a lot of emphasis on training, and we would like to take up Senator...or, excuse me, Mr. Partington's offer to start this discussion that there maybe is something that we could actually come to, but that something would have to include significant training. And if...I would go back, I think Ms. Riibe stated that over 50 percent are actually served in a bar, but that means maybe 40-45 percent get their alcohol some other way and those should be included and those people should be trained also. We would like to be part of that discussion. We aren't necessarily being objectionable but this bill, with its punitive damages and not including training, is not something we can do. [LB693]

SENATOR ASHFORD: What punitive damages are we talking about? [LB693]

JIM OTTO: Well, you can be held liable for everything that happens if...not against a retailer. [LB693]

SENATOR ASHFORD: We don't have punitive damages in Nebraska. [LB693]

JIM OTTO: Okay. I'm not an attorney. Apologies. [LB693]

SENATOR ASHFORD: Okay. Okay, all right. Yes, Senator Council. [LB693]

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SENATOR COUNCIL: Yes. Mr. Otto, I certainly appreciate your position and that's why I asked Kathy about her understanding of what the Iowa dram shop...but the concern and it is...I was addressing it in my question to Mr. Partington, because in his comments he understood that the standard for the imposition of liability was noticeably intoxicated, something that you can visually see, and that's not how the law...that's not how the language of the bill is written. It says "knew or should have known." And so that suggests that there are...that people can be intoxicated without having visible indicia of intoxication. And, you know, my concern, and believe me, I respect and appreciate the retail and convenience store concern right now, but is it fair to hold one liquor serving establishment more accountable than another if the standard is noticeably intoxicated? [LB693]

JIM OTTO: My members may not agree but I have to say it is not fair. If we sell alcohol, we ought to be held to the same standard. [LB693]

SENATOR COUNCIL: Okay. Thank you. [LB693]

SENATOR ASHFORD: Thanks, Jim. Yes, Senator Lautenbaugh. [LB693]

SENATOR LAUTENBAUGH: And just to clarify, Mr. Otto, when you spoke of punitive damages, you didn't mean as in the legal sense for other states that have that kind of particularized damages as a legal term. [LB693]

JIM OTTO: Correct. [LB693]

SENATOR LAUTENBAUGH: You meant damages that are punishing in a way because they exist and they cost money. [LB693]

JIM OTTO: Thank you for helping me. [LB693]

SENATOR LAUTENBAUGH: That would explain... [LB693]

SENATOR ASHFORD: I'm glad to have Senator Lautenbaugh ready and willing to clean up after every question that I ask. (Laugh) [LB693]

SENATOR LAUTENBAUGH: And... [LB693]

SENATOR ASHFORD: I think...go ahead. [LB693]

SENATOR LAUTENBAUGH: As sort of a follow-up, were you here when the liability...dram shop liability for minors was passed? [LB693]

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JIM OTTO: Yes. [LB693]

SENATOR LAUTENBAUGH: Did anyone raise the concern that the next bill would be dram shop for everyone? [LB693]

JIM OTTO: I think it was raised, pretty sure it was raised. [LB693]

SENATOR LAUTENBAUGH: Or at least like this bill was the concern then. So now we're here, hearing... [LB693]

JIM OTTO: As I recall, the way we got to minors is there was a dram shop bill for everyone and it was amended to minors. I think that's how we got there. Maybe Senator Lathrop could help me there. [LB693]

SENATOR ASHFORD: Well, I think, quite frankly, what happened was we were trying to find a comprehensive bill dealing with minors and it included civil liability but it included other issues as well, and our focus was civil liability. But I understand...I think training is one of those...we've both been here a long time, Jim, and training is always one of those terms that gets thrown around as a defense every time dram shop comes up--let's just have training. Well, the problem is, if you have somebody...here's the problem that we're trying to address and I don't know what the best way necessarily to address it is, but you have somebody in a bar, in a tavern for a long period of time who is obviously intoxicated, remains there for a period of time, they continue to drink. You know, it's obvious they're intoxicated. That's the kind of case that does result in serious injury or death. You're not going to get that solved with interlocks. You're not going to get that solved with after-the-fact kinds of remedies. And so I don't know what the answer is necessarily. Senator Carlson is bringing something to us and has before that is a potential remedy to that particular situation. It's a shared responsibility. The damages are shared by the driver, they're shared by whomever is held responsible by a jury. It isn't only this, in a dram shop environment, it isn't only the seller of the liquor. So I don't think...we're not dealing with criminal sanctions, we're not dealing with interlocks. Those may all be good ideas. I don't know. But I do know that it wouldn't have helped in the case, the Cowan case, and I think that's what we're here to address, is that kind of situation. [LB693]

JIM OTTO: I agree with that. I would just add that, as I understand, this bill does not include any other than the fact that maybe you could avoid some...there is no real training part of this bill and I would think... [LB693]

SENATOR ASHFORD: I get that point, except training is not the answer only. It may be... [LB693]

JIM OTTO: It's not the answer by itself. I agree with that. [LB693]

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SENATOR ASHFORD: That's all I'm saying. Okay. Thanks. [LB693]

SENATOR LAUTENBAUGH: And, actually, I wasn't finished, Chairman Ashford, but... [LB693]

SENATOR ASHFORD: Oh, okay. [LB693]

SENATOR LAUTENBAUGH: So you were around when we passed dram shop for minors. Do you recall anyone at the time during the floor debate, as this thing was being passed, talking about, well, the next step will be dram shop for everyone else? [LB693]

JIM OTTO: You have to help me on that. On the floor debate I'm not sure. I would... [LB693]

SENATOR LAUTENBAUGH: Well, even in the committee as the amendment... [LB693]

JIM OTTO: Well, in the whole discussion and in testimony in committee I'm almost positive that occurred, but... [LB693]

SENATOR LAUTENBAUGH: Now you're sitting here today saying this bill doesn't apply to the industry you represent... [LB693]

JIM OTTO: Today. [LB693]

SENATOR LAUTENBAUGH: ...but you have a logical concern that that would be the next step. [LB693]

JIM OTTO: Correct. [LB693]

SENATOR LAUTENBAUGH: And while you're making a slippery slope argument, you're kind of basing it on the history that you've actually seen unfold. Is that correct? [LB693]

JIM OTTO: Yes, it is. [LB693]

SENATOR ASHFORD: But if I might, Senator Lautenbaugh, the difference, the difference is, and this rarely happens, I have great respect for Senator Lautenbaugh's debating skills, but essentially what...the significant difference and why I tried to ask the questions I did, not very artfully apparently, is the fact that the difference here is we have someone who is observing a potential problem and that's a bartender or someone who is observing what's going on, and that's what makes it difficult. That's why, in my view, your establishments or convenience stores, whomever, petroleum group, whomever it is, is not really what we're talking about here. We're talking about a

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situation. And it's perfectly logical that if a dram shop law applies to minors it should apply to adults. I mean it's perfectly logical and I don't think it was a threat that it would or wouldn't. I think we were just dealing with minors at the time. So anyway, enough said, unless Senator Lautenbaugh has another. [LB693]

SENATOR LAUTENBAUGH: I'll let it go, Mr. Chairman. [LB693]

JIM OTTO: If I could just add one thing, the reality is, whether or not...I mean you are correct, Senator Ashford, that's what's being discussed right here today. The reality is that in Iowa the motorcyclists that got killed by the tragedy, tragedy of the young man that went across, that was an off-sale. It wasn't a bar. [LB693]

SENATOR ASHFORD: I understand that but we're not dealing with that. [LB693]

JIM OTTO: I know, but we will be. That's all I'm saying. [LB693]

SENATOR ASHFORD: Well, then we will be. Maybe we should be, (laugh) you know? So maybe that is the answer. Maybe we should be and then maybe we can have an impact on these deaths, is if we...maybe we should apply it to everybody that sells liquor. They have a license to do it. They have the ability, the state gives them the ability to do it. Maybe we should. I mean, you know, there is no question that there is a relationship between, you know, selling to someone who is...may be or reasonably could be assumed to be intoxicated. It results in further harm. Now what the state should do in that regard or what we should do is a matter of debate and that's why it's incremental, because every time we have one of these discussions there is all the opposition--well, don't include me, don't include me, don't include me, don't include me. So I think that's why it's more incremental. So I don't think we should be faulted for being incremental because the reason we're incremental in many respects is because we've got the opponents who come in and say, don't include us, so we're incremental, you know? And is that the best way to make policy? Probably not. So the best, you know, anyway... [LB693]

JIM OTTO: Absolutely, I understand that completely, but we're here anyway, so I guess...(laugh) [LB693]

SENATOR ASHFORD: All right. No, this is serious stuff. [LB693]

JIM OTTO: Yeah, I agree. [LB693]

SENATOR ASHFORD: People are getting killed and it's serious stuff. [LB693]

JIM OTTO: Absolutely. Absolutely. [LB693]

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SENATOR ASHFORD: Okay. All right. Thanks. [LB693]

JIM OTTO: Thank you. [LB693]

SENATOR LAUTENBAUGH: Well, and I guess this really isn't a question but it's a comment. If it is, if we're conceding we're incremental, I don't think the witnesses are unreasonable for being worried about incrementalism. [LB693]

SENATOR ASHFORD: Well, then you...(laughter) then in fact, Senator Lautenbaugh, you win and maybe we should apply this to everybody and we can stay here till 7:00 at night, but... [LB693]

JIM OTTO: I just want to make the point that we are, we being the Nebraska Retail Federation, want to be involved in that discussion to figure out something that can be done. [LB693]

SENATOR LATHROP: Okay. I'm going to weigh in just a little bit. First of all, when we did the Minor Alcoholic Liquor Liability Act, it started out as a Lowen Kruse bill that addressed both issues and it was...there were political problems getting it through the Legislature, so we amputated the dram shop and did the Minor Alcoholic Liquor Liability Act. That's the first point I'd like to make. The second one is every time the dram shop act comes up we get a line of people that come in and say, it's about server training, let us be involved in the discussion, and no one talks about it until the bill is here. And it's a little disingenuous for people to come up and say you're about to get me, I'll be the next person, let's talk about server training. I would say that after today we ought to line up in Senator Carlson's office and talk about server training and what that should look like. But it turns into something we care about when this dram shop bill comes up, and I'm not yelling at you, Jim, but it's something we care about when dram shop comes up, and when we have these families, these poor people that come in here with lost loved ones, we talk about server training but we don't do it unless there's a dram shop bill here. And then when the thing dies or it doesn't move because we've had about one-half of the lobby in here telling us that we're doing the wrong thing, it goes away and nobody does anything. And we don't need a dram shop bill for you and everybody who's already testified to get together and say this is what server training is going to be like; it's now mandated, and if you don't do it you lose your license. There are a lot of ways to skin this cat. And the frustration I think that we experience today is that it's against the law to be serving people to this point of intoxication and nothing happens when they do. And then when people go out on the road and get killed, we say, well, it was that person's fault because they should have stopped drinking. All I'm saying I guess at this point is that, sure, it is about server training. If people would stop serving the intoxicated, it would be over with and this wouldn't be happening. But the question now is whether or not we need to put some bite into it because we've had this conversation every time, every single year since I've been here. Lowen Kruse was...championed this issue every

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year, every year; and every year the bill would get somewhere and we'd go huddle somewhere and everybody would talk about server training and nothing would happen. So I guess if this bill doesn't move, and maybe I'll make this pledge, if this bill doesn't move, and I don't know if Senator Carlson intends to prioritize it, I will see...I will work for it to move if we don't have a significant server training in place, okay? [LB693]

JIM OTTO: May I reply? [LB693]

SENATOR LATHROP: Yeah, absolutely. [LB693]

JIM OTTO: I can't...or excuse me, I agree with everything you said, Senator. I just want to say from my point of view, the Nebraska Retail Federation, a year ago when this came up and Senator Carlson introduced it, I didn't know who to call. I knew Dr. Osborne was going to testify. I actually called Dr. Osborne's office, left a message, said we would like to have this discussion. He called me back. We talked about it. It didn't go any further than that. Senator Carlson had a meeting, and actually I was...and we talked about it. I called again, left that message. I guess I feel that we have put out the, you know, we're asking the other side to come talk to us seriously about server training. I don't know, so... [LB693]

SENATOR ASHFORD: Who is the other side though? Who's the other side? You mean... [LB693]

JIM OTTO: I don't know. Who is the other side? [LB693]

SENATOR ASHFORD: ...Senator Carlson or...? (Laugh) [LB693]

JIM OTTO: So I'm just saying the people that are truly proponents, maybe it's Mr. Moodie. Maybe it's Mr. Moodie and we have to get together and talk about it. I don't know. But I have made the calls to say we would be glad to talk about it and we are. [LB693]

SENATOR ASHFORD: Okay. Thanks, Jim. [LB693]

SENATOR LATHROP: Thanks, Jim. [LB693]

JIM OTTO: Thank you. [LB693]

SENATOR ASHFORD: All right, let's have one more opponent. [LB693]

KORBY GILBERTSON: Good afternoon, Chairman Ashford, members of the committee. For the record, my name is Korby Gilbertson, it's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of the Property

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Casualty Insurers Association of America in opposition to LB693. I'm going to try to skip over the big picture and look directly at some issues within the bill that have caused issues when we were reviewing it. Mr. Moodie talked about the standard being "should have known" or "known or should have known" that the person was drunk. What he left out was the second part of that standard which was also "should have known that a person would become intoxicated." That is entirely broad. Obviously, you could drag that out to meaning that everyone knows that if you drink alcohol you can become intoxicated; ergo, if you serve someone one drink and they, no matter what they did the rest of the evening, if they had one drink at your establishment, you are on the hook. That is our second concern with this legislation. Let's say I go out for an evening, I stop at a local bar after I leave the Capitol, have one glass of wine there, I go home and have dinner and have another drink with dinner or something, and I end up at a small town tavern I like to visit every once in a while and there I have one beer. So at the end of the night I get in a car accident. It's determined that it was my fault. Which one of those bars was at fault or was it the alcohol I consumed at home? Under this legislation, all three of those establishments or two...both of those establishments would be on the hook, and there is no subrogation so there is no way for those people to go after the actual party who served the actual drinks that got the person who is at fault intoxicated. That is another concern with the bill. And inside that concern is that they might go after that group with the deepest pockets. You will look at, because there's no subrogation, all of a sudden, even though I might have served the person the first beer they had that night and refused to serve them any more, if they were doing the right thing, all of a sudden, just because they would have the deepest pockets, they could be held liable for the whole thing because you could not recover from the other parties. Those are concerns and for those reasons we oppose the bill. I'd be happy to try to answer any questions. [LB693]

SENATOR ASHFORD: Senator Council. [LB693]

SENATOR COUNCIL: Korby, you were present when I was asking Mr. Moylan some questions about... [LB693]

KORBY GILBERTSON: Yes. [LB693]

SENATOR COUNCIL: ...liquor liability coverage and premiums. [LB693]

KORBY GILBERTSON: Uh-huh. [LB693]

SENATOR COUNCIL: Did you see the sample he... [LB693]

KORBY GILBERTSON: I did not see the sample and I actually tried to get some different...tried to get ideas of what policies would cost. Since the statute or since the proposed language says that the limits would be established by the Liquor Control

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Commission, obviously I couldn't get anything specific. What we did look at is in other states where they do have dram the rate for the actual dram coverage, I saw one instance where the basic business policy was a little over \$3,000, the additional insurance for the dram coverage was another \$700. Then I also saw it up to over \$1,000 for the additional dram coverage. But it all will depend on what the Liquor Control Commission would set as the limits. [LB693]

SENATOR COUNCIL: Okay. Because the gentleman who owns Brewsky's, I think his experience is a little closer to my experience. I mean you get the general business liability coverage... [LB693]

KORBY GILBERTSON: Right. [LB693]

SENATOR COUNCIL: ...and, you know, you try to get that at \$1 million, okay, and that puts a pretty steep one in your wallet. And then even without dram shop laws, at least it's my experience, most bar owners obtain liquor liability coverage,... [LB693]

KORBY GILBERTSON: Liquor liability, uh-huh. [LB693]

SENATOR COUNCIL: ...because that's the business you're in. And I was sharing with my colleague, Senator McGill, that the last time I renewed, and it would have been 2007, the rider for my liquor liability coverage was at \$8,500. And I don't know what they use. I mean there's never been a claim, never been a claim under even the business general liability, and I guess I was just shocked. And if that's what...without a dram shop, if the premium was \$8,500, what would it be with a dram shop? [LB693]

KORBY GILBERTSON: One could guess significantly higher. [LB693]

SENATOR COUNCIL: Okay. [LB693]

KORBY GILBERTSON: I left one part out, which was the statute of limitations. The four years concerns us basically because it would be hard to find an employee that would still be there, let alone try to reinvent what happened. [LB693]

SENATOR COUNCIL: Thank you. [LB693]

SENATOR ASHFORD: Thanks, Korby. Yes, Senator Larson. [LB693]

SENATOR LARSON: Thank you, Korby, for coming in and testifying. And you mentioned the broad language in your testimony and I guess that just brought up some points that I'd thought of, you know. And maybe you can't answer these but, you know, to make the point for the record, what if the bartender had every reason to believe that the intoxicated person would not be driving home, a designated driver? Would that

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bartender have to stop serving them at a point even if they knew they weren't going to drive, and that person changes their mind and does end up driving? I mean where does the liability end and begin with a bill such as this? [LB693]

KORBY GILBERTSON: I think that that's our main concern, is that, because of the broad definition of "knew or should have known that they could become intoxicated." You're really requiring them to have quite an accurate crystal ball. [LB693]

SENATOR LARSON: Yeah, I just...and that's one of the big things that, you know, that I have, because there could be every intention that they're not driving home and then they end up...do for one reason or the other. So that bothers me. [LB693]

SENATOR ASHFORD: Thank you, Senator Larson. Thank you, Korby. [LB693]

KORBY GILBERTSON: Thank you. [LB693]

SENATOR ASHFORD: Any...well, that's the last opponent testifier. Do we have any neutral testifiers? And then we'll go to Senator Carlson to close. [LB693]

