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General Affairs Committee  
October 04, 2013

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[LR175 LR258 LR280 LR281 LR283]

The Committee on General Affairs met at 9:00 a.m. and at 1:30 p.m. on Friday, October 4, 2013, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LR280, LR281, LR175, LR258, and LR283. Senators present: Russ Karpisek, Chairperson; Colby Coash, Vice Chairperson; Dave Bloomfield; Jerry Johnson; Bob Krist; Scott Lautenbaugh. Senators absent: John Murante; and Ken Schilz.

SENATOR KARPISEK: Okay. Welcome to the General Affairs Committee. I'm Senator Russ Karpisek of Wilber and I chair the committee. Committee members who may be here or are here or may be going in and out, to my far right would be Senator Murante of Gretna, I don't think he will be with us today; then Senator Lautenbaugh of Omaha, I think he may be in and out; Senator Bloomfield just joined us, of Hoskins; Senator Coash of Lincoln, who is our Vice Chair; Josh Eickmeier, legal counsel; to my far left, Christina Case, who is our committee clerk; Senator Johnson of Wahoo; then Senator Schilz of Ogallala, who will not be with us today; and Senator Krist of Omaha, who will join us later. After each resolution is introduced, we will open it up to testimony for the public. There's no need to specify whether you're in support or opposition for an interim study resolution but it would probably be good if we knew if you liked it or not. But you'd probably tell us. If you're planning on testifying, please pick up a sign-in sheet from one of the tables in the back of the room. Please fill out the sign-in sheet before you testify. When you come up to testify, give your sign-in sheet to one of the pages or to the committee clerk. This will help us keep a more accurate public record. If you have handouts, please make sure that you have 12 copies for the page to hand out to the committee. If you don't, please ask the pages and they will help you out. When you come up to testify, please speak clearly into the microphone, tell us your name, and please spell your first and last name. Also please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that makes noise. Please keep your conversations to a minimum or take them out into the hallway. Finally,

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

while we do allow handouts, we do not allow visual aids or other display items. Thank you for your cooperation. And we will begin with my LR280. Good morning, Senator Coash. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k. I'm from Wilber, W-i-l-b-e-r, Nebraska, and I represent the 32nd Legislative District. Legislative Resolution 280: The issue has come up as to whether a retail licensee such as a bar or restaurant should be able to repackage alcohol to be consumed off the premises. Currently, craft breweries, such as Lazlo's can offer their beer in glass jugs, commonly referred to as growlers, that can be purchased at the restaurant and taken off premises. The reason Lazlo's can bottle and sell growlers and other retailers cannot is because Lazlo's is also the manufacturer and can, therefore, package their product however it wants. For other retailers who are not manufacturers, to fill containers such as growlers and sell off premises for consumption would require a change in the Liquor Control Act. I introduced this interim study to gain a better understanding of the issue and determine whether a statutory change should be made. Therefore, I look forward to hearing from today's testifiers. Thank you. [LR280]

SENATOR COASH: Thank you, Senator Karpisek. Seeing no questions, we'll just go ahead and start with the testimony. You can just come up as you like and we'll go from there. Welcome. [LR280]

ANTHONY HITCHCOCK: Good morning. My name is Anthony Hitchcock, A-n-t-h-o-n-y, last name Hitchcock, H-i-t-c-h-c-o-c-k. I'm here representing Blatt Beer and Table in Omaha, Nebraska, right next to TD Ameritrade and CenturyLink. So kind of where this...where I kind of came up...I've just been traveling over the last couple of years and most recently, this last summer, I was in Brooklyn hanging out with my brother. We were barbecuing, and he said let's go to the bar right near by here and get a growler of beer. And I said, wow, I didn't know that that was something you could do. And he said, oh, yeah, we can do that. So we headed over to the local bar, got a growler of a really nice, neat beer, took it back to the barbecue, opened it up and we all poured ourselves some pints of beer as we sat around at his house and barbecued. I said, wow, that's

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

kind of a cool thing. We operate a craft beer concept in Omaha, I'd like to look into that. So when I came back, I kind of did some research. And I knew that it was legal in some extent because I go to Jaipur in Omaha quite often and I take a jalapeno growler home quite often to my family and we sit around and eat Indian food and drink jalapeno beer. And operating Blatt, often we get people that come in and say, wow, I really enjoy this beer but I can't find it anywhere. I say, yeah, it's only in kegs, unfortunately. You've got to come to our establishment or find another establishment that sells it in kegs. For instance, this summer Lucky Bucket brewed a Strawberry Blonde. That Strawberry Blonde Ale is a delicious summer beer. It would have been great to sit at your residence and have a Fourth of July party and maybe drink some Strawberry Blonde.

Unfortunately, you weren't able to unless you wanted to come hang out at Blatt and, unfortunately, we are closed on the Fourth of July. So I guess I brought a growler if you'd like to see what they are because it is kind of a...I mean, I guess a couple years ago, I didn't know what a growler was, I don't think. If you'd like to see one. But the idea behind it would be that we would be able to package these...you know, craft beers are kind of the hot thing. But we'd be able to package a craft beer and sell it for someone to take home or to take to a gathering or what have you. I did, you know, I kind of started thinking about, well, how is it labeled and such. But you know, when I go to Lazlo's or Upstream or Jaipur, there's no labeling on these bottles. It's just, they hand you a growler and off you go. So I guess we're up for any ideas there, I mean, if it was something we had to consider that you had to put a label on it, write the name of the beer, the date, the establishment. I'm sure that that's all possible as well. [LR280]

SENATOR KARPISEK: Okay. Thank you. Any questions? You...do you brew some beer? [LR280]

ANTHONY HITCHCOCK: At Blatt, we don't brew beer, no. [LR280]

SENATOR KARPISEK: Okay. So you just bring it in and so that's the... [LR280]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

ANTHONY HITCHCOCK: Correct. Yeah. So we have 24 handles. And the thing about it, I can't imagine that, you know, some of these places that have a couple draft beers are going to want to sell growlers of Bud Light or Coors Light. I mean, maybe they would but, typically, your consumer can go to the gas station or the store and get a six-pack of Bud Light or Coors Light. I don't know that they're going to want to drive to do that. I think it's more these craft beers that you can't get. And so we have 24 different handles of craft beers and I think that's kind of more where the demand would be.

[LR280]

SENATOR KARPISEK: And I think that is the issue I've heard. What if they pour Miller Lite or Bud? But we'll talk to Hobie a little bit more about that. Does anybody want to see the growler? [LR280]

SENATOR BLOOMFIELD: Yeah. [LR280]

SENATOR KARPISEK: Please. We'll make an exception to the rule, yeah. [LR280]

SENATOR BLOOMFIELD: Thank you. [LR280]

ANTHONY HITCHCOCK: So there's different styles of growlers. They're typically 64-ounce jugs, like such. If you go to Lazlo's, I think they have a different one. This is my personal one. But, you know, these things just pop open as such and the establishment would fill this jug up for, you know, whatever the price they assume for these. And then seal the thing up and off you go. [LR280]

SENATOR KARPISEK: So it's not under pressure? [LR280]

ANTHONY HITCHCOCK: It's not under pressure. I mean, neither are Lazlo's. I mean, none of them are. Yeah. I mean, you know, they do hold for several days. But I mean, it's kind of drink at your own risk after that. I mean, it's kind of like taking a wine to go

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

from a restaurant and corking it. I mean, at this point, if you want to drink it six days later, I mean, that's up to you, I guess. [LR280]

SENATOR JOHNSON: Question. [LR280]

SENATOR KARPISEK: Senator Johnson. [LR280]

SENATOR JOHNSON: Thank you, Senator. You said that's your personal one. Do you bring yours in, then? [LR280]

ANTHONY HITCHCOCK: I take mine to Jaipur and they'll fill this for me. So you can...and you can do that, I would guess, at Lazlo's and Upstream and any other establishment that does that as well. At Jaipur, you can bring your own in and not pay the additional fee for them to give you one, it's kind of a deposit. If you bring it back, they'll give you your money back or you can refill it. My wife gave me mine for Christmas. And I kind of thought it was a neat one because there are different styles of them, I guess. [LR280]

SENATOR JOHNSON: Okay. [LR280]

SENATOR KARPISEK: Any other questions? Seeing none, thank you for coming. [LR280]

ANTHONY HITCHCOCK: Yeah, absolutely. Thanks a lot. I appreciate it. [LR280]

SENATOR KARPISEK: Welcome, Senator Lautenbaugh. Who's next? I can't believe you weren't first. [LR280]

JIM MOYLAN: Pardon? [LR280]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: I can't believe you weren't first. [LR280]

JIM MOYLAN: Well, no. I have to let you go first. You introduced the resolution. Thank you, anyhow. I'm Jim Moylan, 8424 West Center Road, Omaha, M-o-y-l-a-n, appearing today on behalf of the Nebraska Licensed Beverage Association, a state association of liquor retailers. I'll make it short and sweet. We'll just go through the resolution. [LR280]

SENATOR KARPISEK: All right. [LR280]

JIM MOYLAN: Whether there's a demand: Yes, there is a demand. Whether they should be providing the product: They should for draft beer. Whether retail licensees are capable of such product to be sold: They are capable. Number four, what regulations, if any, would be necessary, you know, to protect the public health regarding the draft beer: Well, they already have the license, you know, to sell it; and they already have off-sale, so I don't think there would be any regulation, maybe slight regulation. What, if any, restrictions should apply to the size of the individual container: And I'd say, oh, let's start with five gallons and work down, okay? And I don't think it would have an effect on the three-tier system at all. They're already retailing it, they've already gotten it all from, you know, the next tier up. And I don't think they would need any effect on the three tier. Now, this has been going on since '49 and '50 when I was a student at Creighton University. If we were going to have a picnic, I had a gallon jug in my car. And we had an establishment right there in Omaha down on 30th and Dodge Street. Take it in...that was when beer by the glass was 10 cents a glass. For a dollar, he'd fill that jug up and then we'd have beer for our picnic, so it was great. So it's been going on anyhow. So maybe you ought to continue it. If there's any questions, I'd be happy to try to answer them. Thank you. [LR280]

SENATOR KARPISEK: Thank you, Mr. Moylan. Next. Welcome. [LR280]

HOBERT RUPE: (Exhibit 1) I guess I'll bat cleanup, I guess. That was sort of the plan.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Welcome. Good morning. Chairman Karpisek and members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently have the privilege of serving as director of the Nebraska Liquor Control Commission. I'm handing out sort of the current laws which govern this issue. And I'll give you an idea of how the commission has interpreted those and allowed Class L liquor license brewpubs to do this. What you see is the definitional clause for "original package" and also the regulations on original package, labels, and seals. And you'll see that the push is...and "Original package means any bottle, flask, jug, can, cask, barrel, keg, hogshead, or other receptacle or container used, corked or capped," basically, anything you putting alcohol into. But it's labeled by the manufacturer. All right? The manufacturers have control over how they are going to sell it. Traditionally, that's how you see it. You'll see a, you know, let's use Budweiser for example. You'll get a keg of Bud Light because they sell it in a keg. You'll get, you know, six-pack bottles, you'll get 12-pack cans, case cans, that's how they do it. And you'll see that they meet with the original packaging requirements of the act. And also you have to remember the other interplay is--well, when they're working--TTB has label approval on things that are sent out for interstate commerce, interstate shipping. So they have to approve the labels there. Nebraska has not chosen to do our own label approval because we've thought, you know, why should we duplicate the federal government issues and how they're doing it. Okay. So given that legislative backdrop, you know, the history of the brewpubs comes up in late 1980s. They are manufacturers with large retail rights. They can get additional licenses on top of their L, so they can get...most of them will be able to get a C liquor license on top of their L. But we're just talking about the rights underneath the L liquor license, a brewpub license that allows them to brew at that point in time, 10,000 barrels, now 20,000 barrels, bottle it, sell it, you know, sell it at their own retail locations and also to wholesalers for further distribution. Growlers: What is a growler? Everybody says they know what a growler is. There's no TTB definition for a growler. The states which have gone down this are fighting over what's a growler. There's a big fight in Florida, currently, as to the size and the issues of growlers, what is a growler. When these were first brought to the attention...my predecessor and the commission looked at the original