HOBERT RUPE: Thank you, Senator Ashford. My name is Hobert Rupe. I'm the executive director of the Nebraska Liquor Control Commission and I was actually hopeful I wouldn't even have to testify, but I think there are some issues that have been brought up that I feel incumbent upon me to bring up and discuss. The first has been said, you know, there's been some allusions made to our current rule, and just to let you know what is the purpose of our current selling to a visibly intoxicated rule. The underlying philosophy underneath it is that someone can consume alcohol to a point where they can no longer make the rational decision themselves to stop drinking and, therefore, that burden, then we shift that over to the responsible licensee. Now people always try to merge that into drunk driving and really you're comparing apples and oranges on that one. As Senator Council probably knows, there's two full pages in the act going through the visible indicia that we will utilize at a hearing in front of the commission. They include such things as stumbling, staggering, loss of fine motor controls with change, that sort of stuff. And the amazing part about that is most of those visible cues are pulled right from the training courses, the approved, the certified training courses as to what is a person who's gone over the limit to a level. So, you know, it's not really to stop somebody from getting to .08, because you can be at .08, .09 and not have very many of those visible cues. Ours is really designed, sort of a reasonable bartender test, that somebody behind the bar is going to see this person and come to the conclusion this person needs to be cut off at this point. That's sort of what our existing rule is. Of course, some people, Senator Ashford, you said that, you know, nothing happens. Well, there's a couple bars I think that are a little bit...would disagree with you. There's one bar in downtown Lincoln... [LB693]

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SENATOR ASHFORD: I don't think I said that... [LB693]

HOBERT RUPE: Yeah. [LB693]

SENATOR ASHFORD: ...but go ahead and go to the next point. [LB693]

HOBERT RUPE: Okay. Well, there's one (inaudible) we hit a couple weeks ago for a 60-day suspension, would be a \$6,000 fine. [LB693]

SENATOR ASHFORD: No, I don't think I said that. Why don't we go to the next point. [LB693]

HOBERT RUPE: So, okay. All right. The next point, you know, that got brought up is I was reading the act about who would be covered under this and Kathy Siefken was right, most of her licensees, as grocery stores, would not be liable under their off-sale privileges. However, those same grocery stores have what we commonly call a restricted C. They get an on- and off-sale with a limitation only for tastings. Any one of those wine or beer tastings, the way I would read this act, they would possibly be covered by this. The other area (inaudible) must be licensed by the commission, any of your special designated licenses, any of your street dances and your events. Those all receive liquor licenses. So I'm just reading the rules, who we license for those sales. The commission issues licenses. They're generally divided into either on- or off-sale for retail licenses or both, and so anybody who would have an on-sale privilege and be utilizing it would possibly be covered by this act for coverage purposes. And the last issue I was going with is in training. As you're aware, a couple years ago, not the last time which resulted in the Minor Liability Act but the attempt for dram shop beforehand, had a proposal to have a certified training program as an affirmative defense. Well, that went ahead and passed, but the underlying bill didn't. It was a separate statute. So the commission had the ability then to create certified training programs, and so what have we done with those? We've got about nine of those currently certified. We offer some...we help support the on-line, which the University of Nebraska currently exists. It's the only one accessible statewide. And interesting, what we've been using lately is the court has said we can place reasonable conditions upon a licensee for a violation so oftentimes we get those first offenders for failure to sell...to...on compliance check or sell to a visibly intoxicated. Not only will we do the normal days of suspension, but the commission will place that all the members of that staff have to take one of our certified training courses within 90 days. So that's how we're utilizing the existing training powers we have. [LB693]

SENATOR ASHFORD: Okay. Thanks, Hobie. Senator Council and then Senator Larson and then we'll go to Senator Carlson. [LB693]

SENATOR COUNCIL: Okay. Mr. Rupe, thanks for deciding to testify because...and I'm

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glad you went over the training and the requirements currently in the commission, and that's the point that I was making in some of my questions about the way the bill reads now. Under the Liquor Control Commission's current rules, a retail licensee who's serving by the drink is held to a standard of visible intoxication, you know, not should have known but there are visible signs that say...telling me that this person doesn't need to consume any more alcohol. [LB693]

HOBERT RUPE: Yes. [LB693]

SENATOR COUNCIL: But the question I want to ask you because some...one of the testifiers mentioned the--and I just want to correct what I think would be a misunderstanding that people would leave here with--made the statement that there are a lot of not-for-profits that go out and get special designated permits so that they can serve alcoholic beverages at their function. At least it's been my experience and my understanding of the rules of the commission that if I am not a licensee, because licensees can get special designated permits, but if I'm not a licensee I can't get a special designated permit unless a licensee agrees to allow me to make that application under his or her license. [LB693]

HOBERT RUPE: That's absolutely incorrect. [LB693]

SENATOR COUNCIL: Okay. [LB693]

HOBERT RUPE: There are two classifications who can get SDL, special designated license. The first, of course, are licensees and that's our preference because if something...if there's a violation, we have the hammer to hold them. The other ones are certain nonprofits--museums, nonprofits. They can get a special designated license under the statute. You see quite a few of them. Celebrate Lincoln, for instance, by what used to be called the Updowntowners, that's an example of a nonprofit here in Lincoln that gets a large one. The Omaha Arts Council gets an SDL for the Arts Festival, so that's a nonprofit who is getting an SDL for that particular place for that limited amount of time to sell alcohol. So there is the other people who can, you know, besides the actual licensees who can acquire them. [LB693]

SENATOR COUNCIL: Okay. But I'm just saying, too, and there's another. I mean if my friend Mr. Harr wants to have a gathering at a public place that's not licensed and he would want to serve alcohol, he's not a not-for-profit, but I could get a special designated permit, he could apply for a special designated permit if I sign under my license. [LB693]

HOBERT RUPE: Exactly. He would have to go to a licensee to get the permit and that's where your caterers or your bars will get those licenses. [LB693]

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SENATOR COUNCIL: Okay. [LB693]

HOBERT RUPE: That's the other mechanism to get those. [LB693]

SENATOR COUNCIL: Okay. Thanks. [LB693]

SENATOR ASHFORD: Senator Larson. [LB693]

SENATOR LARSON: Thank you, Senator Ashford. And mine actually goes right along with Senator Council's questions and I actually...I have the privilege of seeing you quite a lot in General Affairs Committee so... [LB693]

HOBERT RUPE: Most people would probably dispute the word "privilege" but... (Laughter) [LB693]

SENATOR LARSON: But...and we've discussed these SDLs quite a bit in our conversations in General Affairs. The university gets quite a few SDLs, don't they? [LB693]

HOBERT RUPE: Yes, they do. [LB693]

SENATOR LARSON: So they could, under this bill, be held liable actually? [LB693]

HOBERT RUPE: They probably could. Most of the university, I will say, the university utilizes caterers. They will have approved caterers. So in that case I would probably think the caterer licensee would be held liable, but the university has a list of approved caterers who are able to get licenses, say at the Lied Center, something like that. [LB693]

SENATOR LARSON: Okay. [LB693]

HOBERT RUPE: But other...but you're absolutely right. There are other municipalities who get SDLs who could be liable or government agencies. [LB693]

SENATOR LARSON: Do a lot of small town...I know I have a lot of volunteer fire departments that have street dances or whatnot. A lot of times those are SDLs. [LB693]

HOBERT RUPE: Yes, they are. [LB693]

SENATOR LARSON: And they would, at that point, be held liable if... [LB693]

HOBERT RUPE: Yes, they would actually be the holder, as a nonprofit, of the SDL license and they could be held liable under any of this of the service of alcohol. [LB693]

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SENATOR LARSON: And then also I guess, and this brings up just the last point because we were talking about them the other day with the swipe cards, Brix has the wine tasting in Omaha. That's one of the examples of the hybrid. They have the retail side that Mrs. Siefken represents that side, but they also have the wine tasting side that they would be held liable in something... [LB693]

HOBERT RUPE: Yeah, their license, they have a Class C liquor license for both on- and off-sale purposes. [LB693]

SENATOR LARSON: And that's what you were discussing... [LB693]

HOBERT RUPE: Yeah. [LB693]

SENATOR LARSON: ...when we were talking about that. [LB693]

HOBERT RUPE: Yeah. For instance, I'll give an example. Hy-Vee does more wine sales than almost any other company in the state of Nebraska. They have a lot of...they used to get a lot of SDLs but, because of the number, that's why we came up with a C with the limitation for only tastings. But they do a lot of...there's a lot of on-premise consumption right there in the store when they would be the licensee who would be, you know, they're slinging the wine. [LB693]

SENATOR LARSON: So again it goes back to the broad language of the bill opens up a lot of doors that could cause problems in the future. [LB693]

HOBERT RUPE: Yeah. I just want to make sure that who is under...who has a license under the commission to sell alcohol by the drink and that's...I was trying to clear up that issue. [LB693]

SENATOR LARSON: Thank you. [LB693]

SENATOR ASHFORD: Thank you. Senator Carlson. (See also Exhibits 8, 9, 10, 11, 12, 13, and 18.) [LB693]

SENATOR CARLSON: Senator Ashford and members of the committee, thank you for giving this time to this bill. I want to thank those that came to testify, specifically Coach Osborne and Michelle and Anna Jo and Anthony and others. And I appreciate the remark that was made several times during this hearing, it is against the law in Nebraska to serve alcohol to an intoxicated person. It's the law, but bad things are still happening. So just being the law doesn't appear to be enough. Now the next comment is meant to be a little bit humorous. I look at the testimony of Jim and Kathy and Jim. Prior to this remark, they were friends of mine. (Laughter) But it's almost like we're

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afraid of dram for everyone and we might be next, and I think underneath is maybe we're kind of afraid this might work. If it works, we'll be next. Well, if it works, is that a bad thing? I don't think so. And I've just written down a few comments in listening to various testimonies. I know the bill is rather general. Now there's an advantage in having a bill that's worded rather generally because it causes people to say this is dangerous, we better be careful. And without getting into a position I don't want to get into, if we need to be more specific on some things in the bill, I'm okay with that, I think. Right now there's no limit on liability. Should there be a limit on liability? I've heard some other terms brought up: noticeably intoxicated, visibly intoxicated, obviously intoxicated. Well, that narrows it down but it's better than not having a bill. Then the idea of training, it would be very, very logical that adequate training provides a line of defense and that should be encouraged. And training is good but training by itself may not be enough. I read a good book that says if a man knows what to do right and then doesn't do it, it's a sin. So knowing what you should do and not doing it doesn't really help. The cost of insurance, I'll simply share this. A couple of months ago another senator called me because out in Holdrege it's kind of hard to get KFAB but there was a talk show on KFAB talking about this bill and the other senator wanted me to know that a bar owner from Council Bluffs called in to the program and said, I don't understand what the big deal is about people in Nebraska afraid of dram shop; we've got it and we're getting along with it. Well, that's a whole lot better statement than saying, we've got it and don't you do it in Nebraska. That wasn't the comment. Interlocks are good and we should pursue more interlocks. Interlocks don't prevent the first offense. And so again I thank you for listening and considering this bill. I'd be happy to work in any way. I appreciate the work done by Senator Lathrop and Senator Ashford and others up to this point and would work with the committee to refine it in any way that might be appropriate. I'll try to answer questions that you may have. [LB693]

SENATOR ASHFORD: Senator Harr. [LB693]

SENATOR HARR: I have a quick question and I honestly don't know the answer but it goes along with what you were saying: If it works they're worried that it might come after them. My question is we're not the first state to do dram shop. Matter of fact, we're one of the last not to have it. Are there any empirical statistical numbers that says it works or doesn't work? [LB693]

SENATOR CARLSON: Yes, there are, and as I sit here I'm not prepared to quote statistics. I think virtually every state that has it will say that it's worked. To what degree, now one of the figures I heard was it would lower deaths by 6 percent. Well, if we had 100 deaths a year, that is 6 people. And if you start multiplying by years, that becomes pretty significant. Wouldn't it have been wonderful if one of those six saved had been Mr. Cowan? So it would be nice to have a record that would say it cuts deaths by 75 or 80 percent but if it cuts by just a reasonable percentage, I believe it's worthwhile. [LB693]

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SENATOR HARR: Okay. Thank you. [LB693]

SENATOR ASHFORD: Thank you, Senator Carlson. [LB693]

SENATOR CARLSON: Okay. Thank you. [LB693]

SENATOR ASHFORD: Speaker Flood. Mike, just give it a half a second here.

SENATOR FLOOD: And, Senator, the Buffalo County Attorney is going to follow me. He's got to get back to Kearney. And then Mr. Lutton will be after him, so...you ready to go?

SENATOR ASHFORD: Yeah, let's go ahead. Could we just...everybody, if they would just quiet down just a bit because we're going to go to the next bill now.

SENATOR FLOOD: Good afternoon, Chairman Ashford, members of the Judiciary Committee. My name is Mike Flood, F-l-o-o-d, and I represent District 19, which includes Madison County and specifically the city of Norfolk. Let me begin by saying that all the people here, both proponents and opponents, all of the advocacy organizations represented, are after the same thing. We all have a goal to protect the public and keep drunks off the roads. There are many provisions of this bill that have widespread agreement. They include: criminalizing the intoxicated transportation of a child; making motor vehicle homicide and DUI serious bodily injury distinct crimes from DUI; removing the 12-year look-back limitation from the DUI enhancement statutes; creating enhanced penalties regarding boating under the influence; creating the enhanced punishment of a Class III felony for procuring when it proximately causes serious bodily injury or death; raising the punishment for traditional procuring offenses to include a mandatory minimum two days in jail as part of the Class I misdemeanor penalty; and increasing the use of interlocks by making ignition interlock devices a condition of bond and making ignition interlock devices mandatory for first and second offenses. The Attorney General and his office together with me and my office have worked on these provisions over the interim. John Freudenberg, criminal bureau chief, is here and will provide further details on these provisions. The point of contention with LB667 and what I would like to take a few minutes to address is the Administrative License Revocation system. ALR has without a doubt the noble goal of swift and sure punishment, yet clearly a majority of law enforcement and prosecutors agree that our current system is broken. Do we continue with ALR as we know it because we are afraid of change or does the current system allow us to feel good about ourselves because we get "tough" on those drunk drivers? I'll provide just one example of the recent tragedies inflicted by drunk drivers in Nebraska. It shows the disconnect in our system. Aaron Danoff was arrested in Sarpy County on August 29, 2010, for DUI and was immediately eligible for scheduled bond. He was released with instructions to

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appear for his first hearing with a judge on October 6. On October 6, 2010, Aaron Danoff did appear and he entered a plea of not guilty. Then, three days later on October 9, 2010, while under the influence again and speeding 20 miles over the speed limit, Aaron Danoff ran a red light near 144th and Q Streets in Omaha, slamming into a car driven by Jessica Bedient. Jessica died days later from her injuries, her earthly life cut tragically short. Tony Bedient, her husband of five weeks, was critically injured. If license revocation were a condition of bond, the system would have immediate control and many options available to oversee and manage the alleged offender. Interlock devices, pretrial reporting, drug and alcohol testing, as well as alcohol monitoring and GPS bracelets, and immediate treatment services would be available and could be reinforced through this legislation. Let's be honest. Taking a license away from an offender doesn't mean that he or she will not get back behind the wheel again. Look at the disregard for the law in the number of driving under the suspension convictions and arrests. According to Mothers Against Drunk Driving, 50 to 75 percent of drunk drivers whose licenses are suspended continue to drive. Suspension sounds tough and it's also easy to suggest that they will take a bus or a taxi, and that may work in Omaha but you'll wait a lifetime in Pierce or Plainview for the bus or taxi. But the fact of the matter is that people keep driving. The idea I've brought forward takes the necessary step of ensuring public safety--and this should be about public safety--by requiring that those who will drive anyway do not drive under the influence of alcohol. Some will say, why not have someone else blow into an ignition interlock device? Well, why wouldn't the sober person just drive anyway? And if someone is caught trying to deceive the system, then make them wear an alcohol monitoring device. What I don't think many in the public realize is that we do not even hold drunks until they sober up in some jurisdictions. Omaha, Nebraska, you get a traffic ticket, you're released after performing the test and blowing into the Intoxilyzer or a test of your blood. In Norfolk, in Kearney, jurisdictions around this state, you're jailed for a night. What's the difference? One, you get a traffic ticket. It looks like a speeding ticket. It's signed on the bottom by the officer and you. The other one, you spend the night in jail. You get your picture taken by a police officer and you end up in a cold cell until 9:00 the next morning. There's a difference. One sends a strong message about public safety; one does not. In fact, those that are arrested, given a ticket, and released are released on the roads with the hope they will honor their bond requirements and appear later to enter their plea. As prosecutors and others have pointed out to me, we missed the most important time to address the wrongdoing--the time immediately following the offense. The current system puts too much time between the offense and any consequence, accountability, or attempt at rehab. It's not swift and sure enough. As I have said from the beginning, let's look at what works the best. If revoking a license and making ignition interlocks a condition of bail is not the answer, then let's figure that out today. I have to have an open mind. I recognize there's proponents and opponents and I'm going to listen very carefully to all the testimony. And with your help, as this committee, I want to sift through all of that when the dust settles and find the best solution because the Legislature is the marketplace of ideas and this is mine. We have these public hearings

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to introduce these new ideas. And as I said at the outset, our goal and mission are the same--Mothers Against Drunk Driving, Project Extra Mile, Office of Highway Safety, the Buffalo County Attorney, the Douglas County Attorney, all of the county attorneys and law enforcement. When I went to Kearney, Nebraska, and a question was asked, who here thinks the ALR system should remain in place--200 law enforcement officers, sheriffs, police were there--not one hand went up in the audience. Who said it should be revoked? Who wants it revoked? Every single hand went up. These are the people that actually have to do the job--the police officers and the prosecutors. Let's listen to them. Let's not immediately flush their ideas down the toilet. This is an idea that they support. I know that the Omaha city attorney is an opponent of this and I understand the criminal defense attorneys are here. I gave the criminal defense attorneys my authority to use Bill Drafters in any way they needed to, to come up with an amendment. My understanding is that Marty Conboy and the criminal defense attorneys can agree on most of their amendment. You know, let's see what that is. Let's learn about it. I'm not here to poke holes. The city attorney...any time the Omaha city attorney and the criminal defense attorneys can get together on the same page, I'm interested to see what that looks like. With that, I'd like to thank the committee and I know you may have questions for me. I would ask you to let...I will be back for closing and will answer all the questions you want. The Buffalo County Attorney's daughter has an event back in Kearney and I'd like to put him up second so that he can make his way back, so if that's okay. [LB667]

SENATOR ASHFORD: Shawn will testify first then. [LB667]

SENATOR FLOOD: Then I'll come back for questions. [LB667]

SENATOR ASHFORD: Or you can close and have questions then. [LB667]

SENATOR FLOOD: Yeah, I'll close and take questions if that's okay. [LB667]

SENATOR ASHFORD: We'll do it that way. Shawn. [LB667]

SENATOR FLOOD: Thank you. [LB667]

SHAWN EATHERTON: Thank you, and I'm Shawn Eatherton, E-a-t-h-e-r-t-o-n, Buffalo County Attorney. And I have sons not daughters, so I don't want to misstate that. I appreciate, again, to have the opportunity to be in front of the committee. I've missed you guys the last couple of weeks. You know, our societal view of DUI has changed a lot over the years. I think even in the time that, you know, in the last 20 years, certainly the idea of it being just a "hey, go home" and "wink" is long behind us. You know, DUI is a crime. It's a very serious crime. Our increase in public awareness, I mean, you can't turn on the TV without seeing "you drink, you drive, you lose" and you hear the door slamming, or the commercial where somebody opens up the door and it looks like

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alcohol is flowing out, or their motorcycle helmet is full of martinis and olives. We look at DUI much differently than we did years ago and our criminal statutes have reflected that. Our Legislature has given us as prosecutors tools to use to prosecute offenders, and then to keep them...to hopefully keep them off the roads and keep them in line and protect the rest of the public. But I just can't forget that DUI is a very, very serious crime. Even my office, a small mid-sized office in Nebraska, you know, we've got about a little short of 50,000 in Buffalo County, we prosecuted about 430 DUIs last year. I looked it up this morning. I wouldn't want to lessen or lighten the penalties or impact those prosecutions one bit ever because of the seriousness and the fear that I know our citizens have of those who operate a motor vehicle while under the influence. But right now the ALR hurts my cases. Because it's happening out over here, there's the ability to...for defense attorneys to manipulate the system and get discovery outside of the criminal case. And so on a felony, for example, they will have an opportunity to, in essence, to depose the officer to get information to get...harass, frankly, our hospital, get every book, everything ever made for the instruments that they utilize to do the testing and get all of that information outside of the scope of the criminal case. That hurts my case because then I don't get the opportunity for reciprocal discovery because they don't have to file any motions. And so certainly when it comes to felonies, particularly, it is very damaging. And finally, you know, the fear of losing this is a big deal to people. That's what I've found. When it's actually gone, the loss of driver's license really doesn't mean anything. And, you know, my office prosecuted over 500 DUSs last year, so obviously people are driving. So I can't stress enough how much I support the use of an interlock after somebody is convicted, and get it to them quickly so they can go to work and support their family and pay their child support and do those things. Get it to them in a hurry, but get it on their vehicle so they're not driving under the...so they're not driving under suspension or certainly not operating a motor vehicle while under the influence of alcohol, putting the rest of us at risk. You know, we have two very different things going on that are supposed to get us to the same end--protecting the public: One is taking your license through ALR, and one we take your license through the criminal code. Frankly, the fact that we're doing both of them, I believe, is wasteful government and it really needs to come to an end. The time of the ALR has passed. These are great people. We still need to be involved and be a team, and I've enjoyed the vigorous debates, but I think the time has come again this year to address it and to move beyond the ALR as it currently stands. Thank you. [LB667]

SENATOR LATHROP: Very good. Thanks, Shawn. Senator Council has a question for you. [LB667]

SENATOR COUNCIL: Thank you. And thank you, Vice Chairman Lathrop. And Mr. Eatherton, and I appreciate you have to leave. But as I read the proposed bill, LB667, I mean, one of the fundamental concerns I have about the license issue, and maybe I'm confusing this bill with one of the others and there's like four of them, so I apologize, but I think it's LB667 that instead of ALR, there's some license revocation that occurs before

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a person has their day in court. [LB667]

SHAWN EATHERTON: Well, yes, and in essence that is correct. It's my understanding in the way that...and there are some language things that we've had a lot of discussions of how this could be cleaner, but in essence, if I get picked up with a DUI, they would take my license as they do now. As part of the arrest, they take my license. I could, you know, go to...I would be booked in; go to jail; bond out. If I wanted my license back, there could be an administrative form where in essence I would agree to get the interlock and have that put on my car and get my license back. If I disagreed or I would have the opportunity then to ask for a bond review which would, in fact, deal with the due process, because you can do that now. You could have your bond reviewed. So the idea is that the operating your motor vehicle with an interlock in place would be a condition of bond if you so chose to do it. If you wanted to challenge that condition, you would have that opportunity in front of a judge by asking for a hearing. And people do that all the time; every 24 hours they can ask for their bond to be reviewed. [LB667]

SENATOR COUNCIL: Okay. So this provides for someone other than a judge to pose a condition on bond other than the payment to ensure your appearance in court. And I'm just looking at...I mean, I understand the ALR because, I mean, the reason it doesn't have problems with the 30-day, you know, suspension is because it's an administrative procedure and it's not subject to the same constitutional requirements. But I get concerned about the constitutional issues when we're depriving people, and don't get me wrong, I don't think people should be driving under the influence, but we're depriving individuals of, you know, whether you call it a right or a privilege without, at that point in time, arguably due process of law. I mean, and I guess to try to mask it under "this is a condition of your bond" is problematic for me. [LB667]

SHAWN EATHERTON: Senator, I do understand that. I think kind of looking procedurally, for example, if somebody gets arrested, the officer generally--and I'll speak in my jurisdiction, jurisdictions at least that I'm familiar with--the officer will fill out an affidavit of continued detention; it's a sworn affidavit. The judge actually reviews the affidavit to determine whether or not the continued detention of that person is appropriate. That is done even if they do bond out pursuant to the preset bond schedules that are set by the judges. So it is the judge still setting those and it would be the judge then reviewing those, you know, the next day or two days later within 48 hours. And so there is...I mean, now we do it. We say the people cannot go live back at their home as a condition of bond. We say that they can't go to certain places, they can't leave the county, leave the state. So we restrict much more inherent liberties than the ability to drive. [LB667]

SENATOR COUNCIL: Okay. But to the requirement of the purchase of a device as a condition, I guess that's what I'm...I have some questions about. And don't get me wrong. I think that interlock is a viable tool for us to use in our fight against DUI. But

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sometimes I think we go a little overboard in believing that interlock is the answer. Because if I get one of these bond releases and I don't object and I say I agree to equip my vehicle with an interlock device, is that input into any database? So that if I get stopped failing to signal to turn and all of a sudden I'm asked for my driver's license, I give them my driver's license. And I'm not driving the car with the interlock on it. I'm driving my cousin's car or my neighbor's car. [LB667]

SHAWN EATHERTON: Well, I would...and of course I...now being we've had a lot of discussions about that and I know it's gone a couple of different ways, I mean, I would envision, it would make sense to me that, yes, in fact it would still go into our DMV database that your privilege to drive or your...is based upon the idea that you are in a vehicle that has an interlock properly installed on it. And so... [LB667]

SENATOR COUNCIL: Now, and then I guess... [LB667]

SHAWN EATHERTON: And the county courts do that every day. [LB667]

SENATOR COUNCIL: Okay. So in terms of database entries, I mean, I don't...is that any additional administrative cost to the Department of Motor Vehicles to input that into the data system that is accessed? [LB667]

SHAWN EATHERTON: I can't speak for them, but certainly would... [LB667]

SENATOR COUNCIL: Okay. That's all right. My apologies. I'm asking the wrong person. Thank you. Thank you, Senator Lathrop. [LB667]

SENATOR LATHROP: Senator Harr. [LB667]

SENATOR HARR: Thank you, Senator Lathrop. And thank you, Speaker Flood, for bringing this alcohol omnibus bill. And I think a lot of the...a lot is going to be focused today on ALR. And I know your testimony was focused on ALR, so I want to address that. You stated you don't like ALR and your reasoning was, and I don't want to put words in your mouth, was you didn't like it because it's a chance at discovery. Is that correct? [LB667]

SHAWN EATHERTON: That's in part, yes. [LB667]

SENATOR HARR: Okay. And why else don't you like it then? [LB667]

SHAWN EATHERTON: Well, because what I...assuming this is from my experience, if you have means and if you're able to retain an attorney, you can massage the system and in essence you can do the right appeals, the right timing, and in essence by the time your criminal case runs through, you end up with no suspension at all or if, for

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example, it was a... [LB667]

SENATOR HARR: And you say massage, how do you do this because I am not of means so I want to know how this is done? [LB667]

SHAWN EATHERTON: Sure. File appeals, you know, multiple appeals. Additionally there are some ways to deal with if you refuse, not making it a year, making it a 90 day. And, again, this is going from my working with my lawyers and defense attorneys. I'm not an expert on how they do it, only that they've admitted to me that they do. And that doesn't seem to be fair; it seems to be somewhat economically prejudicial. But, you know, that being said, my big concern as the county attorney as a prosecutor is the discovery issue because all of that information, there is certainly no right to criminal discovery so we have to go through the courts. And once we do so, if it's done outside of there, we have no avenue of discovery without them filing the appropriate motion first. [LB667]

SENATOR HARR: And that's what I'm getting at. That's kind of the issue. We need to change the discovery that only defense can have mutual...to require that discovery. I think we need to change that, too, and I'm not sure if getting rid of the ALR just because of that is the reason we should. [LB667]

SHAWN EATHERTON: Well, and I mean certainly... [LB667]

SENATOR HARR: I mean, it seemed like the real problem is our discovery laws, in my opinion, not the ALR. [LB667]

SHAWN EATHERTON: Yeah. [LB667]

SENATOR HARR: And I don't know if ALR is good or bad, but if the reason we're getting rid of it is because of its bad discovery laws, then we need to change discovery, not ALR. [LB667]

SHAWN EATHERTON: Well, and, Senator, I also believe that the idea that we're doing it twice seems to be somewhat...I struggle with that a little bit. We're taking...you know, why are we taking it in an administrative fashion and then also taking it in the criminal case? We're doing the same thing twice. That seems to be somewhat, you know, a duplication of services, but that's my belief. [LB667]

SENATOR HARR: But they're completely separate hearings. I mean, the level of proof is different, what you're proving, the underlying, is different than... [LB667]

SHAWN EATHERTON: True, but you get credit for one for the other, and so we're only taking it for that one period of time. So if you go in...you go through your ALR, six

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months later we do your criminal case, you get credit for that ALR. So, I mean, we're only taking a license once. [LB667]

SENATOR HARR: Okay. And you're happy with the way the law is currently...or how this bill is written? [LB667]

SHAWN EATHERTON: Well, I think that there are...certainly there's some complicated issues here and I'm not an expert at all and certainly I think that there are probably ways to deal with it and tweak it, but I am happy with the overall concept right now. [LB667]

SENATOR HARR: And what tweakings would you want to make if you could? [LB667]

SHAWN EATHERTON: Well, I wouldn't want to make any but I'm open to... [LB667]

SENATOR HARR: If you were king for a day, what would you want to change on this? Anything or are you happy with it? [LB667]

SHAWN EATHERTON: No, I mean, I think that we really do...I don't want to step on anybody's liberties. I want to...we need to make sure that we have every opportunity for the people to have the...particularly the mechanics of how they go get the license to make sure that it can be done in a timely fashion. We have to deal with all those things. We never want to infringe on somebody's, you know, liberties. I want to make sure that that's clear. But I think that, in general, this bill does do that right now. [LB667]

SENATOR HARR: Okay. Thank you very much for coming in. [LB667]

SENATOR LATHROP: Thanks, Shawn. Any other questions? I see none. Thank you for your testimony. It's always helpful to hear from you. [LB667]

SHAWN EATHERTON: Thank you very much. [LB667]

SENATOR LATHROP: You're very welcome. Dave Lutton. [LB667]

DAVID LUTTON: (Exhibit 19) Senators, my name is David Lutton, L-u-t-t-o-n. I'm here with my family today to urge your support for LB667. Ours is a very personal plea. On September 3 of last year, my daughter Jessica married Tony Bedient. It was one of the happiest days of my life and I know it was the happiest day of their lives. Five weeks later, October 9 was a beautiful day. We got to spend the day with my daughter Jess. She actually came out to our cabin late that night to take a boat ride with her mother and I. She told us that evening that she had never been happier, that she loved being married, it was the best time of her life. Five hours later, I got the call that no parent wants to get. My daughter and Tony had been in a very serious accident. An underage drunk driver had run the light at 144th and Q in Omaha and hit their car. The driver was

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travelling approximately 75 miles an hour when he hit their car. Jess died four days later. Tony suffered serious internal injuries and a broken neck. Tony continues to suffer the effects of that accident today and will for the rest of his life. We will all suffer the effects of that accident for the rest of our lives. It is our honest belief that if this legislation would have been in law in October, the accident would not have happened. The young man who hit Jess and Tony had been arrested on a charge of DUI in Sarpy County five days before they were married. He was given a letter and his license saying he could apply for diversion. If this new law would have been in place, his license would have been taken on the spot. If he wanted to drive again, interlock would have been placed on his car. That would have saved her life. When he was arrested again in August, he was driving the same car that he drove the night he hit my daughter. Interlock would have saved my daughter's life. The new law would have at least made it difficult and inconvenient for him to drive and inconvenience saves lives. The bill also offers a deterrent for those who buy alcohol for minors and enable them to drink and drive. Under the current law, a person convicted of procuring is charged with a Class I misdemeanor. It is our opinion that the person who procured alcohol for this young man, enabling him to drink and drive, is as responsible for the death of our daughter as the driver was. With this new legislation, a person procures and enables an underage driver is held responsible just as someone who aids and abets in any crime. You'd at least be able to apply a felony to them. Since I became involved a few months ago, I continue to hear that DUI is different from other crimes. I hear that it is not really a crime. It's you. It's me. It's the pharmacist down the street. We cannot make it too inconvenient or harsh for them because they won't be able to go to work or do something that's important to them. But we forget that drinking and driving is a choice that they make, no one makes them do it. It's time that we change our attitude for someone who makes a bad choice. It is a crime and they are killing our children. We need to treat it as a crime and make it inconvenient for all those who drink and drive. I know I have a red light and I have a lot more to say but I will not say that. I have given you my testimony. I know you have all heard this many times before, an impassioned plea by a grieving parent. I believe that attitudes have changed. People want to change this law and it's really up to you to do that, and I would ask your support to do that. Thank you. [LB667]

SENATOR LATHROP: Thank you, and I know it's not easy for you to be here and we appreciate your testimony and your... [LB667]

DAVID LUTTON: I do have comments on ALR if I could make one comment on ALR. [LB667]

SENATOR LATHROP: Please. [LB667]

DAVID LUTTON: And I apologize. [LB667]

SENATOR LATHROP: Go ahead and make... [LB667]

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DAVID LUTTON: I'm a supervisor in Saunders County. Every time we have an ALR hearing, we have to bring the deputy in, we have to pay him four hours of overtime. That's some...he may be there for five minutes; he may not even have to show up. But that's money that our counties don't have, especially since the state is cutting our budgets. If we were allowed with an ALR to simply have a certified affidavit from that officer and submit that at that hearing, you're going to save a lot of hearing time, you're going to save a lot of money for counties who can't afford it. Thank you. [LB667]

SENATOR LATHROP: Very good. [LB667]

SENATOR MCGILL: Thank you. [LB667]

SENATOR LATHROP: Any questions? Okay. Thank you. Next is...we do have a batting order here, Sheriff, John Freudenberg, Don Kleine, Tim Hoeft--okay--and Lee Polivka (phonetic). And then if we get to you, we'll do what we can. Thanks. Welcome. [LB667]

JOHN FREUDENBERG: Good afternoon. My name is John Freudenberg, F-r-e-u-d-e-n-b-e-r-g. I'm the criminal bureau chief of the Attorney General's Office and also the president of the Nebraska County Attorneys Association. On behalf of both organizations, I'm here today to testify in support of LB667. Our office has assisted Speaker Flood in its drafting. This bill is substantial and does a lot of things which will help address DUI problems in Nebraska. I will quickly describe the provisions and take questions thereafter. Section 2 of this bill prohibits a person to drive drunk with a child less than 16 years of age in the vehicle. The punishment for such offense would be a Class I misdemeanor. Sections 3 and 4 make motor-vehicle homicide and DUI resulting in serious bodily injuries separate and distinct offenses from other criminal charges. This addresses the lesser included offense issues that have been raised in the appellate courts and establishes that there is a distinct difference between persons who simply drive under the influence of alcohol or drugs and a person who does so and then kills or seriously injures another. Section 4 and Section 7 through 18 clean up the state's boating under the influence laws. This is especially important since we're now allowing alcohol into many of the state recreational facilities. Efforts were made to make the BUI law--that's boating under the influence law--conform to the DUI laws as much as possible. Sections 5 and 36 require that when a person is arrested or cited for DUI, their license is immediately taken as a bond provision. They are then given the right to obtain temporary license requiring the use of an ignition interlock device during the pendency of their criminal case. Section 21 increases the punishment for those who provide alcohol to minors. A mandatory two-day jail sentence will be imposed for anyone who is convicted of procuring alcohol. The punishments increase when the alcohol procured proximately causes serious bodily injury or death. Such offense shall be punished as a Class III felony and will have a mandatory minimum of 30 days of incarceration in that situation. Sections 22 through 25 and 30, 33, 35, 38, and 39 eliminate the current