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

package law and said, okay, well, since you're the manufacturer, if you're wishing to sell these for off-sale, you're able to do it. Sort of the understanding at that point in time, you know, perhaps wrongfully, was they were going to be selling their own glass bottles with their name emblazoned on it, you know, so you know what the product is and they would sell it. Well, a lot of them do it that way. I believe the...one of the previous testifiers was wrong. Some places will fill anything. Some places will only fill their own growlers because of the original package law. Because of that, the commission was actually, prior to the implementation of this bill anyway, looking at perhaps doing rules and regulations to further define and regulate, you know, the sale by craft breweries of growlers, including only being able to sell your own because of the idea under the original package law to conform to it would be it would have to be marked with the manufacturer's, you know, logo of some sort. And the other issue would be primarily from public health, safety, and welfare issues, the sanitation. You know, in my mind I would prefer a growler exchange if you're going to do it, where you take in your growler and they give you one that they've sanitized. They fill it and they put it out there because some of these growlers you're pulling out from underneath the stairs in the basement; hard telling what's in it. And that's one reason why we've always limited it just to the manufacturers because not only does it meet the original package rule but they're the people that made the investment. If you're going to get something that tastes like crap, the blame should go to the person who made it. Well, if you allow anybody to do that...let's say you're a retail establishment who wants to refill a growler and you haven't cleaned your tap lines in two weeks, you're going to try this new craft beer that's coming out and you're going to taste it and it's going to taste bad. And you're not going to blame the bar, you're going to blame the manufacturer. Well, the manufacturer had nothing to do with it. They sold that retail location good beer. So it sort of fit in with the idea of the original package was, you know, there's sort of an ownership, there's sort of, you know, you're the ones who did it. If you're selling it in this manner, you're going to be responsible for the good and the back thereof. So as I said, the commission was looking and it had been starting to do a look over the nation of growler laws to try to, you know, clarify our existing growler law. And I guess I will tell you the one consensus across the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

nation on growlers is, there is no consensus. Some states, like New York, have pretty laissez faire, open abilities. Some places don't allow them at all. A lot of states are more akin to Nebraska where they allow the manufacturer to sort of package it in that way if they wish to. We also reached out to the brewers' alliance, which is sort of a group...advocacy group of mostly small breweries and to see if there was any consensus from their members. We thought that there might be some guidance from the guys making small beer. And once again, the consensus is there's no consensus. Some of the guys really like it because they think it gives them more market...gets them out there without having the expense of doing a canning or bottling operation. The other guys who might be slightly larger than them saying, well, why in the heck did I spend the money to do a canning or bottling operation. And then some of them also have a lot of the same concerns that I addressed earlier where the sort of pride of ownership where what happens, you know, if I'm pouring this beer into this growler, I'm responsible for it. I'm not really sure I want somebody else, you know, down the stream being responsible. So there was no real consensus from the small brewers' alliance either. So that sort of gives you an idea of the relevant statutory provisions of Nebraska, sort of the landscape across the nation. This is not...you know, this is one of those areas where Nebraska will not be unique in trying to deal with growler legislation. Those issues are percolating through a lot of other states currently. And with that, I'd be happy to answer any questions. [LR280]

SENATOR KARPISEK: Senator Coash. [LR280]

SENATOR COASH: Thank you, Senator Karpisek. So, Hobie, under your...with your understanding of the current law, do growlers need to be labeled? [LR280]

HOBERT RUPE: Well, we thought they were being labeled because that's the way it was presented to us back in the time. And now, since you've had an explosion in the craft brewing...I mean, I can remember back in the '80s and '90s, it was very much still a niche market. Now, American-style craft brewery is the only part of the American beer

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

market which is growing. And so that's why we were looking at doing rules because we thought that, you know, we were getting reports that people were filling anything. And we thought that would probably be a violation of the original package rule. And so we were going to do some...you know, we were looking at doing some rules and regulations to sort of clarify that. And well, then when this bill was dropped last year, we figured, well, let's not do some rules which might be rendered obsolete before the end of the session. So we backed off on those to see what happened as part of this legislation. Or... [LR280]

SENATOR COASH: But, I mean, is an unlabeled growler being filled at a manufacturer's establishment in violation of the law? [LR280]

HOBERT RUPE: I probably think they could be. You know, there should be some labeling on it because you'll see that, you know, "No...shall sell or deliver any original package, you know, manufactured...containing alcoholic liquor, except beer and wine, manufactured...," and that's sort of more of the spirits. You know, it's maybe or maybe not. It's not really clear by the statute. And so we were going to clarify it more because our interpretation, as it was presented, was, hey, we're selling our own growlers and that there is some pride of ownership on it. [LR280]

SENATOR COASH: Okay. What about a beer that is...I mean, I see--you know, we talk about Lazlo's. Lazlo's has got handles all over town. And I could bring my Lazlo's growler into the brewpub and fill it there. But I can't go to a place where they have a handle and fill it there, can I? [LR280]

HOBERT RUPE: No. No, we've only allowed the brewpubs, the actual holders of the L liquor license to do it because they fall under the manufacturer. [LR280]

SENATOR COASH: Okay. So you have to do it on site under the... [LR280]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

HOBERT RUPE: You have to do it on site, yep. [LR280]

SENATOR COASH: Thank you. [LR280]

SENATOR KARPISEK: Thank you. Senator Johnson. [LR280]

SENATOR JOHNSON: Question on...I'm the retailer and I fill up somebody's growler and, for whatever reason, there's a liability issue that pops up. How far back can that liability go because that retailer doesn't know what might have been in that growler somebody brought in if it was their own? Wouldn't it...to me, it would be better that they sell it in something that's not as fancy as a growler and let the individual put it in their own and go to the party. [LR280]

HOBERT RUPE: Yeah. Well, you know, that's the problem. I mean, you know, one of the problems, actually, I mean, you saw a growler earlier. They're not the best design for health and sanitation because of the nice narrow tops. They're really hard to sort of get clean. You know, that's one of the issues that other states have dealt with, you know. You know, the lucky part for most reasons, most alcohol is somewhat resistant to bacterial...going bad because it actually has alcohol in it, you know, which is a preservative. Beer, of course, lower alcohol, a little different than a wine or spirit which have higher. You know, but it is...you know, so there could be something bad in there. You know, I mean, you never know what's in there. And that was one reason why, as we were seeing the explosion of craft brewers and with more growler issues coming before the commission, we're going to look through the rules to more, say, the exchange where, hey, you either buy...you know, almost like the old milk jugs where, you know, you sort of pay the deposit and you took it, and if you brought it back in and you didn't have to pay the deposit again. You could just get another one with the cost. You see that more with like the Blue Rhino, the propane tanks, where, you know, different costs for returning one and bringing it back. And so that was sort of the idea we had because that would do two things: One, if you're doing an exchange, you're

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

assuming that the craft brewery is going to be doing the sanitation of it. You know, selling you a clean...you know, they're the one responsible for it. And two, then it would be brand logoed so that there would be some idea of what the product was and where it was. You know, once you get outside some branded, you know, I mean, it's sort of hard to track it back, you know. If something...if there's a recall on a certain...you know, let's say there's a retail or a manufacturer's recall on a certain line of Bud beer that got produced because something was bad or was off on it, it's pretty easy to track those down because all those have tracking numbers. You know, we can pull it out of the marketplace. You know, the less uniform you get, the more likelihood you have of problems pulling things out. [LR280]

SENATOR JOHNSON: Thank you. [LR280]

SENATOR KARPISEK: Senator Bloomfield. [LR280]

SENATOR BLOOMFIELD: Thank you, Senator. Mr. Hitchcock had his growler up there. And the question that came to my mind after I watched him open and close it two or three times, if he had that filled and he's driving down the street with that sitting in the front seat beside him, is he carrying an open container? [LR280]

HOBERT RUPE: Arguably, he could be violating an open container law. [LR280]

SENATOR BLOOMFIELD: I would think so. [LR280]

HOBERT RUPE: You know, one of the reasons when we looked at the...you know, most...a lot of the ones which will sell...you know, the ones that you get at the brewpubs are usually, you know, they'll put on in such a way that if you take it off you can't reseal it. You know, where his is designed...you know, that was the other issue why we're looking at doing rules and regulations because you were seeing more and more people as the craft beer industry expanded, were getting their own growlers. And they would be

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

designing more reusable, you know, that (inaudible) way. So that's...you know, right now, it's sort of the wild, wild west. We've limited it to the L's and there's some idea, so. But yeah, it could be an open container. I mean, this is easily resealable compared to other ones which when you pull it off, you know, it's not going to be able to get back on the same way. [LR280]

SENATOR BLOOMFIELD: Could we make them have the manufacturer or retailer put a seal on it before it left the bar and have that be adequate? [LR280]

HOBERT RUPE: Well, you could do something, you know. We did do something, it was about four or five years ago when we did the wine doggy bag where they, you know, they could reseal it. Most of them ended up using...I know a bank bag company which, you know, made a lot of money because they were the perfect size for those to be sealed up and with the receipt attached. I mean, so, you know, can the Legislature look at this and make some rules and make some statutes on it? Oh, yeah, I mean, they can do it. I mean, right now I'm just bringing the idea of what's out there. The law is sort of behind where the industry is at currently. We were attempting to catch up. And then this bill came up so we figured we'd see what, you know...I don't really want to go through the pain of doing rules and regulations then have to redo them again if the law changes if I don't have to. [LR280]

SENATOR BLOOMFIELD: Thank you. [LR280]

SENATOR COASH: Thank you, Senator. Hobie, a couple of questions. Do you think the commission has the authority to make the changes outlined in LR280 without statutory change? [LR280]

HOBERT RUPE: Probably. I mean, it's always cleaner to have a legislative change because then it's clear. I think under the...our general powers of regulating the sale, we could take care of most of those issues. You know, so it's whether you want us making

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

those decision or you guys making the decision is sort of the issue. You know, as I've said, we've already allowed the craft breweries to do it under the powers they have under the Class L liquor license and in reading that and conforming it with the original package law, so. [LR280]

SENATOR COASH: Okay. So you think these are changes that can be clarified in the law but aren't necessarily needed? [LR280]

HOBERT RUPE: Well, I would always defer to a legislative change because then it's clear. That way, if somebody doesn't like it, it's...you know... [LR280]

SENATOR COASH: It's our fault, not yours? [LR280]

HOBERT RUPE: Well, no. It's easier to challenge a rule or regulation, you know. I mean, rules and regulations are often challenged under the agency making the rule and not having the authority. You know, I think under the general grant of authority under the Liquor Control Act, we could probably do it. But let's be honest, you know, lawyers need money too. So it doesn't mean somebody might not make a lawsuit about it. [LR280]

SENATOR COASH: Okay. [LR280]

HOBERT RUPE: And furthermore, what it does is, you know, the commission really acts, you know, as the regulatory arm of the Legislature in alcohol-related things. And so, you know, we prefer and really like to...prefer to have guidance from, you know, the Legislature, what they think is more appropriate. And then if we've got to, you know, dot the i's and cross the t's to rules and regs, we're more than happy to do that. [LR280]

SENATOR COASH: Okay. Is the commission taking a stance on this issue? [LR280]

HOBERT RUPE: Well, our rule...our thing would be...you know, the first issue, we want

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

to make sure that we have two things: One, you have to look at the health, safety and welfare, which is one reason we were looking at doing the growler exchange rather than just filling it up because there is some onus upon the people who (inaudible) that they can do it to fill it because under our rules and regulations we were looking at, we were just going to stay at L's. We weren't going to go to...because the original package law, I think, would have to be changed if you want retail people to do it. I don't think that they can do it now under the original package law. The other issue is sort of an orderly marketplace where you're trying an idea, you know,...which is one reason why you would want those growlers sort of marked or, you know, some private ownership back to where it came from, so. And those are both part of the, you know, duties of, you know, health, safety, and welfare and regulating an orderly marketplace. [LR280]

SENATOR COASH: Okay. Thanks. [LR280]

SENATOR KARPISEK: Senator Lautenbaugh. [LR280]

SENATOR LAUTENBAUGH: Thank you, Senator Karpisek. And thank you for coming today. So you're trying to avoid the situation we recently had where we had to enact legislation because...I'm trying to remember. Was it malt beverages? [LR280]

HOBERT RUPE: Flavored malt beverages, yeah. [LR280]

SENATOR LAUTENBAUGH: Flavored malt beverages, that whole adventure with the tax interpretation and the challenge and the litigation. [LR280]

HOBERT RUPE: The AG said we had the authority and the courts disagreed. [LR280]

SENATOR LAUTENBAUGH: Exactly. And that happens. You just want direction from the Legislature, if possible, to avoid that kind of thing. [LR280]

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General Affairs Committee  
October 04, 2013

---

HOBERT RUPE: Exactly. [LR280]

SENATOR LAUTENBAUGH: Okay. [LR280]

SENATOR KARPISEK: Any other questions? I think you hit it right on the head when you said the issue is...to me, okay, fine, we do the exchanges. But can retailers do this? [LR280]

HOBERT RUPE: Yeah, and that would have to...you'd have to change original package law, in my interpretation, because the original package law really speaks to manufacturing and having the right to sort of determine how their products are being sold for off-premises consumption. [LR280]

SENATOR KARPISEK: And if you own your own growler, go in and maybe they have to put a sticker on it. [LR280]

HOBERT RUPE: They might want something, yeah. It's, you know, I mean, you've got a lot of issues on it. Like I said...as I've said, the only consensus is there's no consensus across the nation on how to deal with these issues. So that's why they pay you guys the big bucks. [LR280]

SENATOR KARPISEK: Right. [LR280]

HOBERT RUPE: Now the one issue I will say is, not only are beer growlers turning up but what I think is...Oregon, which is also one which has more of a laissez faire issue on growlers, you know, because they're very big...Oregon has always been known as the wild child on craft brewing anyway. That's where a lot of the weird stuff comes out of originally, out of some of the breweries in Oregon, but they also have a big wine industry. And so now there's a push to allow wine growlers in Oregon, so. Just to further throw another wrench into the issue. [LR280]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: I guess my thought on the sanitation is, well, you took it in there. I mean, you get back what you took in. [LR280]

HOBERT RUPE: Well, I think a lot...a big part of it would be, it might not be there was something wrong with it but if you're...you know, most of the people who make these craft beers have a lot of pride in ownership and it's designed to taste a certain way. And they really don't want you putting something into an unclean growler which is going to...you know, because once you try one of their beers and it tastes like...you know, it doesn't taste very good because you put it into a bad growler that you're going to say, I don't like that beer, you know. And it's going to go beyond that, you know, because the one thing now there's...given the explosion of craft brewery licenses, if you don't like one type of beer or one manufacturer, there's a lot of alternatives to go to. [LR280]

SENATOR KARPISEK: Okay. Any other questions? Seeing none, thank you. [LR280]

HOBERT RUPE: Thank you. [LR280]

SENATOR KARPISEK: Anyone else on LR280 after Mr. Rupe cleared that all up for us? All right, we will go on to LR281. [LR281 LR280]

SENATOR COASH: Okay, Senator Karpisek. [LR281]

SENATOR KARPISEK: Thank you, Senator Coash. For the record, my name is Russ Karpisek, R-u-s-s K-a-r-p-i-s-e-k, from Wilber, Nebraska, and I represent the 32nd Legislative District. LR281 is an interim study to examine the nature and relationship between catering liquor licenses and special designated liquor licenses within the state Nebraska Liquor Control Act. The Liquor Control Commission has raised concerns in the past regarding the proliferation of special designated licenses or SDLs. This interim study focuses specifically on catering SDLs. The commission expressed concerns

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

regarding the number of catering licenses that were going to noncaterers primarily because, in some cases, it was cheaper for the licensee. Hobie Rupe, executive director for the commission, is here to further articulate the commission's concerns. Another issue regarding SDLs was brought to me by a local retailer licensee wanting to know if there could be an SDL that would cover multiple events if at the same location. In other words, could there be a super SDL that would address this issue? I'm looking forward to learning a little more about this and if you have any questions, I'd try. [LR281]

SENATOR COASH: Thank you, Senator Karpisek. Any questions for the Chair? Seeing none, we'll start the testimony. Can I see how many people are here to testify on LR281? Great. All right, you can just come on up. All right, Hobie. [LR281]

HOBERT RUPE: (Exhibit 2) I'll go first and I'll just lay the groundwork and then... [LR281]

SENATOR COASH: We may need you to come back at the end, but we'll let you start. [LR281]

HOBERT RUPE: Good morning, Chairman Karpisek and members of the General Affairs Committee. Once again, my name is Hobert Rupe, I serve as the executive director of the Nebraska Liquor Control Commission. I thought I would go first and, you know, maybe you'll have me come back later on. I know Chairman Batt is also going to testify regarding the position of the commission. I guess right at this point in time, I'll sort of give you a background what is an SDL, how are they issued, how are the numbers of them issued, and what are our concerns, sort of, as we're looking at them. What is an SDL? Special designated license. Special designated license is a temporary retail liquor license that allows consumption on the premise. They can also ask for off-premises consumption for a special event; held, generally, either by a licensee or by one of the nonlicensees, which is allowed by statute. Okay. Those...that means a lot. SDLs are everything from a fancy fundraising dinner at a college or a high school even, to street

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

dances that we see, to certain other events. I mean, there's a whole host of things which fall under the SDL license. And what you've got in your package there, that sort of gives you an idea of sort of the upward trend over the last five years. When SDLs were first introduced back in, I think, they were '87 or '88, there were 283 that year. This year, we're going to be well over 4,000. We were just short of that in 2012. The current numbers show that it's going up. How do you apply for an SDL? Well, this is one of the things that where the locals have approval as well as the state. I'll be honest with you, most of the heavy lifting on whether to approve these is done at the local level because of the pure time frame and the short burn that these license applications have. You'll put in your liquor license application for an SDL. The city will either...will approve it. If the city approves it, it needs to be filed with the commission within ten working days of the event. You would think that would be more than enough time for somebody who's planning on doing an event but, as you're well aware, when you guys get calls--and I get you even more of them--about people who, oh, I forgot to factor in Arbor Day or the Fourth of July because it's not a nonworking day. We actually have a date finder on the front page of our commission Web site because this is that much of a problem, so. You know, if you want to have an event on this day, it must be filed by this date. Ten working days. Still, when you're looking at the 4,000 licenses, is not...I mean, we're just pushing the paper, I'll be honest. Unless there is a place...years ago where Comstock had a lot of problems which we got involved with. Milligan, there for a while, was having a lot of law enforcement concerns at their street dances where...so we sort of stepped in and approved them, putting conditions on it. I remember the big onerous condition we put on Milligan was they couldn't sell it in the half gallon jugs any longer. It was what they were using for their beer, you know. They didn't want to wait long in line. So that sort of gives you the number. An SDL costs \$40 a day. All right. Now I'd like to say it goes to the commission, but it doesn't. It goes to the school funds. The issue where it comes in is, a regular licensee can get up to six events...up to six days a year, because it was under the theory that they're going to do one or two days, the local bar might do the local Fourth of July party for the street dance on the Fourth, so a one-day, maybe a two-day event. Well, the problem is, a lot of places which...a K license is a catering

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

endorsement. It's like a CDL, it's like an additional license on top of a regular license. And for that \$100 fee, that six-day event...that six-day issue is gone. So is the \$40 a day. So it makes financial sense, if you're going to do three days SDL, go ahead and get the catering endorsement. Well, the problem is, the act doesn't really define what a caterer is. The...there is a...the Department of Ag or the, I think, Health Department has or Foods and Dairies or one of those other entities, sort of defines a caterer more akin to what we would think of a caterer. When we're thinking of...when we hear the word "caterer" you're thinking of places like Hy-Vee which does them or Valentino's through Premier Catering who does all these...or the restaurant, you know. Well, a lot of our K licenses right now are just your local bar and grill because it's cheaper to get the catering endorsement, you know, to get away from the \$40 a day. Because if you're going to have three or more days, it makes financial sense. So what you've got is a breakdown then. You'll see how much we get in special designated licenses in 2012, just over \$144,000. And then it sort of gives you a breakdown that...the pie graph is sort of a...gives you an idea of who's getting SDLs, at least in 2012. That's the last year we had the full year of them. And the vast majority, 57 percent, went to caterers which all they did was pay the \$100 annual fee. The next bigger block was retailers, other retailers who just didn't have the catering event. Then you had charitable organizations which are hard...I mean, with only ten days to look it it...I mean, people forget. Comstock, with all the problems, was a nonprofit location for the preservation of windmills, it a 501(c)(3); public service entities; religious, you know, they had 197 in 2012, a lot of those would be fish fries or fundraising dinners; fraternal, you have issues; municipals, cities can actually get them for certain events; fine arts; political; and then, you know, where the other ones would fit in. So that sort of gives you a breakdown. Now if you look on the left side, you sort of see a listing of the classes of license. And so, oh, just a number...this isn't a number of days so this would be just the number of events, so it could be over multiple days. So CK, which is the Class C license with a catering endorsement, 153; DK, which is liquor stores with a catering endorsement. And so you'll see, a lot of the ones which have the K's, we're getting the vast majority of the breakdown. The last chart sort of gives you a picture of where we're

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

at this year. We're already at 3,707, we still have a quarter left to go. These are numbers up until the first week of October. Once again, you're seeing the vast majority being done by these caterers and we think for one main reason. The catering license is more affordable to get those. Now the issue, of course, comes up, you know, and I'd like...somebody asked, well, what's the commission want to see done. I'm not sure. You know, it's an issue which has sort of developed, the numbers. I will take full pride of issue that a lot of those increased numbers are probably our fault. People will call us, they'll describe an event. If it's even close to being questionable, we recommend they get an SDL because when an SDL does it, especially if they go through a licensee, then there's somebody responsible, you know. That's the big onus I think Chairman Batt will hit on late on later on about some of the breakdown. The other issue is, when there's an SDL, then law enforcement can go on and make sure that all the liquor control laws are being applied. When is a license required is a big question. We get answered that a lot. There's two times when a license is required: One, if you're selling it. It doesn't matter if it's a private event. If you're selling alcohol, a license is required. And we've taken the interpretation, as well as the Patrol, that if the alcohol is part of the ticket price built into it, then you're selling alcohol. The other issue is if you're open to the general public and you're allowing consumption. Okay, that's the one that the devil is in the details, you know. We always get the question, do I need an SDL for my wedding reception? Probably not, unless you're selling it. Your hope is, it's only going to be invited guests show up. Well, then the next person says, well, I'm just going to put a poster at the post office inviting the whole town. Well, then all of a sudden you've shifted over from being a private event into a public because you're advertising in a public forum. So, you know, especially with the explosion of social media, when is it open to the public? What are you offering? And it becomes more and more questionable. And so if in doubt, we recommend they get an SDL. So I can't say we're totally blameless in the number of SDLs because if you're going to do an event which is even questionable, we recommend you do the SDL. So that's sort of the 20,000-foot look down as to where we're sitting at. I mean, how many SDLs are we processing, the breakdown of who's getting them versus...you know, mostly licensees are getting them, either caterers.