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Administrative License Revocation system. Sections 26, 27, and 29 change the testing standard for DUI chemical tests so that tests in excess of the legal limit provided within two hours of the driving is sufficient to prove the required intoxication element. Section 31 removes the 12-year look-back for use of prior DUI offenses to be used as enhancement to the current offense, thereby increasing the punishment range. This section also allows for the cross enhancement of DUIs and refusals. Finally, Section 32 creates a wider use of ignition interlock devices in the punishment of DUI cases. And Section 37 creates the offense of tampering with the ignition interlock device which would be a Class I misdemeanor if the revocation is the result of a low-level DUI conviction and a Class IV felony for the more serious offenses. I'd be happy to attempt to answer any questions you may have. [LB667]

SENATOR LATHROP: Thanks, John. Any questions for John? Senator Council. [LB667]

SENATOR COUNCIL: Yes, Mr. Freudenberg. Okay. Under the current ALR provision, a person gets stopped, first offense, first-time DUI. On the road, they are administered the field breath test. They have a BAC. I'm just speaking from my experience with clients in Douglas County. [LB667]

JOHN FREUDENBERG: Sure. [LB667]

SENATOR COUNCIL: The field BAC shows that they're in violation. That individual is then transported to the jail where a confirmation breath alcohol test is provided with a trained technician, signing the document. Now it's my understanding that at that time the person is issued a temporary license or a Xerox copy of their license to operate but their license are actually, I understood, suspended, the privileges are suspended at that time and remain suspended unless they request a hearing. Am I confusing how the ALR process currently operates? [LB667]

JOHN FREUDENBERG: Well, going back, first of all, they can go to take a breath test or they can go take a blood test, but after that confirms it or they refuse to take the test, their license is taken, they're given a temporary license for 30 days. They have ten days in which to request an administrative hearing. And if the... [LB667]

SENATOR COUNCIL: And if they don't request the administrative hearing, what becomes of their driving privileges? [LB667]

JOHN FREUDENBERG: They are revoked after the 30-day temporary license expires. And that is not another license, it's actually just a piece of paper. [LB667]

SENATOR COUNCIL: Right, right, paper, right. [LB667]

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JOHN FREUDENBERG: Yeah. [LB667]

SENATOR COUNCIL: Okay, okay. Thank you. Thank you, Senator. [LB667]

SENATOR LATHROP: Thank you. I see no other questions. Thanks, John. [LB667]

JOHN FREUDENBERG: Lot easier than yesterday. [LB667]

SENATOR LATHROP: What's that? [LB667]

JOHN FREUDENBERG: Lot easier than yesterday. [LB667]

SENATOR LATHROP: (Laughter) Yeah, it was a lot easier than yesterday. But we appreciate your testimony on both occasions as always. [LB667]

JOHN FREUDENBERG: Thank you. [LB667]

SENATOR LATHROP: Don Kleine. [LB667]

DON KLEINE: Good afternoon. [LB667]

SENATOR LATHROP: Good afternoon and good to have you here. [LB667]

DON KLEINE: My name is Don Kleine, K-I-e-i-n-e. I'm the Douglas County Attorney. I'm here in that capacity as a proponent for LB667. I think this is a very important piece of legislation, and there are several areas that I would like to talk about. The first, Mr. Lutton has been in my office. It's many times, way too many victims in my office with regard to motor-vehicle homicides. But the procuring, obviously, is an issue that we need to address with regard to penalizing people who provide alcohol to minors. There's the Jessica Bedient case. If you remember though, several years ago there was a case on I think it was 84th Street where a man was walking his daughter in the carriage and a young person who was a minor killed him, who had gotten alcohol from somewhere. The person who provided that alcohol should be held responsible in some manner, as Mr. Lutton has testified and I would concur with his statements in the law with regard to procuring and making that a felony for someone that procures that leads to someone's death. And it wouldn't have to necessarily even be in a motor vehicle; it could be some other example. And, obviously, if it's a misdemeanor situation that there be some statutory minimum mandatory jail time with regards to that procuring sentence so that the person that provides that alcohol for the minor has a penalty that's something that deters people, something that people see. So I think that's very important. Boating while intoxicated. We've had...in Douglas County alone, we've had two deaths from boating while intoxicated that we filed manslaughter charges on, we had two convictions on. It's a problem. I think that the law change that makes...make sure that we have boating

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while intoxicated the same as the DUI is very important. Like I said, we have examples of that and we have convictions in that regard. You know, I heard on the news last night something about the expense or cost, I think Mr. Conboy was talking about, that the city was going to have to have if we book people for DUIs. Yeah, I was the president of the County Attorneys Association and work in the AG's Office and the Douglas County Attorney. In all these other counties around the state, I know that people when they get arrested for DUI it's treated as a very serious offense and they're booked. And I think even if there's a cost involved with booking for people with DUIs, it's important that we provide for that cost, whatever that might be and I don't think it's that substantial. The problem we have...you know, in Douglas County, we have 170 felony DUI cases pending right now, which means somebody who's a third offense aggravator or higher or fourth offense or fifth offense or sixth offense--170 of those cases. Those people don't get it. I mean, there hasn't been an impact in their lives to get the message to them that they can't drive a vehicle. And I think that when they're arrested on a first offense or a second offense and they're not booked, and they're not photographed, they're not kind of treated like this is a serious offense, that here's a ticket just like you were speeding or something, you know, if they are booked I think it's going to have greater impact. They're going to realize, hey, we're treating this as the serious offense that it is. It's a DUI. And if there's an expense involved in booking them, then we'll have to go with that expense. I think it costs us much more not to do that expense than to say it's too expensive to do it I guess is what I'm saying. I know my time is up. There's some other things I'd be happy to talk about. Is there any questions? [LB667]

SENATOR ASHFORD: I'll just interject. Senator Lautenbaugh. [LB667]

SENATOR LAUTENBAUGH: I was trying to catch Steve's attention. I'm sorry.  
(Laughter) [LB667]

SENATOR ASHFORD: It's an easy mistake, but, Senator Lautenbaugh. [LB667]

SENATOR LAUTENBAUGH: Thank you, Chairman Ashford. Thank you for coming today, sir. Senator Council had some questions of one of your colleagues in Buffalo County if I remember right about, well, constitutional concerns about ordering the interlock prior to a conviction. Do you have any feelings about that? [LB667]

DON KLEINE: Well, you're not ordering the interlock. I think what you're saying is that the person says that they're jailed, their license is taken from them as a condition of bond. They have the ability to have a bond review. If they go to the judge and say, look, I'm willing to put an interlock device on my vehicle to drive, the judge can do that as part of a bond. And so we could tell people you can't drive, your license is revoked, and people still drive unfortunately. If we put an interlock device on the car, as Mr. Lutton explained in their case and that person was driving the same vehicle, they couldn't drive it if they were intoxicated or under the influence. So I see that having a much more

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direct impact than the current system. And I'd be happy to address that also, the ALR part. Yeah. [LB667]

SENATOR LAUTENBAUGH: Now you concede though that that's not going to stop every person from driving while intoxicated? [LB667]

DON KLEINE: Right. [LB667]

SENATOR LAUTENBAUGH: But you also know that ALRs don't seem to stop everyone from driving while intoxicated either. [LB667]

DON KLEINE: No, I...you know, I understand there's a purpose for ALR and I agree with Speaker Flood when he said, look, everybody that's here...you know, Project Extra Mile does a tremendous job, MADD has done a tremendous job. We might have a difference of opinion about ALR because I see ALR somewhat being abused. You know I hear defense attorneys that say, look, I can keep somebody from getting their license suspended with this appeal process of ALRs until they finally go to court on their actual DUI. You know, you hear that bragged about. So there's also, as the Buffalo County Attorney said, there's an economic factor. Well, if you've got enough money and you can hire somebody and manipulate the process a little bit, you're going to be able to appeal that ALR until the time that your criminal case goes in with regards to the DUI. So I don't see that being a fair process if it's able to be manipulated in that manner. [LB667]

SENATOR LAUTENBAUGH: So it's your belief then that the ALR lays more heavily perhaps on the people with less resources that can't hire an attorney to draw out the process. [LB667]

DON KLEINE: Absolutely. [LB667]

SENATOR ASHFORD: Senator Council. [LB667]

SENATOR COUNCIL: Yes, thank you, Mr. Kleine. And I have a concern. I guess I'm trying to think this through in terms of how...practically. So under the bill, someone's arrested, first-time DUI, they're taken in, presumably booked, and are offered the opportunity to retain their license provided that they install an interlock device. That's how it's supposed to operate? [LB667]

DON KLEINE: Well, as a condition upon they're going to lose their license, but they can go in for a bond review before a judge and say: I'm willing to put an interlock device on my vehicle so that I can drive. And as part of that bond review, the judge could say, okay, as long as you put this interlock device on and you're able to operate your motor vehicle. [LB667]

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SENATOR COUNCIL: And so...and the time period for that is what? Did the bill say ten days? [LB667]

DON KLEINE: I believe so. You'd have...I think Speaker Flood could address that... [LB667]

SENATOR COUNCIL: So it has to be done within ten days. [LB667]

DON KLEINE: Right. [LB667]

SENATOR COUNCIL: So if they're in no position to do that and they find out on the 15th day, wow, you know, I can get the money, do they still have a bond review opportunity? [LB667]

DON KLEINE: I would guess that they still could have a bond review because you can have a bond review at any time. [LB667]

SENATOR COUNCIL: Okay. Now who oversees the installation of the interlock device? [LB667]

DON KLEINE: Well, I don't know if anybody has to oversee it. They just have to show, I think, proof that they've had the interlock device in some way to the judge that has them on a bond. [LB667]

SENATOR COUNCIL: Okay. And does the bill say how soon you do that? [LB667]

DON KLEINE: I don't know that it does. I'll have to defer to the Speaker on that. [LB667]

SENATOR COUNCIL: Okay. Well, I mean that's what I'm...I mean, in terms of how this thing works, I go before the judge and say I want a bond review and I'm going to install an interlock device, and the judge says, okay. Then who do you... [LB667]

DON KLEINE: Well, I think they have to show some proof that they have that before they're...if they're going to be entitled to drive as part of that bond review process. [LB667]

SENATOR COUNCIL: All right. Thank you. [LB667]

SENATOR ASHFORD: Thanks, Senator Council. Thanks, Don. Senator Harr. [LB667]

SENATOR HARR: Thank you, Mr. Chairman, and thank you, Mr. Kleine, for coming down. I have...since we're talking about bond reviews, I do have a question. It says that

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this shall be a condition of bond that you impound the defendant's license. [LB667]

DON KLEINE: Right. [LB667]

SENATOR HARR: And then that there shall be a hearing within ten days after the filing request. If at that bond...as I read this, at that bond review there would be nothing that would stop, other than bad policy, that judge from not requiring an interlock device at all. They could change the bond at that point, could they not? [LB667]

DON KLEINE: Well, I think the...it depends on what the...I mean, statutorily there's provisions in the statute as to the bond. All right, so I don't think the judge could just say whatever they want to do with regards to the...either they're going to put the interlock device on to allow the person to drive or not. If the person concurs that they want to...says I want to do this because I want to have the ability to drive as a condition of my bond, they put the device on or they agree to. [LB667]

SENATOR HARR: As a condition of the bond. But at a bond review, a judge could then at that point change the bond, couldn't they? [LB667]

DON KLEINE: Well, they can change the bond if you're talking about the bond amounts or whatever, like any kind of bond. Well, in terms... [LB667]

SENATOR HARR: Well, the amount...and I'm on page 11, line 21, it says, "The court shall also require the operator's license of a bailable defendant be impounded if the defendant has been arrested or received a citation for a violation," per the statute. [LB667]

DON KLEINE: Right. [LB667]

SENATOR HARR: Okay. So that's understandable. So in order to bond out...it's page 11, sorry. [LB667]

DON KLEINE: Right. [LB667]

SENATOR HARR: You have to...they have to impound the driver's license. Then, "Upon a request by the defendant, the court shall hold a hearing within ten days after the date the request is filed to determine whether the defendant may obtain an ignition interlock device." Okay. But there wouldn't be anything in between there. I could have bond that would prevent a defendant from having a bond hearing and asking...the defense counsel asking, hey, can you lift this requirement of bond. It just says it shall be impounded. There would be nothing that would prevent a judge from turning around and--I don't know what the proper word is--impounding the license. [LB667]

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DON KLEINE: Well, with the way I read it, I think it's statutory but the judge can't tell them they can go ahead and drive without putting an interlock device on the vehicle. [LB667]

SENATOR HARR: And where do you see that in here? [LB667]

DON KLEINE: Well, it says that their license is taken as a condition of bond at the time of their...after their arrest. And they can come in and ask for a bond review to put on an interlock device so that they can drive the vehicle. And I think that's the way the statute reads. So that's... [LB667]

SENATOR HARR: But what's to prevent the judge from changing...I mean, I understand that on the positive it requires a judge to do X, Y, and Z, but there are bond reviews all the time. Judges take bonds from a million dollars down to a dollar or zero. [LB667]

DON KLEINE: And I don't... [LB667]

SENATOR HARR: I mean, that happens. And that's what I see could happen here, too, is a judge could turn around and change a condition of bond and say, okay, I'm just going to tell you, don't drive but you don't have to have an interlock device. [LB667]

DON KLEINE: Well, they've already been told they can't drive unless they have the interlock device, and I think that the statute is very clear about that. So that, you know, the judge can review the bond I guess for other conditions, but I'm not sure that they can change the statutory provisions here is what I'm saying. [LB667]

SENATOR HARR: All right. Thank you, Mr. Kleine. [LB667]

DON KLEINE: Sure. [LB667]

SENATOR ASHFORD: Thanks, Don. [LB667]

DON KLEINE: Sure. [LB667]

SENATOR ASHFORD: Okay. [LB667]

SENATOR COUNCIL: Don, just one. I'm sorry, Don. But I'm sitting here, I'm trying to...I go in and I ask for a bond review and the judge says, okay, you agree to put an interlock device on. So my ability to drive with a license is affected until I get the interlock device. [LB667]

DON KLEINE: Right. [LB667]

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SENATOR COUNCIL: But there's nothing that prevents me from driving other than the fact that I'm driving without a license. [LB667]

DON KLEINE: Well, that's like everybody that's out there. [LB667]

SENATOR COUNCIL: Okay. [LB667]

DON KLEINE: And we say, hey you, you don't have a license anymore, you're suspended, whatever. [LB667]

SENATOR COUNCIL: Right, and then...and I think if you do some data with a number of repeat DUIs, I'm sure your data will show how many of them are driving under suspension. [LB667]

DON KLEINE: Right, or at least...you know, that get caught driving under suspension because I'm sure a lot of them... [LB667]

SENATOR COUNCIL: Could get caught, okay. [LB667]

DON KLEINE: ...until they make a violation, we don't even know if they're driving under suspension. Right. [LB667]

SENATOR COUNCIL: Okay, okay. I mean, I just don't want to give any false impressions about, you know... [LB667]

DON KLEINE: Right. [LB667]

SENATOR COUNCIL: ...people still won't be driving under the influence. [LB667]

SENATOR LAUTENBAUGH: And, again, you're not here to say that this would eliminate all possibility of people breaking the law. [LB667]

DON KLEINE: I wish I could, and I... [LB667]

SENATOR LAUTENBAUGH: This has just been a... [LB667]

SENATOR ASHFORD: Come on, Don! (Laughter) [LB667]

DON KLEINE: But I think it's certainly a better way to do business. Okay. We have a tremendous problem here that we need to try and fix any way we can. I think this is a good way to do that. Okay. [LB667]

SENATOR LAUTENBAUGH: Thank you. [LB667]

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SENATOR ASHFORD: Thanks, Don. [LB667]

DON KLEINE: Sure. [LB667]

SENATOR ASHFORD: We have Tim is next and then Lee (phonetic). Is Lee (phonetic) still here? What's that? Okay. [LB667]

TIMOTHY HOEFT: Senator Ashford, ladies and gentlemen of the committee, my name is Timothy Hoeft. I'm the Phelps County Attorney. I'm from Holdrege, Nebraska. I'm here to testify in support of LB667 and the elimination of the ALR. One of the...I concur with all of the comments of my colleagues that have preceded me. And one of the other concerns I have that hasn't been addressed is the lack of the uniform administration of the ALR. There are many agencies out there who have just decided not to do ALR or automatic license revocations. So they're arresting drunk drivers and they're sending their reports to the prosecutors, but they're not impounding the license and sending the affidavits to the Department of Motor Vehicles. So the system as it is isn't perfect and I think that we can do something to make it a better system. And I think if we require law enforcement to impound that license as a condition of bond, then we'll at least have maybe a more uniform application of the consequence because there are jurisdictions out there right now that don't do anything under the Administrative License Revocation. They simply proceed with criminal prosecution and avoid the civil or administrative side of the issue altogether. And so I think LB667 is a good start. I don't think that it's perfect, but I think we're heading in the right direction. And so I would ask that you vote the bill out of committee. [LB667]

SENATOR ASHFORD: Any questions of Tim? Thanks, Tim. Let me ask, how many more proponents do we have? One, two, three, four. We're going to take two of the four, so if you guys could get together and figure out what you're...(laughter) Why don't you come up. And then, Mark, if you'd just consult and see if we can limit the testimony to two people. [LB667]

JEFF DAVIS: Thank you. Jeff Davis, Sarpy County Sheriff. I represent the Nebraska Sheriffs' Association as well as the Sarpy County Sheriff's Department. I was one of those individuals that was at that meeting in Kearney that Senator Flood spoke of. No one had any idea that question was going to be asked, and within a matter of seconds everybody's hand was up. I was even quite impressed. And after that, I talked to several other law enforcement people about what they thought about ALR. And you might think that it was an administrative function and that a lot of that is a fiscal response and it is not. I paid \$15,000 last year for people to attend ALR hearings and if it worked or if we had something that was better, I'd pay three times that much. I don't think it's a question of law enforcement wanting ALR to go away without anything to take its place. We just feel that LB667 offers something much better. And I think what you need to remember is