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Remember, to be a caterer, you have to have a regular retail license as well. The K is simply an endorsement on top of an underlying act. You've got one of the best caterers in town probably going to follow me up here, Mr. Meier. You know, he's got CK or a DK? [LR281]

KENNETH MEIER: CK. [LR281]

HOBERT RUPE: CK. Yeah. That's right, because you've got the wine tasting bar now. So, you know, some of them are actual caterers but, you know, the problem is there's no definition of what a caterer is in the act. With that, I'd be happy to answer any questions. [LR281]

SENATOR KARPISEK: Senator Coash. [LR281]

SENATOR COASH: Thank you, Senator Karpisek. Hobie, you said that an individual entity, person, can get...did you say up to six? [LR281]

HOBERT RUPE: Six SDLs a year, yep. [LR281]

SENATOR COASH: Six SDLs a year. And then if they've used their six and they want to do it again, what do you tell that... [LR281]

HOBERT RUPE: They'll have to get somebody else to do it, another license, yeah. [LR281]

SENATOR COASH: Okay, so they're done? [LR281]

HOBERT RUPE: They're done. Yeah, that's one reason why they get the catering, because it's cheaper. I mean, if in doubt... [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR COASH: It's unlimited. [LR281]

HOBERT RUPE: It's unlimited for \$100. [LR281]

SENATOR COASH: Okay. Is that six-day limit set in statute, or rules and regs? [LR281]

HOBERT RUPE: Yes, statute. [LR281]

SENATOR COASH: Statute. [LR281]

HOBERT RUPE: Yep. [LR281]

SENATOR COASH: Okay. And then, the SDLs or the licenseholders of the SDLs, when they get their license, do they have to get their alcohol through a distributor or can they...I mean, how does that work as far as where are they... [LR281]

HOBERT RUPE: There is an exception. One of the things about the SDL is the commission can waive any other part...any other rule, regulation, or statute of the act except for the age of majority. You shall be 21 to drink. So oftentimes we will...they will ask to, you know, have an exception to acquire from other than a wholesaler which means they will have to acquire it from a retailer. A lot of times those will happen where, let's say, you've got a retailer who wanted to make a donation to a product. The other one...because generally the SDL is for on-premises consumption only. But, let's say, they want to do a dinner with a wine auction. Which case then, they'll have an off-sale component as well, so they can take the bottle with them, the people who buy it can. So depending upon the nature of it, they'll change a lot. And so... [LR281]

SENATOR COASH: And that's up to the commission to grant those waivers? [LR281]

HOBERT RUPE: Yeah. We have to waive...a lot of times we have to waive, you know,

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

150 foot of a school. You know, we have to waive that one. You know, oftentimes, it's the school asking for it. Or the churches, you know, we have to waive the churches, we have to waive the exception because it's within the 150 foot because it's in the social hall of the church. So you know, and that's one reason why, you remember, a year or two ago, we brought up trying to get--especially with the downtown church issues--because when we changed, you know, that 150-foot rule because, you know, people were having these SDLs all the time to get there. One of the classic examples of that was until we changed the 300-foot rule, was Champions Club. Champions Club, because it was within 300 feet of the university, couldn't get a retail license. But they were...a caterer...they were having caterers in there. They were doing 170 events a year. So that's when we changed it and said, well, you know, they're, you know...and even with that restriction, even with that change--that's why I brought 2013 to show you--even with sort of trying to get rid of those SDLs, the numbers are still increasing. Probably the rate of increase has been diminished but they're still increasing. [LR281]

SENATOR COASH: Okay. So my original question was, do you frequently waive then the requirement to go from a wholesaler? [LR281]

HOBERT RUPE: Yes. Yeah. A lot of times the smaller places will get it from the local grocery store instead. [LR281]

SENATOR COASH: Okay. The license fees, the \$40 and then...for the SDL and then the \$100. [LR281]

HOBERT RUPE: Uh-huh. [LR281]

SENATOR COASH: How long have they been at those levels? [LR281]

HOBERT RUPE: Oh, I'm thinking they've been at that level...I was looking back at Ken because he actually helped draft the original. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

KENNETH MEIER: Eighty-eight. [LR281]

HOBERT RUPE: Yeah, '88 probably. I was thinking, the original SDL was in '88 so I don't think they've been changed since. [LR281]

SENATOR COASH: So those are '88 licensee costs? [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR COASH: Based...set in '88? [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR COASH: And then are those license fees set in statute or are they set... [LR281]

HOBERT RUPE: Yes, statute. All license fees are set in statute. [LR281]

SENATOR COASH: All right. Thank you. [LR281]

SENATOR KARPISEK: Senator Bloomfield. [LR281]

SENATOR BLOOMFIELD: Thank you, Senator. I have a couple of things as much for my own edification as anything. I was recently at a event where they sold paper tickets for cash and you could turn the paper ticket in for a beer and they said they didn't need a license. [LR281]

HOBERT RUPE: They are wrong. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR BLOOMFIELD: I was relatively sure they were. They have changed their process. They were given that option or me no longer to be involved. On the catering license, would a VFW or something like that be able to get that catering license if they... [LR281]

HOBERT RUPE: Yeah. Right now there is no restriction. All you have to be is a licensee. VFWs have...probably have some K's. [LR281]

SENATOR BLOOMFIELD: Okay. We...the group that I was talking about has never had a license until our last event when we finally got one. And that was the one-day license. [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR BLOOMFIELD: And nobody in the organization or myself was even aware of a catering license. Do we have to go through the same... [LR281]

HOBERT RUPE: Yeah. Well, they'd have to get a retail license first. You have to get a regular retailing license. A catering is like a CDL endorsement on a regular driver's license. [LR281]

SENATOR BLOOMFIELD: Okay. So they would have to get the \$600 license in order to get the \$500 license. [LR281]

HOBERT RUPE: Yeah. Yeah, so. [LR281]

SENATOR BLOOMFIELD: Okay. Where they hold only five or six events a year, it really doesn't... [LR281]

HOBERT RUPE: Yeah. They'll probably get...able to get as a fraternal organization or

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

as a nonprofit, they can get the SDLs. So, you know, for them, they're only doing five or six a year, then they probably want to continue the way they're doing it. Although...let me rephrase that. They probably want to continue the way you're telling them to do it now to get a liquor license because what you described is the classic example--which we hear a lot--we're not selling the beer, we're selling you the glass. You know, it didn't work when you were in college, it doesn't work now. [LR281]

SENATOR KARPISEK: Is that it? [LR281]

SENATOR BLOOMFIELD: That's it. [LR281]

SENATOR KARPISEK: Thank you. So to get an SDL, you don't have to have a regular license behind you? [LR281]

HOBERT RUPE: You do if you're a retailer, of course, because then you...obviously. The other group which can get SDLs, by statute, are nonprofits, religious, fine arts museums, political parties. And that's where you'll see that breakdown of most of the ones, you know, sort of up there in the upper left corner is the break down of political, fine arts, municipal, fraternal. You know, they can get those. Now, I believe that you might hear later on, you know, we've often had issues because the problem with anybody who's not a licensee getting a liquor license, you know, there's not a lot we can do if something goes wrong because the licensee is ephemeral, it goes away, you know, unless we're aware of it and put a kibosh and put a denial on the next time they to get one. By that time, they've changed their name or changed their directors and, you know. [LR281]

SENATOR KARPISEK: So just me wanting to have a big bash in the park, I can't get one. [LR281]

HOBERT RUPE: Depends. Are you running for political office? Karpisek for whatever

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

office could do something. [LR281]

SENATOR KARPISEK: That just depends. [LR281]

HOBERT RUPE: A political organization...what I'm saying, a political organization or political party can, you know. So the, you know, the Lancaster County Democratic Party could do a fundraiser-type thing with an SDL. [LR281]

SENATOR KARPISEK: But just "Joe Schmo" on the street? [LR281]

HOBERT RUPE: No. "Joe Schmo" can't get it. They need to go to a, preferably, a licensee. [LR281]

SENATOR KARPISEK: Dave. [LR281]

SENATOR BLOOMFIELD: Enlighten me a little more if you would, Mr. Rupe, on the VFW again. [LR281]

HOBERT RUPE: Okay. [LR281]

SENATOR BLOOMFIELD: If they get the license, they've been to the city council and the city council said yes. Then shortly after we got the license in hand, the clerk of the city council came around and wanted to know everybody who was going to be serving beer. And given a fraternity or a group of people like that, hell, we don't know who's going to start out and who's going to be serving it. Does she have a legitimate question there? Is that something we have to have on file? [LR281]

HOBERT RUPE: Well, once the city has approved it, I'm pretty sure they've already passed on it, you know. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR BLOOMFIELD: Yeah, they had. We had the license in hand. [LR281]

HOBERT RUPE: Yeah. You know, the city can put whatever restrictions they want on SDLs because, as I said, this is one of the few licenses--unlike a regular retail license where they make a recommendation--it must be approved by both the local governing body and by the state. And so if a local governing body says no, we never even see it. And so that's the reason why, really, because there's got to be approval by them and because the time frame is so low, a lot of the heavy lifting on whether to give or give out is really rests with the city councils. Now city councils can either do it themselves...I know Lincoln actually has a very intricate system set up for SDLs. For instance, they won't allow any SDLs on home football Saturdays unless you're contiguous to your retail establishment. You know, that's a...they have an ordinance, they just won't allow it. And they have other restrictions. I mean, I think once you've been through and had a lot of them, the clerk can administratively approve them but I think the first time you get an SDL, I think they still have to the city council. So, but it's up to them. They can put up whatever restrictions they want on it. [LR281]

SENATOR BLOOMFIELD: Okay. But after the license was in hand, she was a little late asking, but she can certainly ask before we get the next one. [LR281]

HOBERT RUPE: Exactly. [LR281]

SENATOR BLOOMFIELD: Okay, thank you. [LR281]

SENATOR KARPISEK: But there probably has to be some sort of a city law, ordinance, saying that, isn't there? [LR281]