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that even though it may be somebody's first offense, a number of these people that are stopped have a very serious alcohol problem. And you have the police officer saying, that's okay, here's your driver's license, you can drive for 30 more days. I know there's a due process question here, but I don't think it's too cumbersome, as the other gentlemen have said, for somebody to say, you know what, here's your driver's license back but you've got to have an interlock device on your vehicle. Makes a huge difference. It may make a huge difference to those people on the street and certainly some of the victims, potential victims that are out there. I think the ones that testified today that it is important to try and take these people off the street. If you have any questions, I'd be glad to answer them. [LB667]

SENATOR ASHFORD: Thank you, Jeff. Any questions of Jeff? Seeing none, thanks. [LB667]

JEFF DAVIS: Thank you. [LB667]

SENATOR ASHFORD: Last proponent. Mark. [LB667]

MARK YOUNG: Good afternoon, Senator Ashford, members of the committee. I'm Mark Young, Y-o-u-n-g. I'm here on behalf of the County Attorneys Association. I am Hall County Attorney. I'm also a former defense attorney who practiced with DUI defense counsel who could play the ALR system like a Steinway. And perhaps if I was better at it, I would still be a defense lawyer. The one point I would like to address for some questions that were raised concerning due process concerns about taking a license as part of the bond. We already, in Nebraska, have over the years placed restrictions on bond as a matter of public safety, for example, sexual assaults and now with LB63 a couple of years ago. Really this recognizes the same thing much as the ALR statute. The statement of intent says that that's also a question of public safety. I think there's some mechanics that can be addressed. The question has been raised here about some of the mechanics that need to be addressed with this bill. But I think as a matter of public safety, this will work better than the ALR. I think it will save counties like mine where we're doing 700, 800 DUIs a year, that's probably 1,600 to 3,200 hours of overtime a year the law enforcement is going to have to find if they go, and sometimes they just don't show up, they oversleep. And I don't think the outcome of a case should necessarily depend on whether the night shift cop can wake up for a 9:00 a.m. ALR. We would have it in one setting. Public defenders would be involved; they're not now. If you don't have private counsel, you're not going to be represented, you're not probably going to be able to figure out the ALR process on your own. I would urge you to adopt this bill. I think the other provisions address some specific issues concerning, for example, children in cars. They have been specific problems in my jurisdiction and I would ask you to adopt this bill. I'd be happy to answer any questions. [LB667]

SENATOR ASHFORD: Senator Council. [LB667]

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SENATOR COUNCIL: Thank you. And thank you, Mr. Young. And I don't disagree that judges have the authority and routinely impose conditions as a part of bond, but that's..ordinarily it's, stay away from person X, refrain from engaging in this kind of conduct. But a taking...and that's what I'm concerned about, and I know the argument is, you know, your driver's license is not...it's a privilege not a right arguable. [LB667]

MARK YOUNG: It is. [LB667]

SENATOR COUNCIL: But that's the reason the administrative, the ALR, procedure exists because in terms of that taking it is not held to the same standards of a taking in a civil or a criminal context. And I guess that's where I have the concern because under the administrative, it's almost like, okay, DMV issued the license; DMV is the one taking it back. And that is consistent with the...but I'm just troubled because the implication is that everyone who's arrested for a DUI is actually guilty of a DUI and that's not the case. I mean, there are many times where the BAC, you know, wasn't functioning properly. There were questions of whether the stop should have occurred. I mean, we know all of the defenses, and that's the problem that I have with the taking of the...the taking, impounding the license before the individual has had an opportunity to address the charges against him. The ALR, that's an administrative proceeding, and it's basically the DMV saying these are the conditions under which you hold this privilege. I just think it's...there's a difference there. I don't how we address it. I'm not suggesting to you that I want to see people...but inherent in this process is, you know, the belief that if you're arrested for a DUI, you were guilty of driving under the influence and we want to prevent you from doing it again, and I have a problem with that. [LB667]

MARK YOUNG: Senator, I understand and appreciate that problem. If I may respond. [LB667]

SENATOR COUNCIL: Yes, sir. [LB667]

MARK YOUNG: I think one of the things to consider is that there is always...the beauty of our system is sooner or later everybody has their day in court and will have a final determination made. Much like somebody who is under state law not given a bond because they're charged with a first-degree sexual assault, you know, six months from now they may have been deprived of their liberty for six months, but six months from now a jury may kick them loose as being not guilty or a motion to suppress may be sustained on that case or any other case. So we're already...when I look at it, I think we're already as a matter of public safety limiting in much more draconian fashion other much more basic rights rather than privileges through the bond process, and at least here there would be within ten days, the bond review. Now most places within ten days are going to have that case sorted out to some extent. You're right. There's always going to be that motion to suppress the bad stop, but you're going to know by ten days

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or your blood test is. So you're going to know if you're, you know, too close to the limit or you're under the limit, so that shouldn't be a problem. I do think because of the fact that you're going to have...in some ways, I really believe, Senator, this has better...is better due process for everybody than the ALR system because the ALR system is absolutely dependent on your ability to afford private counsel. You know, I know in my county--I checked with a few other county attorneys--public defender's offices don't do them nor should they I think because it is an administrative hearing, so that means the indigent defendant who probably arguably if anybody needs that car may be that indigent defendant, they've got no shot. You know, they tend to be not people that are going to show up... [LB667]

SENATOR COUNCIL: And they won't have a shot with the interlock either. (Laugh)  
[LB667]

MARK YOUNG: Well, you know, at least they've got the ability to go talk to a judge with an attorney with them to walk them through the system. [LB667]

SENATOR ASHFORD: All right. Let's do this. I'm sorry, Senator Council. [LB667]

SENATOR COUNCIL: No, I'm done. [LB667]

SENATOR ASHFORD: Let's...thanks, Mark. Let's go to the opponents just because I...we've spent a lot of time. How many opponents do we have on this? Okay. [LB667]

MARTY CONBOY: (Exhibits 20, 21, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, and 49) Good afternoon, Mr. Chairman, Senators. My name is Marty Conboy, C-o-n-b-o-y. I'm the city prosecutor in Omaha. I'm also here at the request of the Nebraska State Bar Association to testify on behalf of the bar association, and I'm here in opposition to this bill. I will say in total, frankly, there are many good provisions in this bill. The Attorney General's Office has worked hard and come up with some great ideas. And the theme I think you're going to hear from a lot of organizations, if you haven't already, is that there are a lot of good things here, but these ALR provisions are not good ideas. I think Senator Flood has done a good job of bringing these things forward. I hope that there will be some movement to correct some serious problems with this bill and I'll get right into them. The fact of the matter is...Senator Council is exactly right. I don't think you got good answers. When you're first stopped, the license is taken from you by the officer but you are still eligible to drive until you have a hearing. That hearing affords due process. It's amazing to me that of all the lawyers that testified, it was the police officer that first mentioned, yeah, there seems like due process problems here. You are taken in front of a judge, even if it's a blood test where you've got absolutely no idea of what your test result is and you are ordered not to drive. The judge has to order you to, which the implication is then we have to hold you in jail, not just book you but hold you in jail until you get to see a judge for a misdemeanor. I don't think that's happened in anywhere in

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the state. Maybe they've figured out a way to do that. I don't know. But normally you're allowed to post a bond, which is scheduled in Nebraska by the order of the courts and it's \$200. Now how many of those people do you think are actually going to be in jail the next day or the next Monday after the weekend to see the judge? Only the people that can't come up with 200 bucks. Interestingly, this law and its provision takes away the opportunity for an indigent fund interlock which currently exists for the other interlocks under ALR. So we've replaced this with it says only poor people are apparently going to be affected by this law. It is ridiculous to suggest that everybody ought to be booked for DUI in a situation where they can just post \$200 and get out. I mean, we're not...it's a distinction without a difference. What we're really talking about here is a process that is accepted all over the country. I've passed out some research because I was challenged to present some, and those are just some quotes from some of the things. They're kind of like cell phones and personal computers. A lot of this research was conducted 20 years ago when this was an issue, and like those nobody is doing a lot of research on whether that's a good idea or not because it's so well established all over the country. It works. No other state has considered getting rid of ALR, of reducing its effectiveness. This is contrary to the trend of the recommendations of all major anti-drunk driving agencies, including some that you will or have heard from. It has the problem of, you've got an A bill that says it's going to save us a million bucks. Actually, the funding is currently paid by the reinstatement fees collected from those people who lose their license on ALR. It is, in fact, self-sustaining. We will lose that million dollars in addition to the highway funds that this money qualifies us for, most of which goes into the law enforcement for drunk driving. I will leave it to others to talk about the fiscal impact to the city of Omaha, but I will tell you according to the finance department, it would be roughly a half a million dollars a year to accomplish this booking process which would in the end have no effect. Mr. Lutton testified that it would be a good idea to have a paper hearing to eliminate some of these things. And I see I'm running out of time, so I'll just close by saying this: There are ways that ALR can be repaired. Our law is flawed. It was flawed by design when the compromises were made in 1993 to pass this law. They favor a flawed process. The county attorneys are frustrated with it. It needs to be changed. I commend Senator Flood for his persistence in bringing this issue forward because he is hearing the truth. I've asked the same questions from law enforcement. It's expensive when it shouldn't be. Other states in this country provide for a paper hearing process. They do not have an automatic stay that encourages appeals. They have a process that works much better than ours, but in the end as a general deterrence, unlike an interlock which provides that your license...that people know that there's going to be something is going to happen to you. And before they become drunk drivers is when we really want them to not be drunk drivers, not afterwards. I'd be glad to answer any questions that you have. [LB667]

SENATOR ASHFORD: Senator Council. [LB667]

SENATOR COUNCIL: And thank you, Mr. Conboy, because that was...I was getting

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towards that in my questions to Mr. Young about the interlock device. And if it's a part of your...that you have to install an interlock device, I know the price of interlock devices is kind of like VCRs now, going down because so many states are urging, you know, the installation. But I still think they're about \$160, somewhere between \$150 and \$200 to install. [LB667]

MARTY CONBOY: For the three-month period that's required, that's almost exactly right. [LB667]

SENATOR COUNCIL: Okay. So now under ALR, if you're indigent, there is some assistance available to you. Am I correct...? [LB667]

MARTY CONBOY: Yes. [LB667]

SENATOR COUNCIL: ...to obtain an interlock device? [LB667]

MARTY CONBOY: Yes. There is a fund in place which everyone under ALR gets interlock has to contribute \$20. That fund then is available to those people who cannot afford it through a demonstration of indigency. [LB667]

SENATOR COUNCIL: Okay. There's nothing in LB667 that provides any assistance for an indigent who goes in for a bond review and wants to have their privilege restored, at least I didn't see it. [LB667]

MARTY CONBOY: Actually, it very specifically eliminates the possibility of using that indigency fund. That is stricken from the law. [LB667]

SENATOR COUNCIL: Okay. So that's problematic. And then the other part of it, when I post a cash bond, if my case is dismissed, then I get that bond returned less whatever, 10 percent or whatever that's kept for administration. And even if I'm convicted, if I don't have a fine associated with my conviction, I get my bond returned. If there's no provision to assist indigents in paying for the cost of the interlock, and what happens if they're found not guilty, they're stuck with an interlock device that was imposed as a condition of their bond, but does anybody have to give them the \$200 back? [LB667]

MARTY CONBOY: Well, unfortunately that's part of the due process deficiency here. There's no possibility of appeal. There's no set term that this lasts. There's no provision for making people whole who are penalized at the beginning of a process in which they might be exonerated. So those are among the constitutional concerns. [LB667]

SENATOR COUNCIL: Thank you. [LB667]

SENATOR ASHFORD: Thanks, Marty. Next opponent. [LB667]

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MARK WEBER: Afternoon, Senator Ashford, members of the committee. I'm Mark Weber, W-e-b-e-r, here on behalf of the Nebraska Criminal Defense Attorneys. And I appreciate Speaker Flood meeting with us to review LB667 with him. He gave us a unique opportunity to provide input which we have done. One of my colleagues is here to speak about that. I'm here to speak in opposition to the specifics of LB667 which we find problematic, some of which you've already heard from Mr. Conboy so I don't want to be redundant. And it is constructive criticism because we have, in fact, proposed a bill, and I've provided that actually to Mr. Flood's office but also to Mr. Conboy. The biggest problem we have I know is an add-on, an attempt to compromise, but there is now a two-hour presumption of intoxication. If a person is tested within two hours of arrest and that test is .08 or greater, they're presumed to be guilty of driving under the influence. This is entirely unacceptable to us because as criminal defense attorneys, we believe very strongly that the only presumption exists is the presumption of innocence. There is a court venue for people to fight those things, and we would strongly oppose that provision. There presently is no day-for-day credit if a person is given the interlock and we think that's important. But, again, I don't think that's a sticking point. And I think it might be a technicality, but this bill doesn't appear to allow the ignition interlock device immediately. It's upon...when someone is charged. In Douglas County, that could be 30 days or more. So this...I think it's a misperception that the bond setting level. Maybe it's a technicality in the way I read it but that's the way I see it. And to answer your question or to respond to your question earlier to someone else, the hearing request is within ten days of the request, not within ten days of the arrest or someone being charged. And then obviously we had opposed the lifting of the 12-year ban look-back on prior offenses. The laws change. People change. There's a reason for that 12-year look-back we think, and so we're opposed to it. And the...Mr. Conboy addressed here a concern and our concern that the indigency fund is lifted or doesn't exist with this bill as written. [LB667]

SENATOR ASHFORD: Thanks, Mark. [LB667]

MARK WEBER: So thank you. [LB667]

MARK RAPPL: (Exhibit 26) Chairman Ashford, members of the Judiciary Committee, my name is Mark Rappl, R-a-p-p-l. I'm an attorney here in Lincoln, and a large portion of my practice is dedicated to criminal defense work and a large portion is dedicated to DUI work and I've done a lot of the ALR hearings over the years. And Speaker Flood did give us the opportunity to work with his Bill Drafter to propose an amendment and we're grateful for that gracious offer and we did take advantage of that. And I am proposing an amendment that was I guess drafted in conjunction with members of our organization, the Nebraska Criminal Defense Attorneys Association. And some of the problems we have with the LB667 as proposed have been alluded to. It basically would force lodging on DUI offenses, misdemeanor offenses, and in Lancaster County where my primary

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practice is, they typically don't lodge on misdemeanor DUIs. They usually will lodge on a felony DUI but not a misdemeanor. And so I think the jails are full to this point in Lancaster County, and to strap the system much more with mandatory incarceration following an arrest for DUI might be a bit much, in our county at least. Due process concerns are obviously a concern for us. And this bill seems to be shifting the burden of these administrative hearings off of the DMV and onto the court. And just my experiences, the courts are pretty strapped in Lancaster County, and trying to get bond reviews to address issues such as interlock might be a little difficult. And we do believe the bill as proposed does discriminate against indigent people if, for example, the person is not lodged and they aren't appointed an attorney until they're arraigned which could be 30 days after they're picked up in Lancaster County. Someone who might be qualifying for a public defender will not have the option to have a lawyer file a bond review for them in a short time after their arrest, whereas somebody who might be able to afford an attorney could file the appropriate bond work. Not only that, in Lincoln, a lot of times the county attorney doesn't file charges until 30 days after the arrest, so it's impossible for us to file a motion for a bond review until we get a case number and that case number doesn't come until the charges are filed. And that's another problem we see with this. Another big problem we notice is, under the current law, the ALR does give you day-for-day credit for the time you're revoked, but under this proposed bill, you don't get credit for any time you've been revoked. Lastly, an important distinction which needs to be made, with our amendment, it does deal with the indigency issue. Under our proposed amendment, the DMV would be the ones issuing the interlock permits and the person would fill out the application. If the Director of the DMV found them capable of paying for the interlock on their own, they would pay a \$20 per month fee for that ability and that would be put into an indigent fund which could then be used to give interlocks to those people who are indigent. They'd simply fill out a poverty affidavit and be found indigent by the Director of the DMV pursuant to a definition of "indigency" as defined under the Nebraska Criminal Code. And we believe this is a step in the right direction. Maybe eventually ALRs will go away altogether, but I believe if you give...our amendment gives the person the opportunity to waive their right to an ALR hearing and just simply make an immediate application for an interlock permit. And if they get that interlock permit through the Director of the DMV, take it out of the court's hands, I think you'll see a majority of people will waive their right to ALR hearings and not even mess with them anymore and, hopefully, save the state a lot of time and money over the years. And that's kind of the gist of our amendment. And I'm open to any questions.  
[LB667]

SENATOR ASHFORD: Thanks, Mark. Thanks for your work. [LB667]

MARK RAPPL: Thank you, guys. [LB667]

SENATOR ASHFORD: Diane. [LB667]