HOBERT RUPE: There should be. I mean, like I said, it must be approved. I mean, so if it's an action item on their agenda and they say yes, no, or yes with a condition, you know, it's really...they have a lot...they have most of the juice on it. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Well, I think we have a study later this afternoon that might change that anyway, with the mandatory server training anyway. [LR281]

HOBERT RUPE: Yeah, that will be an issue because I know that Lincoln, for instance, requires SDLs to have...they have to have their server permits. [LR281]

SENATOR KARPISEK: Senator Johnson. [LR281]

SENATOR JOHNSON: Yeah. A clarification. I sat in the mayor's chair and also went to some county board meetings. I remember a lot of SDLs being approved but I don't remember, at the city level, anything on catering. Do they not have to go to the city council? [LR281]

HOBERT RUPE: Catering would be the normal license. It's like an attachment on it. And so when they were new...when they originally get the liquor license and they ask for the K, it will be on the original application. Or if they add it later on, it'll come through in the normal full scope, so the city can make a recommendation to approve or deny. [LR281]

SENATOR JOHNSON: Okay. [LR281]

HOBERT RUPE: But because it's not an SDL, you know, the final decision would be made by the commission. But generally, if you're applying for a liquor license, you'll apply for...let's say, if I want to run a restaurant and do a lot of catering, I probably would apply for a CK right now right at the get-go. And so that would be right on the original application. [LR281]

SENATOR JOHNSON: So it's covered that way instead of (inaudible). [LR281]

HOBERT RUPE: Yep. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR JOHNSON: Thank you. That's all. [LR281]

SENATOR KARPISEK: Any other questions? [LR281]

SENATOR COASH: One more. Hobie, with the weddings... [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR COASH: You know, because that's just the one, which category do you stick a wedding SDL in? What do those typically go under? [LR281]

HOBERT RUPE: Well, generally, weddings, if they're actually at a place that's not a licensee, one, we would push on a lot of those locations, you know, social halls to get permanent licenses because it's easier. You'll have to go get a caterer. And you'll need a caterer if you're going to sell alcohol, at the license. You know, sometimes religious organizations will get it if it's in the, you know, the church or something like that. They'll come through a lot of different ways. Mostly they come through retailers. You know, the vast majority are done by caterers or something like that. The vast majority of wedding receptions, you won't require an SDL because if they're not selling it and they're giving it away and it's only their invited guests, then they don't need a wedding reception...or one. [LR281]

SENATOR COASH: Right. Okay. Thank you. [LR281]

SENATOR KARPISEK: Anything else? Thank you. We may ask you to come back up. [LR281]

HOBERT RUPE: I'd be...my pleasure. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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SENATOR KARPISEK: Okay. Commissioner Batt. [LR281]

BOB BATT: Oh, yes. [LR281]

SENATOR KARPISEK: Now we're going to find it out. [LR281]

BOB BATT: No. The technical expertise is with my lawyer behind me. Hi. Good morning, Senators. My name is Bob Batt, B-a-t-t. I'm the, on this...today, the Chairman of the Nebraska Liquor Control Commission and been doing it for about five and a half years. And just to say it's...we've done a lot of good work in the last five years and made some changes. Unfortunately, some things are hanging on in the past. And what we found goes into the SDL matters is that sometimes we need to bring things up to date to reflect what's going on in today's society. And one of the things that, in my book of hearing cases...remember, all I do is hear cases and decide whether to approve a license or suspend, cancel, or revoke a license and to keep the interests of the state and the interests of the people. And that's basically what my role is in the deal. I only do it a few days a month. But we like to have an orderly transition through all of our liquor control matters. So every month for the last five years, I've been hearing things about SDLs. And SDLs are only one of the subject matters that we're going to hear about today but it's a very interesting one. First of all, there are two distinct kinds of SDLs from the commission standpoint. One is for licensees, and the second one is--for better lack of a term--nonlicensees, such as fraternal, charitable, religious, governmental, or political entities. My opinion, that we have too many that are issued every year. One of the biggest users of SDLs--we're talking about nonlicensees right now--is the University of Nebraska System, especially right here in Lincoln. They get several hundred SDLs altogether. And until we were able to change the law through the General Affairs and the Legislature...for instance, the Champions Club was the number one user in the state because they couldn't have a permanent license. Well, we've now changed the law, given them a permanent license, and it's working wonderfully. They are now under the control of a licensee at the direction of the university system. It runs quite well. But that's

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Rough Draft

General Affairs Committee  
October 04, 2013

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only for the Champions Club. We also have places like the Lied Center does not have a license, yet has dozens of events. The Wick Alumni Center, there's fraternity houses, there's the Sheldon Art Gallery, none of these have liquor licenses. I've proposed to the regents now that we have...be able to bring it under the control of a license. While the university is not an abuser of these, administratively, with no income, it becomes quite expensive. I am, like you, concerned about how much money we put out in administrative costs. And until we raise the liquor license fees in general, we are getting \$40 for an application and it costs about \$300 to vet a license. So like the Furniture Mart, we're selling below cost but trying to make it up on volume. It doesn't work. We want to bring the cost for this into a realistic...to at least cover our expenses. Now you remember that licenses and fees, etcetera, and fines don't go to our funds, they go to the school board...to the local board. But, so we're giving all the income to another entity and it looks like we're eating up a lot of expense in this deal, which we are, and there's no offsetting income. And I think that needs to be changed at least to reflect...to recover our costs. Remember when you vet one of these, you have to have the commission, the fire department, the ag department, the building inspectors. There's a lot of entities that get involved in these deals, even Revenue. But getting back to SDLs, I think that there should not be private SDLs and there's one reason. There's no one responsible at the end of the day, no matter whether it's the university, a religious organization, especially some of these kind of shaky fraternal organizations. In the five years I've been doing this, we've never had a cause against one of them because there's nobody to bring an action against. There is a tremendous amount of overconsumption, overservice. There's no security in some of these deals. Licensees will do it because we have the big stick with licensees. If you don't do it right, you overserve--whether you're on O Street, Dodge Street, or someplace else--if they don't do it right, they're going to lose their license. We need to have a better handle on who gets these. And it's not done with a lot of oversight. Having cities approve these is another deal that I would love to change because the reason why we have a state Liquor Control Act is it removes the politics out of who gets licenses and how they're administered and etcetera. Too many times--this is not every city so I don't want to broad brush it but we see it over and over again,

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

where the people who are getting the SDLs that are approved by the council, the village board, etcetera, it's more of a political football than it is dealing with this. Most city councils lack the expertise to vet a licensee to see if they are competent in handling and putting people in the liquor consumption business. And sometimes, if you're not connected properly, you're not going to get a license. I asked one person in a small town, I said, you've had licenses before and you've never had a black mark and you're a responsible person, etcetera, 20 years in the business; why can't you get one for your grocery store? He says, because the mayor's brother owns the other grocery store. And they actually turned him down. This was on a regular liquor license but it was probably one of the most egregious reasons I've ever heard. We need to keep it at a higher level and keep some of the politics out of it. But in SDLs, it puts a tremendous...I have a staff of 11 or 12, counting Hobie, plus the three of us. You know, it's the same amount that we had in 1934 with the Liquor Control Act. And now we have about 6,000 licenses, we have 4,000 SDLs a year. It's putting a lot of strain. And we have not...since I've been there, we have not expanded our staff and actually have been able to operate more efficiently. And that's how we keep our costs down, by trying to cut out unnecessary steps. The system is ripe for reform and to bring it up to date, to charge the proper amount, and put the authority to sell or give or dispense wine, liquor, or beer in the hands of responsible licensees in order to bring more order. This also--besides the fact on the liquor part and what it does to the governmental units, the strain this puts on police resources, especially in small towns with street dances, church festivals, fraternal deals. They put out all their police resources and there's no payment for that. That's just a bigger strain on the local budget. Even, sometimes, State Patrol has to bring in special squads to be able to control some of these deals that are not under the control of a licensee. And that's how people get hurt. You have drunk drivers, you have people who have...who act irresponsibly. We're just there to protect the positions of the state but number one is to protect the safety of the people. I'll stop for a minute. Questions?  
[LR281]

SENATOR KARPISEK: Any questions, anyone? So you're not saying that most of these

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Rough Draft

General Affairs Committee  
October 04, 2013

---

are at the university. They're not getting them just to get them, they can't get a regular liquor license. [LR281]

BOB BATT: They're not...one of them is because the State Fire Marshal said you need \$4 million in the...I think, is it the Sheldon? [LR281]

HOBERT RUPE: Well, no, they only wanted to look at Sheldon. That was just on... [LR281]

BOB BATT: On the Lied Center but there...some of it is there. But the university, because of their unique nature, is administratively a burden on the system, rather than having one licensee come in, operate the deal. And the university doesn't want to be in the liquor business, they just want to have...which they do, they have control over their own premise. The thing we did at Champions Club, even though that's not owned by the university but by the alumni association, is an example about how we did it from a stack of paper to one deal per year and it works beautifully. The university is very responsible but it needs further reform in order to lower our administrative costs and bring order and have the matter and all of these premises under the control of a licensee whenever there is liquor present. There's no liquor present, there's no problem because there's nothing there to drink or to sell or give away. [LR281]

SENATOR KARPISEK: So, though, if we took that away, would they have to hire a...I just don't know, how would they do it, then? Okay, Ken or...oh, you'd be glad to help them out, I bet. [LR281]

KENNETH MEIER: I do. I do the catering at the Wick Center. [LR281]

BOB BATT: Right, but...correct, there is catering. And there's not...the university is more administrative of a headache. We'd rather do a deal in one license. The more we can cut down on paperwork and have somebody to hold responsible, the better we're doing

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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our job. And it...I guarantee you, if you watch how our licensing manager and the people who work there, the amount of paper they have to push. You know, even, for instance, I'll give you one other example; it's a little allied to this. The state has developed an on-line license renewal for regular licensees. But, unfortunately, the counties and the cities have to opt into it before it to become effective. Many of the cities have, but say, for instance--which is true--the city of Omaha has refused to opt into it and so everything is still done manually. It increased your administrative costs and it's a bureaucratic way to do business. We're trying to cut...if you take a process model and you cut off all the steps that don't affect safety or welfare or revenue and make it a more compact in more things...that's one of the missions of government is to get rid of things that are from the old days that don't make sense anymore. And since I've gotten here, we recommend a lot of things to General Affairs and the total Legislature. And you know what? They work and it lowers the administrative costs. Do you know that in California, if you apply for a liquor license, it's a payment of--and a couple of other states, New York or Florida--it's about \$250,000 to get the license. And we are so cheap here to hand it out. The more...if we talk about proliferation of licenses, one of the ways to cut it down rather than getting into per capita, is to get more...make it more expensive so you get more or better operators. We turn down a lot of licensees because we look at their financials and say, where's your working capital? Where's your business plan? Where's your experience? And if they can't even come up with the basic parts to being a licensee, let alone being a nonlicensee who's given the authority to sell or dispense liquor, we like to have more professionalism and more expertise in the game and we'll end up with a better crop of licensees and people being responsible. You know, we have no trouble giving licenses when it's due but we also have no trouble taking them away when they're irresponsible. It's part of...I mean, that's our duty to do that. [LR281]

SENATOR KARPISEK: I just wanted to be on record making sure I was concerned about the university. [LR281]

BOB BATT: Well, the university is... [LR281]

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Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR LAUTENBAUGH: As are we all. [LR281]

BOB BATT: Oh, yes, yeah. The Huskers will do fine, you know. But by the way, just for the record also, because of administrative decisions within the university, you cannot sell, dispense, give away, or even hold private parties in athletic facilities, such as Memorial Stadium that is under the control of the university. That is their decision. As we well know, it's the regents and the administration's property and they control their own way liquor is done there. And, but yet, they also have hundreds of events in their other buildings, all of which just...they go fine. But the university can put it in and they can take it away at their will because they are in control of their property, therefore, responsible for it. [LR281]

SENATOR KARPISEK: Very good. [LR281]

BOB BATT: We just need the change. [LR281]

SENATOR KARPISEK: Any other questions? Seeing none, thank you, Mr. Batt. [LR281]

BOB BATT: All right, thank you. [LR281]

SENATOR KARPISEK: Welcome. [LR281]

KENNETH MEIER: (Exhibit 3) Thank you, Senator Karpisek. I have some handouts for you as well. Thank you. My name is Kenneth Meier, K-e-n-n-e-t-h M-e-i-e-r, I own Meier's Cork 'n Bottle on the corner of 13th and South. I have just shy of 36 years in this business, including beverage catering. And I'd like to go back and just examine what has happened historically during my time. When I first got into this business, if you had a retail license, you could extend that license anywhere in the state of Nebraska to do a beverage catering. Well, that caused problems because of abuse of the program itself.