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DIANE RIIBE: (Exhibit 27) Chairman Ashford, members of the committee, Diane Riibe with Project Extra Mile. We recognize that the bill has many good things in it and were it not for the repeal of ALR we would be here in support of it, particularly the procuring for alcohol minors provision. And we thank the Attorney General and Speaker Flood for an attempt to look at some positives on it. Unfortunately we are here, as I mentioned, to oppose the bill. ALR is, quite frankly, considered the "granddaddy" of all DUI countermeasures. Forty-one states have it and, as Marty Conboy said, no state has repealed it or considered it thus far. Sometimes there's a discussion of whether this is ALR or ignition interlock, thankfully we can have both of those and we should. And an ignition interlock, if it's going to be done well, if we're going to be honest about it, it should also be through the administrative process. I have to ask, too, if taking a license at the point of bail as proposed in the bill is taking of a license. And I think, Senator Council, you've talked about this somewhat, the courts said we must provide access to a swift postsuspension hearing. There is some due process that is required. The question is, will the proposed ignition interlock hearing now become a de facto ALR hearing? What does it become? We support ALR first and foremost because it saves lives. I do not want that to get lost. The evidence is two decades long. It saves lives, plain and simple. It serves as both a general deterrent and a specific deterrent, particularly to young people under 21. The loss of their driving privileges is the key provision that they believe changes their behavior. They tell us that again and again. ALR deters a whole population in terms of their drinking behavior as well as specific deterrents. It shouldn't get lost either that according to the National Highway Traffic Safety Administration, 75 percent of all drinking drivers have no prior DUI conviction. I think we should listen a minute. Seventy-five percent of all DUI offenders who were involved in fatal crashes have no prior conviction. So we have to get them ahead of time. We can't wait for ignition interlock; it has a place, but not everywhere. We haven't talked about the loss of federal highway safety funds. It's about \$1.25 million a year. Those are dollars that go directly to our first line of defense, our law enforcement officers and agencies, \$1.25 million lost in overtime, training, as well as equipment. The DMV has a system in place that right now we have...those hearings are an average of ten minutes in length with 96 percent of them taking fewer than 30 minutes. We also know in the court cases that those convictions have gone back before ALR to somewhere in the 40 percent as a statewide average to now over 80 percent. We're seeing a difference in the administrative process as well as the court and criminal. We couldn't forget that and can't forget that. To recap, again, the research and literature, it works. We know that. It deters drunk drivers. It saves lives. Public opinion in short: People support it overwhelmingly. The court's opinion: it's been upheld again and again in Nebraska and in the U.S. Supreme Court. We've heard about some of the abuses and manipulating the process. We saw those in spades 20 years ago. It was a bad place to be. And if that were the case, if it were manipulated so severely, we wouldn't have such high conviction rates. I also hear a lot about the question posed at the meeting in Kearney. No one... [LB667]

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SENATOR ASHFORD: Diane, I'm sorry. [LB667]

DIANE RIIBE: Absolutely. [LB667]

SENATOR ASHFORD: We just have to keep... [LB667]

DIANE RIIBE: Absolutely. It's just important. I think it's important to know that at that meeting... [LB667]

SENATOR ASHFORD: Everything you're saying is important. I just want to give everybody a shot here. [LB667]

DIANE RIIBE: But I don't want to be redundant. But during that meeting, Senator, no one asked those law enforcement officers or those county attorneys whether or not they wanted a paper review, and if we fixed it, would they be supportive of that. That's an important piece of that. [LB667]

SENATOR ASHFORD: Okay. Senator Council, do you have a question? [LB667]

SENATOR COUNCIL: No, I was going ask a question. I mean, I was going to ask a question and allow you to finish the question (sic), but Senator Harr has a... [LB667]

SENATOR ASHFORD: Senator Harr. [LB667]

SENATOR HARR: Thank you, Senator Ashford. Have you had a chance to read this amendment that was presented by... [LB667]

DIANE RIIBE: I have not. Is it...who submitted it? I guess I haven't seen it. [LB667]

SENATOR HARR: This is...just previously, it was presented by defense counsel and also I think they worked with the Omaha city prosecutor on this. And I was going to see if you had a chance to read it and, if you did, what your comment was on it, so. [LB667]

DIANE RIIBE: Well, I know that we would support Marty Conboy's perspective. We've worked for a long time in terms of working on DUI issues. He's seen as, quite frankly, a leader across the country on the issue. So I think his intentions would be good. [LB667]

SENATOR HARR: Okay. Thank you very much. Appreciate it. [LB667]

SENATOR ASHFORD: Senator Lautenbaugh. [LB667]

SENATOR LAUTENBAUGH: Thank you. Thank you for coming today, ma'am. Now you were present for the testimony of the county attorneys. [LB667]

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DIANE RIIBE: Yes. [LB667]

SENATOR LAUTENBAUGH: And obviously they seemed to have supported this bill pretty wholeheartedly. So I think you'll concede that reasonable minds that are experts of this field can disagree over what should and shouldn't be done. [LB667]

DIANE RIIBE: Oh, absolutely, absolutely. It's hard though, Senator, to forget the days of...and I served as the MADD state chairperson back in the days when we adopted that legislation. County attorneys and county attorney staff and people in those communities would call repeatedly because of the lack of pursuing of DUI cases. Greasing that system was pretty easy to do. So we've come a long, long way. We're not perfect but we're a lot better than we were and it's an easy system to fix. [LB667]

SENATOR LAUTENBAUGH: But you'll agree that the county attorney is just pursuing a different approach in supporting this bill. [LB667]

DIANE RIIBE: Oh, I've never disagreed with that. [LB667]

SENATOR LAUTENBAUGH: And we're not going to see any kind of press release saying they don't care about children or they don't care about anyone else because you disagree on this bill. [LB667]

DIANE RIIBE: I'm not sure what you're referring to, Senator. [LB667]

SENATOR LAUTENBAUGH: I just want to make sure that we can understand that reasonable minds can disagree on this, and I... [LB667]

DIANE RIIBE: Senator, we have never put a news release out after a legislative hearing. [LB667]

SENATOR LAUTENBAUGH: Okay. I'll take you at your word on that. [LB667]

SENATOR ASHFORD: Only I do that. Okay, thanks, Diane. Next. [LB667]

TOM TOMOSER: I've got a couple of notes. I'll give it to you when I get done. Morning, Chairman Ashford, members of the panel. My name is Tom Tomoser. I'm here to speak for myself. I lost three members of my family were killed by drunk drivers: one was a 27-year-old mother of three; my sister was 43 and a mother of six; and the last one was a young 19-year-old who had just finished his first year at UNL. Now I've listened to lots of testimony today on lots of stuff, and all of it I have to...I was caught with what Marty Conboy said and somebody else said about, wouldn't it be better if we knew how to prevent this drunk drivers. And I think all drunk drivers are alcoholics. And I've had five

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alcoholics in my family so I know about alcoholism and I used to drink. I quit in '71. There's a difference between a hard drinker and an alcoholic. But what I found out by accident was the reason I could drink so much booze was because I have a very high tolerance for anesthetic drug. Alcohol, ethyl alcohol is an anesthetic drug, and the higher your tolerance for anesthetic drug, the more booze you can drink. Now would it be impossible for the wonderful research facilities we have at UNMC or at Creighton to come up with a test that would be mandatory before issuing a driver's license to find out if a person is...what a person's tolerance was to ethyl alcohol? Should it be so low that that would be subject that they would become an alcoholic, would it make it like I got on my license I have to wear my glasses to drive, that that said license be issued with this stipulation that they had to have an interlock on any vehicle they drove because they didn't have a tolerance high enough to drink alcohol and drive? And as far as this ALR, conviction rates went from 40 to 82 percent. You can't mess with success. Fix the little bitty parts that aren't working right, and the little bitty parts that need some tweaking, I would go to them. But, overall, this bill is working. It's getting more drunk drivers off the street. It's got provisions for the indigent. It looks into all the aspects of it. The parts that need tweaking, the brains in this room and in the general senate can take care of that and fix this bill but there's no sense to repeal it. That's my testimony today. Thank you very much. [LB667]

SENATOR ASHFORD: Thanks for being here all day. [LB667]

TOM TOMOSER: (Laugh). It was a great experience. [LB667]

SENATOR ASHFORD: Well, thank you. We have two more opponents and then we'll go to the neutral. Do we have any other opponents? How about...Bob? [LB667]

BOB SCHMILL: (Exhibit 28) Senators, I'm sorry, I just saw two up here. I'm sorry, I gave it the wrong way. Senators, I see there's a...we're getting shorter here. Again, Bob Schmill, S-c-h-m-i-l-l, the founder of the Matt's Dream Foundation and the father of Matt Schmill who was killed by a drunk driver in 2004. As a member of the Voices of Drunk Driving Victims, a victim advocate group made up of citizens of our state that are victims of family and victims of drunk driving, we are not in favor of this bill. Our main concern is for getting rid...is getting rid of ALR. We have already heard that...about all the things that are positive about it. But over the last five years, our foundation has been trying to change laws to get our state in line with the other 49 with drunk driving laws, so I'm not sure why we're going the other direction. It has been said that 40 states have ALR and others are trying to put it in place. It has been shown that it saves lives. The program is self-sufficient and the fees pay for the...pay the...paid to the DMV are reinstated and more pays for this program. I understand the reasoning to drop the program is the overtime for law enforcement. But instead of throwing out the baby with the bath water, why not fix the problem and use the officer's sworn statement or his sworn report as the evidence? From what I understand, the judges, when the judges takes the license, it

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doesn't show up on the person's record. That said, we are in favor of increasing the use of ignition interlock, changing the provisions for motor-vehicle homicide, alcohol violations including minor, and DUI of alcohol and drugs, but why get rid of something that works and has saved lives of the citizens of our state? We need to add programs not change...add programs and changes, not detract. I thank you for your time this afternoon. And I'll open up for questions. [LB667]

SENATOR ASHFORD: I don't see any, Bob. Thanks, though. [LB667]

BOB SCHMILL: Okay. Thanks, Brad. [LB667]

SENATOR ASHFORD: Do we have any other opponents? I don't think so. Neutral? How many neutral testifiers do we have? Okay. [LB667]

SIMERA REYNOLDS: (Exhibits 29, 30, 31, 32, 33, 34, and 35) There's a mountain of paper coming over to you. My name is Simera Reynolds. I'm the executive director of Mothers Against Drunk Driving, and I am here in a neutral capacity. This is tough. First of all, I want to thank Speaker Flood for introducing a comprehensive DUI bill. And first and foremost, MADD does support provisions for mandatory ignition interlocks upon conviction on all offenders. We know drunk driving is a violent crime and we know one person in our state dies every five days due to an alcohol-related crash. Despite that fact, lifesaving technology is not being used. It's not uncommon for the courts to ask the offender if they want it installed. The law requiring ignition interlock in our current state as it is right now is an optional law even though CDC and NHTSA report us out as a mandatory state. MADD is concerned about the disparity of treatment of offenders, and believes mandatory ignition interlock would provide for equitable treatment of all offenders. In 2009, there were more than 13,000 arrests. There was an 86 percent conviction rate of approximately 11,000, and yet there were only 1,800 ignition interlocks in use. And, you know, in 2009 is really our first data because LB736 became law in 2008, but it became law January 1, 2009, so this is really our first baseline year of data regarding ignition interlocks in our state. However, it's clear that the judicial discretion is not providing for equitable treatment of offenders across the state. From court monitoring program, we know that there is clearly inconsistent use at best of ignition interlocks and probably only 1 out of...well, we know with 1,800 only 1 out of every 6 offenders is receiving ignition interlock. As a state, we have a duty to provide lifesaving technology when an offender has been found guilty of driving while intoxicated at .08 or above. Second, with respect to the crime of transportation driving DUI, transporting a child, in our state with the information that I sent out, 19 children over five years have died while driving with an adult driver over the legal limit of .08--that's 4 children a year and 1 child every three months. And, you know, Senator McGill, I had a person call my office--and I think they were coming to visit you--and their son was killed three months ago in another state. [LB667]

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SENATOR MCGILL: I met with them yesterday. [LB667]

SIMERA REYNOLDS: And I was telling him this information and he said to me, he goes: You mean nationally. And I said: No, I mean in Nebraska. He was stunned. But, anyway, so not to get sidetracked, but I do want to bring that up. Over the last five years, you know, we have seen the importance of making the felony offense an option. All too often people ask MADD to be appreciative of judicial and prosecutorial discretion, and all I ask is that we have a felony offense in the toolbox and just make the toolbox a little bit larger so that there's a wider range of options to use if someone is driving drunk with a child in the car because a child has no voice and they have no choice. [LB667]

SENATOR ASHFORD: Thanks, Simera. Do we have any questions of... [LB667]

SIMERA REYNOLDS: I have one...I just have one thing that I have to... [LB667]

SENATOR ASHFORD: No, we're going to go to the next testifier. I'm sorry. I'm sorry. [LB667]

SIMERA REYNOLDS: That's all right. [LB667]

SENATOR ASHFORD: I have people that have been here all day. [LB667]

SIMERA REYNOLDS: Okay. I know. [LB667]

SENATOR ASHFORD: Okay. Thanks. Next neutral. Yes, good afternoon. [LB667]

MATTHEW MITCHELL: (Exhibit 36) Yes. Good afternoon. My name is Matthew Mitchell. Thank you for the opportunity to be here this afternoon. I'm here on behalf of Alcohol Monitoring Systems, the manufacturer of the Secure Continuous Remote Alcohol Monitoring, or SCRAM, device. This afternoon, we've heard a lot of discussion about various facets of the bill, and we wanted to suggest to the Judiciary Committee that there are some potential areas to strengthen this bill, those provisions related to the hard-core drunk driver. We're asking for specific consideration in discussions with Senator Flood's office. And we've made some recommendations for potential amendments to this bill with Senator Flood's office. And we thank you for the time this afternoon. As those recommendations come forward to consider increasing the complement...or increasing the tools available to the state to address the hard-core drunk driver. Thank you for your time. [LB667]

SENATOR ASHFORD: Thanks. Next neutral testifier. [LB667]

LAURIE YARDLEY: I'm Laurie Yardley, Y-a-r-d-l-e-y. I am a Lancaster County judge

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and I'm here on behalf of Douglas County and Lancaster County, not for the whole association. We are neutral on this bill but...and as I've been talking to the Douglas County judges, we're just a little concerned about the impact on the courts. It seems like you're taking a level of hearings and applying the courts. So I just want you to keep in mind that we might be back. I have no idea what the impact is going to be. I'm trying to get a handle on it but I don't know. But if it's a huge impact, we probably would be coming back indicating that we'd need more judicial resources. Currently, the courts are pretty strapped right now. We're not filling positions. We're not filling court employee positions. And just something to keep in mind if it can be streamlined at all, that would be probably helpful. [LB667]

SENATOR ASHFORD: Point well taken. Thank you, Judge. [LB667]

LAURIE YARDLEY: Okay. Thank you. [LB667]

SENATOR ASHFORD: Next. Dave. [LB667]

DAVID BAKER: Senator Ashford, members of the committee, my name is David Baker, D-a-v-i-d B-a-k-e-r. I'm appearing on behalf of the Omaha Police Department today in a neutral capacity on LB667. The Omaha Police Department appears neutral on LB667 because we believe there are some very good, long-overdue provisions in LB667. There are also some very concerning elements as well. In its present form, we cannot support it. As you review testimony on this bill, we urge you to consider the economic impact and implementation issues in the real-world applications of LB667. LB667 calls for the immediate impounding of a bailable suspect's driver's license by the court. This is, as you've heard many times today, in lieu of the ALR process. We see two issues with this. First of all, page 11 does allow for citing of the criminal suspects in occasions of driving under the influence. However, it also talks about the court impounding the license and the judge being able to impound the license. If cited, a suspect may not appear in court for an extended length of time. There are legitimate cases where suspects have to be cited, for example, when we have accidents. We talked a lot of about accidents today. We have suspects that are injured in accidents as well. They're in the hospital for extended stays in some cases. And if they are booked, we put an officer on their bed and we do a paper booking on them. Then the city becomes responsible for the entirety of the hospital bill of that booked suspect for the entire time that he's there and subsequent medical bills. That combined with the fact that it cost approximately half a million dollars to go ahead and change our current citations, over 3,000 per year, to 100 percent bookings would have an economic impact of approximately half a million dollars on Omaha itself, plus an unknown amount of federal funding that we would lose as a result of the noncompliance of the ALR statutes. If every arrest is booked, then we also have an issue we feel with certain forms of testing. For example, with blood tests, with urine tests, things of that nature, we don't know the final amount of alcohol in the blood or urine in these cases until well after the suspect

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has been booked. We've talked about keeping them there, being sure we're serious about why they're there, they know that they're serious, and at that point, we don't know if they're over a .08 or not. And if they're cited, that's correct, we put it on a criminal citation, and then it allows us at a later time to go ahead and change that criminal citation if it's to careless driving or something of that nature if, in fact, it does come in under the .08. Now we understand that the .08 is not absolutely necessary to get a conviction, but practically in Douglas County it is. That's why in those particular cases when we draw blood, it's the policy of the Omaha Police Department to go ahead and cite if it does not appear there are other exigent circumstances. I see my red light is on. I've got more, but I know you've listened to a lot. [LB667]

SENATOR ASHFORD: And we can ask you later about some of the other points, but thanks, Dave. Any questions of Chief? [LB667]

SENATOR LATHROP: Other than you're wearing the place out. You're here every day now. (Laughter) [LB667]

SENATOR MCGILL: One of them is. [LB667]

SENATOR LATHROP: I don't think you were here at all last year, were you? [LB667]

DAVID BAKER: No, I wasn't. [LB667]

SENATOR LATHROP: You must have just got this job. It's good to have you back. [LB667]

DAVID BAKER: I was here a lot the year before, so. [LB667]

SENATOR LATHROP: Okay. [LB667]

SENATOR ASHFORD: All right. Speaker Flood. [LB667]

SENATOR FLOOD: Thank you, Chairman Ashford, members of the committee. Before I kind of touch on some of the issues that were raised here, put yourself in the shoes of a family that lost somebody like Jessica Bedient. If only something would have intervened between the suspect's first arrest and the night of that accident. In 1993, we didn't have ALR, we didn't have ignition interlock devices or SCRAM bracelets. Today we do. There are a lot of different ways to look at this and I'm the first to admit, you know, this is far from done. But the immediate intervention with ignition interlock device does stop or arrest I would think a great number of these repeat offenders from getting behind the wheel. And we can get as tough as we want and we can take their license and we can go to our homes at night and say: look at what we did, we took that offender's license. Fact is, they get back on the road, they get back behind the wheel because they have to

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make a decision: I got to go to my job. Feed my family. Still have an alcohol problem. Stop at the bar for a few beers on the way home. I want to talk about a few things. Marty Conboy, the Omaha City Attorney for criminal matters, said it's ridiculous to book everybody for DWI. Well, then Norfolk, Columbus, Kearney, North Platte, Scottsbluff, Hastings, Grand Island, Holdrege, and almost every other county in this state is ridiculous. Sometimes the big city can learn from the smaller cities. And it seems to work. And if they're taken by ambulance to a hospital, the arrest happens later because that's common sense. But we seem to get their attention. We seem to process them through in our small little jail. And life goes on because we send the message to the suspect at that hour you are under arrest, you have lost your freedom. And the next day when they get processed out of the Norfolk City Jail, they get a scheduled bond that says you can't leave the state of Nebraska. My God! Can you think about the due process we have just violated! That bond says you must appear in court on this date, obey all laws, and you cannot leave the state of Nebraska. That's a direct infringement on their liberty for interstate travel. When a sex offender, a suspect, is arrested for possessing child pornography, they're prohibited as a condition of their bond, after a court hearing I will add, from using the Internet or being around children that are not their own. Those are pretty serious limitations. I object to the idea that you shouldn't book offenders. And if you don't like my ALR idea, that's fine. But don't lecture me...now I'm not saying you, but don't...those folks cannot lecture me (laughter) about public safety... [LB667]

SENATOR ASHFORD: That woke me up. (Laughter) [LB667]

SENATOR FLOOD: Don't lecture me about public safety and the threat to the public safety and you're citing and releasing drunk after drunk after drunk and how many of those drunks go...you know, if you've already made the decision wrongfully to get behind the wheel once, you're arrested, you're ticketed, you're released. What's to stop somebody in that same frame of mind from getting behind the wheel of a car again? This isn't a zero-sum game. I understand that. This is doing what we think collectively is right. Mr. Conboy brought up the fiscal issue. He suggested to you that you won't get any more reinstatement fees if we don't have ALR. I still believe the DMV charges a reinstatement fee if the court takes your license and you have to get it back. The court, even in Madison County, Nebraska, and I know we're small, but we enter it into the JUSTICE system, it's reported to the DMV, and they don't release it. That's what happens. So you're still going to get the reinstatement fees. And I'd be happy to use those reinstatement fees that we collect if we don't have ALR to pay for indigent folks to get ignition interlock. I think that's reasonable. The court suspension still counts. And the other thing I want to talk about, you talk about the burden on those that are indigent. A hundred and fifty-nine bucks for a couple of months or, you know, depending on where you live, taking their license for 30 days or 60 days or 90 days in a lot of cases administratively means they're going to lose their job. So if we're worried about those that can't afford it, I think if you had the option of keeping your job at \$10 an hour, \$8 an

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hour and getting to work every day versus putting one of these in your car, you're going to put one of these in your car, and you know we're going to be safer. You're going to be safer. Senator Council brought up some good points. And I don't know how much this matters, but she talked about, well, if you're proven not guilty in court, will this Legislature--and I voted for it--change the law a couple of years ago that says if you're not guilty in court, the ALR still stands. Two separate processes. I just wanted that talked about. The other thing we heard a lot about from the opponents to this bill is due process. We've got to have due process. We've got to afford these folks due process. A paper review, a sworn statement from an...okay, either you have an administrative law hearing or you don't. A paper review, if we're really thinking about making this efficient, what due process is that to the offender, to the suspected offender? They have to respond to a sworn statement, don't have the right to cross-examine. You can't have it both ways. Either you have due process or you don't, and that's why I opted to keep it all in the court system that we pay \$80 million a year to maintain. We have a court system that balances the...you know, the interests of justice. County court judges, district court judges, they have to be trusted. They do a good job and they weigh the equities of a case. And the laws in Nebraska have gotten much better, the technology has gotten a lot better. And at the end of the day, I think there are some out here, and they will never say it on the microphone, that don't trust a prosecutor or a court system. I do. And I believe it can happen. As to having the hearing, I admit that's a hurdle in this bill. We have bond schedules that work. You know, the policy of a judicial district may be that everybody that applies for this interlock gets one and the clerk magistrate cites a form...signs a form. I think that would be acceptable to get people the ignition interlock. There are ways around this. There's a way to get to yes without saying no every time. SCRAM bracelets, I think they're helpful. If you can't put ignition interlock in your car, then put a bracelet on and monitor your blood alcohol content. And, you know, Judge Yardley, I do appreciate her coming. She has a real concern there. I don't want to flood the courts with constant hearings on ignition interlock. My vision of that is they should be able to get that by application, and that's not spelled out very well in the bill and it's something that I would work on. You know, quite frankly I'm going to let the dust settle on this. As to the safety funding, nobody really got into the 410 alcohol incentive funding. I've got the criteria right in front of me. My bill adds a new criteria to secure funding and I'm not as concerned about losing that \$1.25046 million. So as you can see, I care about this issue not because I want to make it easier for drunks, not because I want to make it so they never get their license back, but there's a better way to do it and it's not working as currently designed. Thank you. [LB667]

SENATOR ASHFORD: Thanks, Speaker Flood. We know where to find you. We'll keep working on this. I hope...yes, Senator McGill. [LB667]

SENATOR MCGILL: I have a quick question. Do you have any idea what happens...no one from Lancaster County or Lincoln was here and I know we have Cornhusker Place where if someone is pulled over for a DUI, they end up there. I don't know if they get

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booked, though, in the process. Do you have any idea? [LB667]

SENATOR FLOOD: Well, and, you know, part of what I talked about here is if we had an extra million dollars sitting around, I think Omaha and Lincoln would...or Lincoln...Omaha would need some funding to develop some kind of a process. As my understanding and Judge Yardley would know a lot better than me, but if you're arrested for drunk driving in Lincoln, you are taken in custody to Cornhusker detox. You're placed in a type of civil commitment where you cannot leave until certain conditions are met--you blow zeros or somebody gets you to blow zeros, I don't know exactly what the latest requirements are. I know that Cornhusker detox has wanted the ability to keep people for a couple of days and that has been rejected once or twice. And I think Senator Coash has worked on bills like that. Lincoln has a very good system. And maybe Omaha, given the sheer number that they have, needs a Cornhusker detox. [LB667]

SENATOR MCGILL: Um-hum. Because I don't want to mess up the good thing that I think we have going on in Lincoln either, so. [LB667]

SENATOR FLOOD: No. Lincoln set up a system that works very well. And at the end of the day it's not about jailing them, it's about taking them off the road... [LB667]

SENATOR MCGILL: Um-hum. [LB667]

SENATOR FLOOD: ...and sending the message, you know, you're a danger to society right now. You can't be back out there. [LB667]

SENATOR MCGILL: Thank you. [LB667]

SENATOR ASHFORD: (See also Exhibits 22, 23, 24, and 25.) Thanks, Speaker Flood. [LB667]

SENATOR FLOOD: Thank you. [LB667]

SENATOR ASHFORD: All right. Let's go to Senator Pirsch is here. I don't even know what the number is. LB675. Hold on just a sec., Pete, till we get a few people...Lee, you stayed around. I thought you were going...I know it's an important issue. I didn't mean that. I just thought you...go ahead, Pete. I think we're okay now.

SENATOR PIRSCH: (Exhibits 50, 51, and 52) Okay. Chairman Ashford, members of the Judiciary Committee, I am state Senator Pete Pirsch, that's P-e-t-e P-i-r-s-c-h. For the record, I am the sponsor of LB675. LB675 is designed to target the habitual drunk driver, the worst of the worst, serial drunk drivers who have no interest in changing their dangerous ways. LB675 has six parts to it: number one, would create a mandatory

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minimum prison sentence of five years for habitual drunk drivers convicted of their fifth offense or more DUI; secondly, it expands the look-back period from 12 years to 20 years for determining whether a prior DUI exists for the purpose of sentencing enhancement. Currently, if you have a prior DUI conviction from 13 years ago, for this purpose, the law, the courts, the prosecutors ignore it, have to ignore it legally. Third, it doubles the fines for all drunk drivers; fourth, it creates a new misdemeanor criminal offense for those already convicted of felony drunk driving. Such offenders would be prohibited from driving with over a .02 blood alcohol concentration, so it's essentially a zero tolerance approach similar to the approach we have used for years and is the approach we use now with respect to all drivers under 21 years of age. Fifth, to prevent drugged driving, LB675 creates a new misdemeanor criminal offense for driving with an illegal drug in one's system and drugged driving is a very significant problem in the state; and sixth, finally, it heightens the penalty for leaving the scene of a death or serious bodily injury accident. Right now there's an incentive for a serial drunk driver to leave somebody dead or dying on the roadway and this bill takes away that incentive. A recent survey ranked Nebraska as having the third highest levels of drunk driving per capita in the nation, not a good position to be. In recent years there's been approximately 14,000 DUI arrests statewide so this is no small matter. DMV statistics indicate that there are 116 DUI serial offenders in the state with between 10 and 18 prior drunk driving convictions. And research has indicated that for every time an individual is stopped for drunk driving, that particular individual has already driven approximately 200 times already impaired. Having come to this body as a criminal prosecutor having prosecuted approximately 4,000 DUI cases, I know that we can make a difference with this legislation and we should and we must. The testimony here today has been clear: Drunk driving kills; too many families have suffered the loss of a loved one; too many victims' lives have been shattered; too much death, too much carnage. As with any comprehensive and complex legislative proposal, I look forward to working with this committee and other stakeholders to ensure a quality final product. I will close by stating that with the magnitude of this issue I do tentatively look forward to prioritizing this legislation. I thank you for your time. [LB675]

SENATOR MCGILL: Thank you, Senator Pirsch. Senator Larson, it's just us so any questions? Thank you, Senator Pirsch. [LB675]

SENATOR PIRSCH: Thank you. Yes. [LB675]

SENATOR MCGILL: First proponent. Welcome back up. [LB675]

MARTY CONBOY: Good evening, Senators. I will be very brief. I think Senator Pirsch laid this out very well. I would point out it's just kind of interesting because he said something I didn't realize. Nebraska right now has the third highest per capita DUI rate and the third lowest fines in the United States. Our fines have not been adjusted in decades. There are only two states that have lower fines. One of them is North Dakota,

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which is actually also ahead of us in per capita DUI rate, and the other is Rhode Island and I think they're ahead of us as well. So there must be some correlation between having antiquated DUI penalties and DUIs. The most important thing this bill does, frankly, I think is the leaving the scene provision, which brings us really I guess in a way I think perhaps here describes closing a loophole. When we had this penalty when what we call Matt's law was adopted, there was not a provision to make the penalty a Class III felony. It was a IIIA. And this distinguishes out those cases where death or very serious injury results from leaving the scene. And those, thankfully, are rare but also I think should be treated with the kind of gravity that this suggests. One other interesting concept here, it's something that's been advanced in other states, and that's the idea of treating a person who's been already convicted of felony DUI, multiple DUIs back again, the same way we do with a teenager. They've got basically an .02 limit; they can't drink and drive. We just don't trust them to use any kind of judgment. We're not saying you can drive and drink legally, and we don't let teenagers do that for the same reason, because their judgment is no good. After you've been convicted enough times to be a convicted felony drunk driver, it makes sense to have some sort of different treatment. To just assume that they're going to make good decisions I think is bad public policy. This also does one other thing and I guess, you know, it gets kind of technical. The previous bill would have taken the look-back period to 12 years from the day of the enactment of the bill going forward. This just says any bill...any DUI that's 20 years or older. The advantage of that I guess is at least it gives the DUI offender a chance to know when that prior conviction is going to be valid or not and under a provision where it's kind of a floating day, you really have to...a harder time I guess as an attorney and as a citizen knowing when your prior conviction was voided. This just says if it's 20 years before the day you were arrested it's good, which I think is...you know, clarity is important. Be happy to answer any questions. I'd also like to thank Senator Pirsch and then finally add that as this committee looks at these DUI bills and all the proposals that have been coming up, ultimately I think it would be nice to take some of these provisions that make sense and try and advance a bill. The public is demanding action on DUI in an almost unprecedented manner. Certainly Mr. Lutton was here I think to represent in a way that's hard to ignore that people are looking at this group to do something substantive and we've got plenty of opportunities in this bill and the previous bill. Be glad to answer any questions. [LB675]

SENATOR ASHFORD: Any questions of Marty? I think you're... [LB675]

MARTY CONBOY: As I said earlier, good evening. [LB675]

SENATOR ASHFORD: Well, not quite, you got five minutes left. Paul. [LB675]

PAUL CARTER: Well, several hours ago I was Paul Carter and I still am Paul Carter so... [LB675]

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SENATOR ASHFORD: And you look the same. [LB675]

PAUL CARTER: Yeah. C-a-r-t-e-r, and as I've said before, I'm executive director of PRIDE-Omaha. The reason that we're here to strongly support Senator Pirsch's bill, LB675, is first of all there are six very key facets within the bill as you read it that I think are very important. One thing we have to remember is that almost 20 percent of the alcohol what's purchased in our state is consumed by minors, by underage youth. One of the strongest things that PRIDE has been focused on since March of 1978, this year we're celebrating our 33rd anniversary, is our concern to change the cultural, environmental issues that send messages to our youth that it's okay to drink. And you've heard testimony earlier today that we do live in a state in which the alcohol influence is very strong as part of the culture or rite of passage. I think it's important if we're going to deal with youth access, and again we heard earlier from Jessica Bedient's father, we must bear in mind that she was...her life was taken by an 18-year-old, underage drinker and driver, and I think it's very important that as we begin to focus on trying to change those cultural and environmental influences one of the key parts of that is going to be by having stricter and harsher penalties for the adults that will help send a clearer message to our youth. One other key factor is that, again, Senator Pirsch has created a new criminal offense for those driving a vehicle with any measurable amount of illegal drugs, be it marijuana, methamphetamine or cocaine. And we've had a very high-profile case in the news very recently where a bank vice president not only left the scene of a property damage accident but then also caused a very serious accident in which not only the driver, who was under the influence of meth, the bank vice president, but also two people that are personal friends of mine that I've known for a long time, a very serious injury. So again, I'd be glad to answer any questions, Senator Ashford, or from any of the other senators on the Judiciary Committee, but I would urge your support for Senator Pirsch's bill. One last comment since the red light has not gone on. [LB675]

SENATOR ASHFORD: Turn that red light on. [LB675]

PAUL CARTER: Yeah. [LB675]

SENATOR ASHFORD: No. (Laughter) [LB675]

PAUL CARTER: I would echo what Marty Conboy said a few minutes ago. You've heard a lot today and you're dealing with a lot of issues related to alcohol in this state, and I think that we're going to have to, through a process, find a way to be able to bring all of the issues we're dealing with today, whether it's ALR or ignition interlock or any other strengthened and stricter penalties, we're going to have to make some of these things happen. Thank you very much. [LB675]

SENATOR ASHFORD: Thanks, Paul. Other proponents? [LB675]

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CARRIE COPENHARVE: (Exhibit 54) My name is Carrie Copenharve, C-a-r-r-i-e C-o-p-e-n-h-a-r-v-e. Members of the Judiciary Committee, on January 31, 2010, my brother, Scott Limbeck, was attending a housewarming party for a friend of his. While on the front porch, an uninvited guest showed up to the party. The guest entered the house with some other guys he was with. They began to steal beers from the fridge and start fights with the partygoers. Soon after this group of guys entered the house, the music was turned off and they were asked to leave. Scott, still being on the front porch, had no idea what was occurring. While Travis Wolfe left the house with one other guy, they got into Travis' truck and went flying down the street. This is when they hit Scott's car that was sitting in the driveway. After witnessing this, Scott ran into the street to figure out what was going on. This is when Travis hit Scott with his truck and the lives of so many people were changed forever. Travis fled the scene by going in reverse all the way up the street before speeding off. Partygoers who heard the squealing tires came out to see what was going on, only to find Scott lying in the street. Scott was rushed to the hospital where he laid in an induced coma. The family was told that Scott had a tremendous amount of swelling in his brain and advised us not to leave the hospital for 48 hours. Within hours, Creighton Medical Center was booming with people coming in and out to see what was happening. No one was allowed to enter the room, touch Scott, or even talk to him; just look and wait. Seven days went by with so many ups and downs. There would be signs that the brain was healing, the pressure going down. He even opened his eyes for a nurse at one point. But there were also so many setbacks, emergency surgeries, heavy spikes in fevers, and eventually pneumonia. I will never forget February 7, 2010. I woke up in the waiting room at Creighton and went down the hall to sit with my brother. He didn't look right. There were too many people coming in and out. Something wasn't okay. Hours later the family was summoned to the room. We were told about the severity of the pneumonia, shown x-rays of his lungs, and told to start thinking about letting him go. Over 100 people were at the hospital that day to say good-bye to Scott. Many came from miles and miles away. I will never forget this day. Very soon after kissing Scott good-bye, the family was given a slap in the face. When Scott laid in the hospital bed, Travis Wolfe eventually turned himself in. He was given a hearing and released on bail. Travis was not able to be tested for alcohol level that night because the police never went to his house or anywhere to find him, despite all the witnesses who knew it was Travis. By the time Travis was charged and he turned himself in, the evidence was gone. People were very convinced that he was also under the influence of drugs that night. That will never be known. While Scott was in a coma, Travis faced the possibility of 50 years in prison. When Scott took his last breath, Scott (sic) now only faced the possibility of 20 years in prison. My initial reaction though is that it had to be a mistake. Someone had to be giving us false information. Unfortunately, the information was correct and the slaps to the face just kept on coming. Travis was allowed to post bail with a new set of charges. He was allowed to leave the city and live with his mother. He was allowed to sell everything he owned, including his truck, leaving nothing for the family to go after to help with the finances of Scott's hospital bills, car