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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And so that was disallowed by the Legislature. In 1986, '87, along with Senator Dave Landis, I was instrumental in writing the SDL law or beverage catering law for the state of Nebraska. And part of what it is that we did is met with the city councils and the legal counsel for Omaha and Lincoln and several other cities in order to create local control but still allow a legitimate beverage catering opportunity. And as you have heard this morning both from Mr. Batt and Hobie, that this SDL process has gotten to be a little bit out of hand just in sheer numbers. So what we're...the wheels of government turn very slowly, particularly in this industry, as you all know. Many of the laws that were in existence when I first got in this business are no longer there. And the reason that they are is because they were written back in the days when Prohibition was just ending and people were very concerned about consumption. I think we're all more responsible today than we were back then. And I agree with Mr. Batt, too, in that if you're going to have an SDL, you ought to be responsible. I was the first person trained in the Responsible Hospitality Act in the state of Nebraska and became an instructor in a number of classes in that regard. And I think it's important for education as well as public health in order to go through that process. So I'm also in favor of a statute that you're going to hear later on today in regards to that. The process of getting an SDL should be with a licensee himself, as you have also heard this morning as well. Now, that brings us up to something brand new in that, how do we get to a situation where the number of SDLs that are applied for are reduced? And what you have in front of you is a solution. So I come before you not only in support of you studying this issue but I also brought you a solution as well. And this addresses all of the items that we are looking at in terms of having a responsible licenseholder do the process. And by the way, it isn't the University of Nebraska that applies for these licenses. It's a licenseholder that applies for those licenses. So if you look at this, what it is that I have proposed is that, essentially, this is somewhat of a super-K catering license. And what you would do is, you would issue a license for a premise for the year that is the same corresponding year as the licenseholder itself, for a particular facility. A licenseholder would be able to hold six of these licenses for different entities within the state of Nebraska. So a particular licenseholder, such as myself, would only be able to do this at six different locations. It

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

also has to include the fact that they're going to do more than 12 beverage caterings a year. And so what this does is, it has you issue a license for that premises through an existing licenseholder in order to cover that for a whole year. In order to satisfy the need for local control, you would still have to notify the local control authority, whether it's the city clerk or the county board, about the licenses when the events are going to occur. And the local control comes in because, number one, they cannot issue you a license, or number two, if you're abusive, they can deny you the privilege of serving at those particular instances. So it creates an event where it, at least in my instance, is going to reduce the number of SDLs that we would apply for by about 48 percent, almost half. And I think this would work very well. It also addresses the issue of...let's take, for example, the Lied Center. I don't think the Lied Center, by definition, actually qualifies as a licenseholder and it's on state property. So this addresses the issue for the University of Nebraska as well. I think that's all I need to say. [LR281]

SENATOR KARPISEK: Thank you. Any questions? I do appreciate you bringing a solution rather than just people complaining. I think the Tax Commission has been hearing a lot of complaints but not any solutions. [LR281]

KENNETH MEIER: Well, thank you. You know, we spent a great deal of time and effort to come up with this solution. I presented it in front of the state Liquor Commission. Don't know whether they actually...I think they see some feasible things in this solution. But something needs to be done and this is an opportunity, whether you use this or whether you expand on it. But it uses existing statutes and just does amendment rather than going through the whole process. So I think we've done our homework on this and I think it's a good solution for you. [LR281]

SENATOR KARPISEK: Yeah, I don't want to say that we're going to just approve it but we do appreciate some guidance. [LR281]

KENNETH MEIER: You bet. Well, thank you very much for having me this morning.

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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[LR281]

SENATOR KARPISEK: Thank you. Any questions? No. Thank you. Do we have anyone else? Welcome. [LR281]

KATHY SIEFKEN: Good morning. It's good to be back. Kathy Siefken, Nebraska Grocery Industry Association, Kathy with a K, S-i-e-f-k-e-n, and I wasn't sure if I was going to testify today or not. Don't know if it is neutral, negative, or...(laugh). So in listening to the testimony, there were a couple of things that I just wanted to talk about. And one of them is the suggestion that the fees have not increased since 1988. What I would like to point out is that the cities...so first of all, there is a license fee and then there is the catering license on top of that. So our members that have the catering license are paying for two fees. And you take that times three because the cities add their fee on top of it. So it's not just \$100, it's \$300. And in several instances just here in Lincoln, we have stores that give cooking classes to teach people how to actually cook food that you buy in a grocery store. In some of those classes they use wine and they are required to have the catering license in order to cook with that wine. And if the cost of the catering license goes up, they're going to stop those cooking classes using the wine because they won't...it would be cost prohibitive for them to continue to have the catering license. Either that or they would go after an SDL, which is going to do the opposite of what you're trying to do here, it's going to increase the SDLs. And any time there's a fee increase, naturally we're opposed to it, it's just the position that our industry has taken. Another issue that we have experienced in the past year a couple of times with the SDLs--and since we're talking about SDLs, I thought this would be a perfect time to discuss this--is the fact that the Liquor Control Commission does have a calendar at the front of their Web site saying, if you want your event to be held on this day, you need to file by this day so that it can go all the way through and they get their ten days. Our people have done that and they have had to actually cancel two events, major events that were fundraisers for nonprofit organizations. And the reason they had to cancel them was because the city sat on the SDL request, didn't get it to the Liquor

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Rough Draft

General Affairs Committee  
October 04, 2013

---

Control Commission in time. Therefore, the ten-day requirement wasn't met and they actually had to cancel some of the events that they were going to hold. If there's anything we can do to fix that, we would greatly appreciate it. I don't know what the answer is but it is a problem. So if you have any questions, I'd be happy to answer. [LR281]

SENATOR KARPISEK: Thank you, Kathy. Any questions? Senator Johnson. [LR281]

SENATOR JOHNSON: Yeah. The three different fees, the \$100, \$100, and \$100, are they all in statute or does the city have any variance of what they charge? [LR281]

KATHY SIEFKEN: I believe the city has a maximum of double, so everybody takes it to the max. So if your catering fee is \$100, by the time you get through it's \$300 because the Liquor Control Commission gets \$100. The cities...I don't know of any city that's not maxing it out. [LR281]

SENATOR JOHNSON: Okay. [LR281]

KATHY SIEFKEN: And they take it to the...they just double it. [LR281]

SENATOR JOHNSON: So there is a max. [LR281]

KATHY SIEFKEN: Um-hum. [LR281]

SENATOR JOHNSON: Okay, thank you. [LR281]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LR281]

KATHY SIEFKEN: Thank you. [LR281]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Anyone else? Would you guys like Hobie to come back? Yeah, I would. [LR281]

HOBERT RUPE: Once again, Hobert Rupe. Just to make sure, Kathy was right. The cities can charge, by statute, an occupation tax of up to twice the license fee. And, you know, some do, some don't. A lot of them do. Some of them didn't even realize they could until a couple of years ago. So it depends on the city. Some cities will, some cities won't, and some will actually charge an additional charge--on top of the \$40--as an occupational tax too. And the theory of the occupational tax is designed to, at least hopefully, you know, in this day I'm not sure \$80 is going to do a lot, on a one-day SDL to defray the additional costs for law enforcement, traffic control, that kind of stuff. [LR281]

SENATOR KARPISEK: Senator Coash. [LR281]

SENATOR COASH: Thank you. Hobie, any comment on Mr. Meier's? [LR281]

HOBERT RUPE: You know, we looked at it. You know, we...there wasn't really a lot of...the theory behind it was, when he brought it to us was it was something far beyond our ability to do by rule. It would require a statutory change. And so, therefore, you know, we'd take a, you know,...yeah, I think our response to him was, you know, why don't you go to a state senator and we'll discuss it and work on it there, you know, there's the devil is in the details. You know, I...we're always looking, as Chairman Batt said, to perhaps try to professionalize it, try to streamline it. And so if it does that, we'd be in support of it. But when he brought it to us, we were sort of looking, you know, depending what hat the commission was wearing at this time, you know, it was the commission's...you know, my recommendation to the commission and their agreement that his proposal was pretty much beyond what we could do by rulemaking and, therefore, requires a statutory change. So we did not give it a yea or a nay because we don't know what it would be introduced or how it would look. But we'd be very happy to

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Rough Draft

General Affairs Committee  
October 04, 2013

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work with anybody who's looking to professionalize the process. [LR281]

SENATOR COASH: Okay. Something Mr. Batt said in his previous testimony that I didn't think about asking him, so I'll ask you. He mentioned that the Lied Center, as an example, has a couple dozen events. Are they just...since it's over six, are they getting the catering license? Is that what's going on? [LR281]

HOBERT RUPE: What it does is, they usually...the university utilizes a list of approved caterers, Mr. Meier is one and some of the other ones. And you have to go to one of those approved caterer lists to cater your event. The university generally does not get its own license. [LR281]

SENATOR COASH: Right. [LR281]

HOBERT RUPE: But it's sort of, you know, under its control of how it's set up. It says, hey, you have to use one of these approved caterers. And, generally, they're looking for people who, you know...because I know that people who get in problems with us and they've had their license suspended, canceled, or revoked to be reviewed by the university and, perhaps, you know, eliminated from that list. You know, the issue which has cropped up with the university...because the university has been working with us, you know, to try to get some of those places which are high users licensed. But apparently because they're being regulated by the State Fire Marshal because it's on state property as opposed to the city Fire Marshal, they're taking...the State Fire Marshal over the last year, year and a half, is taking a far more--I hesitate to use the term--draconian interpretations of new fire marshal things. And so they're making them...for instance, on the Wick Alumni Center, a building built in the '80s, they were going to have to put multiple millions of dollars in it just bringing it up to the fire code. But a building which is built to code...and the reason the Fire Marshal was in there looking at it was because they applied for an SDL. I don't really want to speak for the university but if they're having that much problem with a building built in the '80s, I'm not

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

really sure they want the Fire Marshal going in if they try to get a license for the Sheldon, which is built, I think, in the '20s or '30s. Would they make them rip out, you know the stairways and everything else? So you know, that's the problem. Just so you know, on SDLs, generally, we will only approve one location 12 times a year. Any time a location goes over 12 times, it gets sort of set for administrative review. We look at it, the commission looks at it because about four or five years ago came to the commission, you had some places which were using the SDLs as a way to get around the health and fire safety requirements because, either they were going to a building that, you know...the classic example. We had a caterer out of Waverly which was running a bar in northeast Lincoln every single weekend. They were doing...they were getting SDLs for it because the cost to put into that building would have been cost prohibitive if they wanted to permanently license it. Well, we really didn't think that was a good idea to use SDLs to get around the fire codes. So we have the thing, anything over 12, we set for review. Now some places we've approved. Like, a lot of times, you'll have small town community centers which will have more than 12 over the year but they'll have four or five different people in there utilizing it. And, generally, they'll be able to show us, if we have concerns, the last time they got their insurance, they'll show us their occupancy permit and how they...because they had to get rechecked for that when they redo their insurance so that the purpose behind it was still there that they met the fire codes. [LR281]

SENATOR COASH: But with the Lied Center, the university has six approved caterers? [LR281]

HOBERT RUPE: Yeah, I'm not sure how many they list. [LR281]

SENATOR COASH: A handful... [LR281]

HOBERT RUPE: Yeah. [LR281]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR COASH: ...and they all have their K license. [LR281]

HOBERT RUPE: Yep. [LR281]

SENATOR COASH: So they can do as many as they want... [LR281]

HOBERT RUPE: They can do as many as they want. [LR281]

SENATOR COASH: The Lied Center, as long as they use one of their approved licensees, so. [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR COASH: The couple dozen events that the Lied Center has isn't really an administrative burden on your office because they're going through six approved licensee (inaudible). [LR281]

HOBERT RUPE: Well, all those...there's an application for all those reports. For all those SDLs there's an application. [LR281]

SENATOR COASH: So the caterer has to apply for the SDL per event? [LR281]

HOBERT RUPE: Yes, they have to apply for it. They have to apply for the license. There's still licensing, it's just it makes more sense because they don't have to pay the per day if they've got the catering license. [LR281]

SENATOR COASH: So just because they have a caterer's license, doesn't mean they don't have to apply for the SDL per event. [LR281]

HOBERT RUPE: Per...exactly. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR COASH: It just means they don't have to pay the SDL fee,... [LR281]

HOBERT RUPE: Yep. [LR281]

SENATOR COASH: ...they just operate under their \$100 general license. [LR281]

HOBERT RUPE: General license, yeah. [LR281]

SENATOR COASH: I understand. Thank you. [LR281]

SENATOR KARPISEK: Well, is that something that...obviously, you wouldn't want to or maybe not, to say if you have a catering license, then you don't have to turn in every time you have an SDL? [LR281]

HOBERT RUPE: Well, I'm not sure you want to go that far because then, you know, the idea where, you know... [LR281]

SENATOR KARPISEK: You don't know where they're at. [LR281]

HOBERT RUPE: You don't know where they're at, when they're utilizing it. You know, then you're sort of, you know, "Katy, bar the door" a little bit. Right now, you know...the advantage, you know, and Chairman Batt addressed it on his, you know, regarding some of the problems with the locals is that one advantage of going through the locals, in all honesty, is then the local police departments are aware of the issue. You know, so, because, so you know, there is...notice to the local governing body, especially to local law enforcement, I think is still crucial to whatever change we want to look at because the reason we want them to get an SDL is so law enforcement can go in and make sure they're complying to the act. [LR281]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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SENATOR KARPISEK: Is there somehow we could make it not as time consuming of a process? Just a "here's where we're going to be." You wouldn't have to go through the whole stack of papers. I don't know. [LR281]

HOBERT RUPE: Yeah, there's a way. And I believe that's sort of what Mr. Meier is trying to look at some of the frequent fliers. You know, I mean, in a lot of ways, I sort of put his idea sort of similar to the...you know, the TSA will let you pay an additional fee to you not have to take your shoes off going through the security lines type situation. So there's always something to do to professionalize it, you know. The issue that we're having, of course, is, you know, it was a system that was working pretty well in 1988 when it came about but we're dealing with 300 SDLs every...you know, 4,000 now and our staff has pretty much remained the same which means there's more and more stress. I've got one person who is, you know, probably 75 percent of her job is just processing SDLs. [LR281]

SENATOR KARPISEK: And I realize we don't want to make it less professional by making it easier. I understand that, I guess, somewhere. [LR281]

HOBERT RUPE: Yeah, there's a balancing act. There is a happy medium somewhere. [LR281]

SENATOR KARPISEK: Senator Bloomfield. [LR281]

SENATOR BLOOMFIELD: Thank you. For now, we're going through the cities for this temporary SDL license. Up in my part of the state, most of the small communities don't have a local law enforcement. They work through the county sheriff and he drives through town every once in a while. What would be the possibility of going to the county commissioners? [LR281]

HOBERT RUPE: They do. The local governing body, it's either...so in unincorporated

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General Affairs Committee  
October 04, 2013

---

towns or villages it goes, you know... [LR281]

SENATOR BLOOMFIELD: Well, these are incorporated. [LR281]

HOBERT RUPE: These are incorporated? Well, you know, the board...so it's...right now, the counties get it if it's in the county, you know, outside the city jurisdiction. So I'm thinking, I think you want to be really leery...you know, I always look for the...you know, the lawyer in me. You know, any time you're trying to take away a right of a small village or a city and transfer it over to the county, I'm not sure they're going to be liking all that. [LR281]

SENATOR KARPISEK: Or state. [LR281]

HOBERT RUPE: Or state. [LR281]

SENATOR KARPISEK: I would think most of those are contracted with the county sheriff that would be notified. [LR281]

HOBERT RUPE: Yeah, they should notify the county sheriff. I mean, that's...you know, part of the onus, I think, you know, the city should do a good job. I mean, you know, they don't have to approve these. And if they don't approve them, we never even see them. There's no appeal rights. They can approve them because they don't like the color of the guy's tie. [LR281]

SENATOR BLOOMFIELD: That's just precisely where I was going. I was wondering if you get to the city, as Mr. Batt said, some of them, because my brother-in-law owns the other store or his brother-in-law owns the other store. Can we conceive of a system where we could bypass the city and go to the county? [LR281]

HOBERT RUPE: Well, I think there's a way you could look at it. I mean, I don't think you

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General Affairs Committee  
October 04, 2013

---

want to totally obliterate it. I think you want a final decision made by the state because of lack of politics. But I think you have to have the cities aware of what's going on there because, you know, and as he said, a lot of times it's going to be their local law enforcement who's going to have to deal with it. So I can't...I don't think you can totally take them out. But, you know, at the same time, because there's such a short burn on these applications, you know, there's no appeal to a denial from a city. You know, if they say no, it doesn't go. [LR281]

SENATOR BLOOMFIELD: Okay. [LR281]

SENATOR KARPISEK: Senator Coash. [LR281]

SENATOR COASH: Thank you. Hobie, I was just talking with counsel here to try to clarify. With the...either the \$40-day fee, the \$40-day SDL fee, now the locals can double that and charge the applicant as well? [LR281]

HOBERT RUPE: I think so, yeah. I think some of them do up to a fee. I'm not positive. I can get that back to you. It's my recollection I think some do. I know Lincoln does, I think, as an occupation tax. [LR281]

SENATOR COASH: Okay. But the \$40 fee that goes to the commission, you don't keep any of that money? [LR281]

HOBERT RUPE: No. [LR281]

SENATOR COASH: That goes to the school fund? [LR281]

HOBERT RUPE: Yep. [LR281]

SENATOR COASH: What about the \$100 catering license? [LR281]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

HOBERT RUPE: Goes to the school fund. Yeah, I think it...license fees...well, yeah. Well, I think the fees...yeah, they go to the...let me see. Application costs go to the General Fund. I think the license fees go to the state school funds. [LR281]

SENATOR COASH: I'm trying to figure out...I mean, what I keep hearing from the commission is, there's an administrative cost to processing these... [LR281]

HOBERT RUPE: Yeah. [LR281]

SENATOR COASH: ...now thousands of licenses, and somebody is paying money to have this license. And I'm wondering where that...I'm trying to... [LR281]

HOBERT RUPE: Most of it...it's going to the school board, most of it. Yeah. [LR281]

SENATOR COASH: All that money is going to the school. You don't get to keep anything to hire... [LR281]

HOBERT RUPE: Remember, last year what we did, when we changed the application fee for the regular license when it was \$45 and we raised it to \$300 because we did an actuarial analysis. At that time, the cost was closer to \$290 or \$280. And that goes to the General Fund because, at that point in time, you had four different state agencies having a part of it which were all generally funded. So although we weren't seeing the money, at least it was going into the money which was then distributed to us for our budget. [LR281]

SENATOR COASH: Right. [LR281]

HOBERT RUPE: So, but the license fees go to the schools. [LR281]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: It should help the property taxes. [LR281]

SENATOR COASH: Thank you. [LR281]

SENATOR KARPISEK: Any other questions? Seeing none, thanks, Hobie. [LR281]

HOBERT RUPE: Thank you. [LR281]

SENATOR KARPISEK: Anyone else have anything to say on LR281? If not, we will break and be back at 1:30. Everybody was more quiet than I expected this morning. [LR281]

BREAK

SENATOR KARPISEK: Okay, we'll get started. And I think Senator Lautenbaugh will be on his way and Senator Krist a little after that. But we'll just go through everything that we did this morning. But welcome to the General Affairs Committee. My name is Russ Karpisek and I am the Chair of the General Affairs Committee. I am from Wilber, Nebraska. Committee members who may or may not be in or out today: to my far right is Senator Murante of Gretna; Senator Lautenbaugh of Omaha; Senator Bloomfield of Hoskins--they switched chairs on me; Senator Coash, who is our Vice Chair; Josh Eickmeier, who is our legal counsel for the committee; to my far left is Christina Case, our committee clerk; then Senator Johnson of Wahoo; Senator Schilz of Ogallala, who will not be here today; and Senator Krist, of Omaha, who will be joining us later. The page helping us out today are...tell them who you are, please.

AUDIE AGUILAR: I'm Audie.

PETER BREUNIG: Is Senator Krist there?

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Rough Draft

General Affairs Committee  
October 04, 2013

---

AUDIE AGUILAR: (Laugh) And this is Peter.