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damage, and funeral expenses. Insurance paid an amount after a lawyer was hired, but it is still small compared to the hole left in our family. The prosecutor, the judge, and Travis' lawyers met to discuss the charges. He was being charged with manslaughter and hit and run. After many delays in the process for this and that, Travis met with the lawyers and judges and decided to plead guilty. The judge and the prosecutor agreed to drop the hit and run sentence since it would not affect the time Travis spent in jail--the maximum amount of only five years. The judge said he would run the two concurrently. Travis had been rewarded for leaving the scene. He could not be tested for drugs or alcohol, he was allowed to post bail despite the fact that he is known to run from his problems, and then the charges were dropped. Travis was sentenced just yesterday for his crime. The judge sentenced him only for the manslaughter. It was hard to swallow, knowing that when Scott was fighting for his life Travis could have faced 50 years but yesterday Travis didn't even have to face the hit and run charge because it was not significant enough for the judge to consider. This tragedy in my life has opened my eyes to the many flaws in our legal system. The accused have many more rights and privileges than the victims. Every time I turn on the news and hear about a hit and run, even if no one is seriously injured, I immediately think about whether or not that person will even face a punishment for the crime. Please help those who will someday be affected by this legal flaw. Today you have the opportunity to change the sentence for a hit and run to a 20-year sentence. You can help those who face similar situations not to be slapped in the face in the middle of a tragedy. This will also help judges to understand that a hit and run is a severe crime, not just an attachment that can be thrown out. Thank you for your time, your work, and your consideration of advancing LB675 out of committee and on to the floor for a vote and, in turn, a small step in the betterment of our legal system. [LB675]

SENATOR ASHFORD: Thanks, Carrie. Thank you for your testimony. Thank you for being here all day. You did a great job. [LB675]

DIANE RIIBE: Senator Ashford, members of the committee, Diane Riibe with Project Extra Mile. We're here in support and thank Senator Pirsch for introducing the legislation. As you've heard, and I'll be brief, approximately 20 percent, it's odd that those are parallel numbers, but about 20 percent of all alcohol sold in the state is consumed by those under 21, and about that same percentage are the number of young people who are involved in DUI arrests. So unfortunately, it's an issue that is there and we see the cases. So anything you can do to maintain what we know works is really helpful and when you can look at some innovative opportunities, as certainly Senator Pirsch's, particularly as we see the closing the loophole on the leaving the scene and then the lower BAC for repeat DUI offenders, are really helpful and certainly worth your time. Again, as others have said, you may have an opportunity to put some of these good pieces together and come with something really positive. So we thank you for your time very much. [LB675]

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SENATOR ASHFORD: I wish we had the answer, Diane. [LB675]

BOB SCHMILL: (Exhibits 55 and 56) Well, hopefully this is the last time, at least today. [LB675]

SENATOR ASHFORD: It's never too many times, Bob. [LB675]

BOB SCHMILL: No. Bob Schmill, it's S-c-h-m-i-l-l. Again, I'm still the father of Matt Schmill and the founder of the Matt's Dream Foundation. As I had stated before, Matt was killed by a drunk driver who also left the scene. Matt had turned 23 at midnight and was killed at 12:30 on his birthday. Again, we are the members of the voices of drunk driving victims and we're still advocating that we are for this bill and all the parts to it. Although it was a felony since 2006 for leaving the scene of an accident, the law is still unfinished. For the last three years the foundation has been trying to update the law by adding two sentences to make it a Class III felony for leaving the scene of a personal injury accident that's the cause of death or serious bodily injury. The existing offense for leaving the scene of a personal injury accident is a Class III felony or punishable by up to five years. If you stay at the scene, you have prior DUIs, you are over the legal limit and you do cause that same kind of injury to another person, it's a Class III felony. But if you run away, it's rewarded for doing that with only a Class IIIA, so the scales of justice still aren't level. Each of the past sessions this bill has never made it out of committee. Since the law went into effect, the average number of hit and run deaths in the state still remain at 2.2 per year, that's deaths, or 22 deaths over the last 10 years. That will change in 2010 when we had 18 deaths due to hit and run in the state. The problem has not changed, mainly due to the way the law is written and the other laws too. We hope this will change this year. The remainder of LB675 was for the mandatory incarceration, the DUIs, the criminal offense, all the other parts, the other five parts to it we are in much favor of. During the last two weeks I went around and handed each senator, there's two senators, I have yours here because I never could get you, that I have the information because what we did is we went to the Department of Roads and we asked for what was the...how many hit and runs were there in each county by county since 2000 to 2009. That report we did have it (inaudible) into each by county. But in that we more or less...and I do have that and I attached to the ones that I have here the overall view for the entire state. If you see that there were 22 hit and run fatalities over that period of time, that ten-year period of time, but last year 18 for just the one year so it's gotten worse. I will open it up for any questions. [LB675]

SENATOR ASHFORD: I don't see any, Bob. I just hope that if we...and I agree we should enhance the penalty, no question. I just hope that it's going to make, you know, makes a difference. We spend a lot of time and we spent a lot of time on kids and drinking in this committee and I hope it's making a difference. I don't know. But I mean all we can do is keep plugging. [LB675]

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BOB SCHMILL: Just keep trying. [LB675]

SENATOR ASHFORD: And I know you'll keep trying. I've known you for 59 years or 56 years or so. [LB675]

BOB SCHMILL: Yep. Yeah, almost that long, yeah. [LB675]

SENATOR ASHFORD: And it's always good to see you. Thanks, Bob. [LB675]

BOB SCHMILL: You too. Thanks, Brad. [LB675]

SENATOR ASHFORD: Are you neutral, Judge? [LB675]

LAURIE YARDLEY: I'm neutral. [LB675]

SENATOR ASHFORD: Do we have any other proponents? How about opponents? Judge, I think you're up. [LB675]

LAURIE YARDLEY: My name is Laurie Yardley, Y-a-r-d-l-e-y. I'm a Lancaster County Court judge, and I'm speaking on behalf of Douglas County and Lancaster County and I'm only talking about...and I'm neutral on it but I just want you to know the effect that if you raise the fines over \$500 it increases the...they're no longer under the jurisdiction of the city ordinances and that would impact, I believe, Douglas County Courts and Lancaster County Courts greatly. Currently, we do I think about 55 juries a year, only DWI juries a year. That's just DWIs. You're going to add...I think the fiscal impact statement said 1,000 possible jury trials in Lancaster County. I think it's more. I think it's higher than that. And Douglas County is going to be 3,800 cases. Jury trials just take a lot of time and if you add 50 or 60, I mean even if it's 5 percent become jury trials, you're adding another 50 or 60. So I think that would have a huge impact on the courts in terms of time. So again, I don't mean to sound like a broken record but... [LB675]

SENATOR ASHFORD: No, you don't. We struggle with it mightily in here all the time and that's sort of one of the reasons why in our LR542 process we didn't elect to do anything that would impact at least the existing system and/or judges, so we know that it would be tragic to do that and we just have to keep... [LB675]

LAURIE YARDLEY: It's just the fine part that's going to affect the jurisdiction. [LB675]

SENATOR ASHFORD: Well, the fine moves it up and it's a jury trial. I get it. [LB675]

LAURIE YARDLEY: Right. [LB675]

SENATOR ASHFORD: And so thanks, Judge. [LB675]

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LAURIE YARDLEY: Okay. [LB675]

SENATOR ASHFORD: Senator Pirsch. (See also Exhibit 53.) [LB675]

SENATOR PIRSCH: Members of the committee, I appreciate the testimony here today, appreciate the testimony of the judge. That obviously is an issue that needs...that we are aware of and a very solvable little issue I think. And I guess, just to kind of carry on the thought that was going on in the back and forth with Mr. Schmill, we have to keep trying. It's unacceptable the way things are now. We have around 80 deaths every year consistently in Nebraska. It's one of the...when you look at the magnitude of anything that can cause 80 deaths to Nebraskans consistently year after year after year, it's become so common that we almost take it for granted that we have to keep suffering this, and we don't. I think there are common-sense things that we can do. This isn't, you know, as Senator McGill pointed out, there are kids dying as a result of this, even the drunk drivers themselves die. We just had a few days ago on West Fort Street in Omaha, the drunk driver was the only one in the car, hit a pole and died himself. So it's for everybody's benefit. You know, we can't give Mr. Schmill back his son, we can't give Ms. Copenharve back her brother, but we can make common-sense steps to make sure that we...that this doesn't have to happen to other families and to other people. So I look forward to working with this committee on this bill and thank you for your time. [LB675]

SENATOR ASHFORD: Thanks, Senator Pirsch. [LB675]

SENATOR PIRSCH: Yep. [LB675]

SENATOR ASHFORD: Thanks, Pete. Okay. All right. [LB675]

SENATOR MCGILL: Last but certainly not least... [LB660]

SENATOR ASHFORD: Senator Karpisek, you would be the... [LB660]

SENATOR KARPISEK: Thank you, Senator Ashford, members of the Judiciary Committee. I know you've had a long day. I've had a long day waiting so I know it's worse on that side of the table. We will be brief. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I represent the 32nd Legislative District. LB660 very simply amends the Uniform Controlled Substances Act so that any person who provides a sample of bodily fluid containing any amount of a controlled substance commits an offense punishable in the same manner as if the person otherwise possessed that substance. This is not a debate about if marijuana should be legalized or not, if it's good or not. This is just a debate...a bill saying that if it is in your person you are in possession. I'm fairly certain that minors in possession carry this sort of a law. If they are in possession of alcohol in their bloodstream, they can get an MIP. I guess I don't

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see the difference between if a person stuffs a rock of cocaine in their pocket or if they have been snorting it during the evening but have none left. That is the whole intent of my bill, and with that I'd be glad to take any questions. [LB660]

SENATOR ASHFORD: Any questions of Senator Karpisek? Yes, Senator Larson has one. [LB660]

SENATOR LARSON: Real quick, Senator Karpisek, I just have one quick concern. What about prescription medications? A lot of them are outlined and, you know, are controlled substances. Should this be limited to just only like Schedule I drugs? It's just a small concern. [LB660]

SENATOR KARPISEK: Sure. And I think the fact, reading from the bill, "The fact that a person charged with violating this section is or was legally entitled to use the controlled substance shall constitute an absolute affirmative defense against such charge." So long as you have it... [LB660]

SENATOR LARSON: I just wanted to make that clear on the record for you. [LB660]

SENATOR KARPISEK: Yes, and thank you for doing that. I'm trying to move too fast for you. [LB660]

SENATOR ASHFORD: Yes, Senator Harr. [LB660]

SENATOR HARR: Thank you, Senator Ashford. So if I read this correctly, the same as having it within your urine, correct, or blood or whatever? [LB660]

SENATOR KARPISEK: Correct. Same as having it in your pocket. [LB660]

SENATOR HARR: So would you be able to charge me with distribution if I hand you my blood that has it? [LB660]

SENATOR KARPISEK: I suppose if you would take the blood (laugh) if you were a vampire. [LB660]

SENATOR HARR: Yes. (Laughter) All right. [LB660]

SENATOR ASHFORD: The vampire thing? Yeah, go ahead. [LB660]

SENATOR COUNCIL: Thank you, Chairman Ashford. Senator Karpisek, I just...just a point of information and something that I've heard from some concerned citizens about the marijuana is a controlled substance that stays in one's system for up to 30 days and I mean that's a...and with all this movement to legalize medical marijuana, the push to

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legalize marijuana, I guess I'm wondering if it's your intent that that be captured as well or if you're talking about the more serious...I guess in some people's mind all of them are serious, but the more serious that... [LB660]

SENATOR KARPISEK: In my... [LB660]

SENATOR COUNCIL: ...and I'm going to say this because those don't stay in your system as long,... [LB660]

SENATOR KARPISEK: Uh-huh. [LB660]

SENATOR COUNCIL: ...but is cocaine seven days,... [LB660]

SENATOR HARR: About a week. [LB660]

SENATOR COUNCIL: ...meth maybe even a shorter period of time but... [LB660]

SENATOR HARR: Can't even test for K2 (inaudible). [LB660]

SENATOR COUNCIL: Yeah, and can't even test for K2 so you don't know. [LB660]

SENATOR KARPISEK: And you are correct, some people would say some are worse than others. I think they're all bad. That's why they're all illegal. I guess in my opinion, Senator, the 30 days, I don't care if it was a year, it's still illegal. It was illegal. It is illegal now so...I guess I shouldn't say that. I do care if it was a year. [LB660]

SENATOR COUNCIL: Okay. So... [LB660]

SENATOR KARPISEK: But my point is it's illegal. It's still in your system. You had done it. [LB660]

SENATOR COUNCIL: Okay. Thank you. [LB660]

SENATOR ASHFORD: Thanks, Russ. Do we have proponents on this bill? Opponents? Opponents. [LB660]

SENATOR LARSON: He's been sitting here all day so... [LB660]

LEN SCHROPFER: (Exhibit 57) Good evening, Chairman Ashford, members of the Judiciary Committee. My name is Len Schropfer, S-c-h-r-o-p-f-e-r, first name is Len, L-e-n. Yesterday in this packed room we heard from law enforcement that they have better things to do than to verify immigrant legal status, which after all is a federal function or dysfunction. There was also a lot of discussion about constitutionality. We

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believe the same applies to cannabis. The state is wasting valuable, scarce funds pursuing an unconstitutional hemp prohibition. It required an amendment to the United States Constitution to prohibit alcohol. It would likewise require an amendment to the constitution to constitutionally prohibit hemp, which does far less harm than alcohol. Furthermore, surely sampling body fluids without probable cause, without impairment, and I'm glad that Senator Council did mention the fact that hemp/cannabis does stay in the system for quite a long time, but surely taking those fluids without probable cause, without impairment is a clear violation of the Fourth Amendment regarding unreasonable search and certainly a clear violation of the Fifth Amendment regarding self-incrimination. I do thank you. I accept questions if anybody has them. [LB660]

SENATOR ASHFORD: Any questions of Len? [LB660]

SENATOR COUNCIL: Just a comment. Thank you, Len. I asked that question for your benefit because I've received your communications and I am aware of your position on the issue. Just wanted to make sure that the record did reflect the fact that consideration is given to that position. [LB660]

LEN SCHROPFER: Thank you very much, ma'am. [LB660]

SENATOR ASHFORD: Thank you, Senator Council. Thanks, Len, for staying all day. [LB660]

LEN SCHROPFER: Thank you, all. [LB660]

SENATOR ASHFORD: Senator Karpisek. Oh, I'm sorry, do we have any other opponents? Senator Karpisek. [LB660]

SENATOR KARPISEK: Thank you. I just want to say very quickly that I consider Mr. Schropfer a friend of mine and we normally agree on quite a bit of things, just not on this one subject. But as you know, sometimes that can get radical. Again, you know...and, Senator Council, you're right, the medical marijuana and everything. I'm not going to say that there's not medicinal properties in marijuana. I did say that the other day in the hall and I have to apologize and get on the record. I think that it is misused. How's that? But I guess until we go that step, which I would very much not like to go there and I would battle, it is illegal. Now if the committee would want to talk about taking marijuana out of this sort of thing, we could talk about something. Obviously, I'm just trying to make a little bit of a point here that if it's in your system it's in your possession. So thank you for your indulgence. [LB660]

SENATOR ASHFORD: Senator Council. [LB660]

SENATOR COUNCIL: Yeah, Senator Karpisek, and it's just...your amendment is just to

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the Uniform Controlled Substance Act, but my question is, and I'm sitting here, and Len kind of prompted this question. So I'm in the hospital and I go in because I've severely injured my leg and they take a blood draw and they do an analysis and the blood draw comes back and says I have marijuana in my system. Does that impose some duty on the healthcare provider to report me to law enforcement or... [LB660]

SENATOR KARPISEK: It probably would, and you bring up a great point, Senator Council. That is not my intention with the bill. My intention would be if it is the police have taken you in for a probable cause. And again, as Len talked about the search and seizure, it's not my intention to grab someone off the street and make them give you their...give you the blood or in the hospital. It would be reasonable means, reasonable suspicion to bring you in. [LB660]

SENATOR COUNCIL: Okay, so you're...so then... [LB660]

SENATOR ASHFORD: Don't say that. Don't say those words. [LB660]

SENATOR KARPISEK: Oh, I'm sorry. [LB660]

SENATOR COUNCIL: No, you don't want to start that. (Laugh) You don't want to start that. [LB660]

SENATOR KARPISEK: I don't sit on this committee, so... [LB660]

SENATOR ASHFORD: Don't go down that road. [LB660]

SENATOR KARPISEK: I don't sit on this committee. I got to be careful. [LB660]

SENATOR COUNCIL: But your intent is that if someone who's in lawful custody of the police... [LB660]

SENATOR KARPISEK: Yes. [LB660]

SENATOR COUNCIL: ...and is required as a part of that custody, that they... [LB660]

SENATOR KARPISEK: That's what...she knows what I meant. [LB660]

SENATOR COUNCIL: Okay. Well, then that...but that...well, that's what needs to be changed dramatically because it really doesn't get to that point, so... [LB660]

SENATOR KARPISEK: Okay. Well, that would be my intent, Senator. [LB660]

SENATOR COUNCIL: Okay. Thank you. [LB660]

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SENATOR ASHFORD: Thank you, Senator Council. Senator Lautenbaugh. [LB660]

SENATOR LAUTENBAUGH: I'll be brief. I promise you that. And if you covered this in your opening, I apologize. Is there a way to get marijuana in your system without actually smoking it? Can you do it just by being around someone who's smoking it? [LB660]

SENATOR KARPISEK: I would assume so, Senator. [LB660]

SENATOR LAUTENBAUGH: Is that a problem with this then? [LB660]

SENATOR KARPISEK: It is, and it would probably...could be a...I don't know how you would do an amount, then hence has been the problem with all of these bills on driving under impairment of marijuana. I don't know. I guess you smoke crack, too, and if you're in one of those places I don't know. [LB660]

SENATOR LAUTENBAUGH: They have places for that now? (Laugh) [LB660]

SENATOR KARPISEK: So I hear. (Laugh) [LB660]

SENATOR LAUTENBAUGH: No, okay. [LB660]

SENATOR KARPISEK: I watch TV. That's about all I can tell you, Senator. [LB660]

SENATOR LAUTENBAUGH: I thank you. Thank you, Senator. [LB660]

SENATOR KARPISEK: Thank you. [LB660]

SENATOR ASHFORD: I don't know how much more refreshing one guy could be. All right. Thank you, Senator. [LB660]

SENATOR KARPISEK: Thank you, Senators. (See also Exhibits 58 and 59.) [LB660]