SENATOR KARPISEK: All right, thank you. If you need anything, please let them know. After each resolution is introduced we will open it up to testimony from the public. There's no need to specify whether you're in support or opposition of an interim study resolution, so we can come up in any order. If you are planning on testifying, please pick up a sign-in sheet from one of the tables at the back of the room at either entrance. Please fill out the sign-in sheet before you testify. When you come to testify, give your sign-in sheet to one of the pages or the committee clerk. This will help us make a more accurate public record. If you have handouts, please make sure you have 12 copies for the pages to hand out. If you need more copies, please get their attention. When you come up to testify, please speak clearly into the microphone. Tell us your name and spell your first and last names. Also, please tell us whom you are representing, if anyone. Please turn off your cell phones, pagers, or anything else that beeps. Please keep your conversations to a minimum or take them out into the hallway. Finally, while we do allow handouts, we do not allow visual aids or other display items. But we will keep that discretion to the Chair if someone would like to show us something. Thank you for your cooperation on all those things, and we will start now with LR175 by Senator Sullivan. Can I see a show of hands on how many people would like to testify on LR175? One, two, three, four, five. Okay, thank you. And we're not going to use the light system today because I know you came and you have something to say. But try to keep it around five minutes or more or less (laugh) or a little more. But if you talk too much, like me, then I'm going to shut you down. Thank you. Welcome, Senator. You can take however long you want. [LR175]

SENATOR SULLIVAN: (Exhibit 4) Well, thank you. Thank you, Senator Karpisek and members of the General Affairs Committee. I'm Senator Kate Sullivan of Cedar Rapids. That's K-a-t-e S-u-l-l-i-v-a-n. The intent of LR175 is to begin a dialogue about how state government and the Legislature can encourage and support the industry of local craft beer breweries in Nebraska. By statutory definition, a craft brewery is a brewpub or

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

microbrewery that produces a maximum of 20,000 barrels of beer per year on the craft brewery premises. A craft brewery may also sell to beer wholesalers for sale and distribution to licensed retailers. One barrel contains 31 gallons or, approximately, two kegs of beer. Most craft brewers are not at or near the 20,000-barrel-per-year maximum. There are approximately 20 operational craft breweries or brewpubs in Nebraska. In addition, there are approximately another 14 craft breweries in the planning stages, with several set to open yet this year. Nebraska has a rich history of supporting and encouraging local businesses to grow. We use various means of encouragement, including direct investment, tax credits, rules and regulation changes, and policy reform. Nebraska's craft breweries are developed, built, and operated by local entrepreneurs who invest in their communities and create jobs right here in our state. Craft brewers pay state and federal excise taxes, sales and use taxes, property taxes, and employment taxes, just like any other business. These business owners are often our neighbors, our constituents, and our citizens. Craft beer is a growing segment of business with a positive impact on lodging and entertainment taxes in places where they exist to support tourism or travel-related activities. Craft breweries are local economic development, pure and simple, particularly outside of our urban areas. Craft breweries typically buy supplies from local and in-state suppliers where possible, including case boxes, bottling supplies, merchandising materials, printed goods, promotional stickers, agricultural goods such as hops and other grains, cleaning supplies, and so on. All in all, that's local economic development. This industry continues to grow across the country. Nationally, the craft beer industry grew by 13 percent in volume in 2011 and 15 percent in volume in 2012. But Nebraska craft brewers are encountering some of the same issues faced by craft brewers in other states. And in just a little bit I'll pass out an article that was in a magazine that we all get from Capitol Hill Publishing (sic--Capitol Ideas) that identifies what's going on in some of the other states. Farm wineries, as you well know, experienced these same growing pains in our state when they were beginning to flourish 20 years ago. As their industry grew, the farm winery owners worked with this committee and the Legislature to develop, regulate, and promote their industry. So in closing, it's my hope that this

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

committee and the craft brewers, the distributors, and the large beer companies can begin an open dialogue about the future of craft breweries and move forward in an open, cordial, and cooperative manner. So that's, basically, my hopes and dreams for this study. That's what I had in mind. And as I said, there is this article that appeared in Capitol Hill (sic--Capitol Ideas) that talks about what other states are doing with this burgeoning industry. So I'd like that passed out. And to the extent that I can--but I will underscore that I'm not an expert, even though I enjoy microbreweries and brewpubs--I'll try to answer any questions. [LR175]

SENATOR KARPISEK: Thank you, Senator Sullivan. Questions? I think we understand the whole thing. [LR175]

SENATOR SULLIVAN: Um-hum. [LR175]

SENATOR KARPISEK: And we'll just hear from both sides. [LR175]

SENATOR SULLIVAN: Okay. [LR175]

SENATOR KARPISEK: And I'm sure you'll stick around. [LR175]

SENATOR SULLIVAN: I will, I will, um-hum. [LR175]

SENATOR KARPISEK: And a lot of times, I don't know, don't close or...on...but we'll certainly let you if you want/have something to say, okay? [LR175]

SENATOR SULLIVAN: Well, we'll play that by ear and we'll see, sure. [LR175]

SENATOR KARPISEK: All right. [LR175]

SENATOR SULLIVAN: Okay, thank you very much. [LR175]

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Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Thank you. Okay, anyone else? Welcome. [LR175]

CALEB POLLARD: (Exhibit 5) Thank you. Chairman Karpisek and members of the General Affairs Committee, my name is Caleb Pollard, C-a-l-e-b P-o-l-l-a-r-d, and I'm here today to testify in favor of LR175. Today I testify on behalf of the Nebraska Craft Brewers Guild, along with my own company, Scratchtown Brewing Company, located in Ord, Nebraska. As Senator Sullivan said, the growth of the craft beer industry has been well-documented across the country. The growth of the industry was one of the only bright spots during the Great Recession and over the past three years has averaged a 13.6 percent growth in volume. As the American consumers' tastes continue to evolve, LR175 can establish a meaningful conversation around legislative and tax policy modernization that will positively impact the Nebraska economy. A staff economist at the brewers association stated that craft's market share is strongest among the youngest generations who are legal to drink, mind you, and it is driven by 2,500 innovating brewers attuned to local markets. And together these consumers and producers are helping shift American beer culture. We see this in the fact that markets with the strongest craft beer presence continue to grow. And Oregon, for example, is one of the most mature craft markets in the country and still saw production volume growth by 11 percent in 2012. Also, in Texas, new laws passed that support their state's craft beer industry and, also, a recent economic study by a professor at the University of Texas-San Antonio predicted that modernization of the Texas beer laws could result in growth of the economic impact of the Texas craft beer industry from \$608 million in 2011 to \$5.6 billion within eight years, including the creation of over 50,000 jobs. With 20 breweries now operational in Nebraska and 14 in the planning phases, craft beer is becoming an important employer and a job creator in Nebraska. Craft brewers impact the state economy in several ways, as Senator Sullivan did a good job documenting, and I won't beleaguer the point. For us, LR175 is important because it establishes a formal conversation around measures that would improve the business climate for craft brewers in Nebraska. The Nebraska Craft Brewers Guild and Scratchtown Brewing

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Company wish to offer support for two of the five main areas of focus in LR175, which is limited self-distribution and excise tax relief. We support these two items for two reasons: national competitiveness and economic development. Thirty-six states now allow some form of limited or open self-distribution. While we are not advocating for the disposal of the three-tier system, we do ask that the Legislature investigate how self-distribution has positively impacted the craft beer segment without tossing out the three-tier system. Specifically, for my business, the possibility of limited self-distribution allows us to meet market demands in a sparsely populated area, which is the Nebraska Sandhills, with production volumes that are much smaller than Nebraska metropolitan craft brewers. Our beer, at best, would have to travel 130 miles to reach a retailer that is three doors down from my business. Additionally, our end goal as a production brewery is not to tear down the three-tier system, and I want to emphasize that. Our goal with limited self-distribution is to provide a means to help startup breweries build stronger brands that distributors would want to carry. SBC's goal is to make beer, not distribute it. Our business model demands that we work with a distributor to meet our market opportunity. As for excise tax relief, our position is quite simple. Nebraska has the highest state beer excise tax of any surrounding state in the Midwest, and that's according to the Associated Beverage Distributors of Nebraska. Again, we're not advocating that specific thresholds for limited self-distribution or excise tax really be set at this time. We believe a dialogue with our industry partners can establish reasonable limits to self-distribution, along with the targets for excise tax relief. We are encouraging the Legislature to examine these issues because the economic well-being of the state can be positively impacted by modernization efforts. The Nebraska Craft Brewers Guild is encouraging an open, meaningful dialogue with policymakers and our industry partners for the benefit of all. Precedents and example in other states has shown us just how uncompetitive Nebraska is becoming when it comes to supporting the craft beer industry, and the potential changes in self-distribution law and excise tax relief can have tremendous positive outcomes for the Nebraska economy. That includes Nebraska brewers, distributors, and state tax receipts as well. This approach makes sense and, on behalf of the Nebraska Craft Brewers Guild and Scratchtown Brewing Company, I

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Rough Draft

General Affairs Committee  
October 04, 2013

---

ask that you support this interim study. Thank you for your time, and I am happy to answer any questions you may have. [LR175]

SENATOR KARPISEK: Thank you, Mr. Pollard. Any questions? Senator Bloomfield. [LR175]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. When you say limited distribution, are you talking about a limited number of miles, distancewise, or are you talking limited number of gallons? [LR175]

CALEB POLLARD: Of gallons. Barrelage is what we measure our production volume by, and we would be more than willing to have that conversation. [LR175]

SENATOR BLOOMFIELD: Okay, thank you. [LR175]

SENATOR KARPISEK: Senator Coash. [LR175]

SENATOR COASH: Thank you, Chairman. I have a...I just wanted to dig down into Senator Bloomfield's question a little bit more on your testimony. You recommend...or you said that your brewery is in a sparsely populated area. You're recommending self-distribution at volumes that are much smaller than what we see here. Where do you...where are you recommending we draw the line? What is small? I mean, in a barrelage quantity, what are you suggesting as the limit to where you... [LR175]

CALEB POLLARD: Threshold? [LR175]

SENATOR COASH: Yeah. [LR175]

CALEB POLLARD: I don't know if I'm qualified right now to be able to answer that with any certainty without sitting down and talking to our partners. We've had an opportunity

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

to visit with some of our partners over the course of the last month about what they would feel comfortable with. You know, the definition of the...of a microbrewery in the state of Nebraska is 20,000 barrels of production a year, and I don't believe that that's an attainable goal at this point in time. I would, however, say that we're open to using the study as a meaningful way in which to find that target that is comfortable for everyone. I don't think we want to push a number right now, arbitrarily, without having, again, conversations with the Legislature, policymakers, as well as our industry partners. [LR175]

SENATOR COASH: Okay. [LR175]

SENATOR KARPISEK: Other questions? Senator Johnson. [LR175]

SENATOR JOHNSON: The growth that the industry has had--I know you're...you know, the generation that you appear to be reaching out to--is that growth coming from the traditional beer industry or is this new, I might call it, new business to the whole industry? [LR175]

CALEB POLLARD: It's a brand-new business to the entire industry, new startups that are happening in both rural and urban areas. My angle on this comes from a place of economic development in rural places. The county which I came from needs all the economic opportunity that it can get. And so we see the growth of craft beer as equally important, both in urban and rural areas, and it's new business creation in those areas. [LR175]

SENATOR JOHNSON: So it's attracting a different group of people that might not like the traditional beer? [LR175]

CALEB POLLARD: Absolutely. [LR175]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR JOHNSON: So we're enticing more people to drink beer? [LR175]

CALEB POLLARD: Absolutely. [LR175]

SENATOR JOHNSON: Thank you. [LR175]

SENATOR KARPISEK: Is there a problem getting distributors to distribute in the business? [LR175]

CALEB POLLARD: I don't believe that there is a problem getting them to distribute craft beer. I do believe that there is some competitive issues that have come up over the course of the last year in my investigations on this issue that revolve around the issues between craft beer and crafty beer, which is where your two large domestic producers of beer, which would be A-B InBev, which is Anheuser-Busch's new corporate entity, as well as MillerCoors, creating what are called crafty beer labels that give the perception that they are craft beer when, in fact, they are made by large domestic brewers. And what we're asking for is that there needs to be some distinction made because we're not large corporations that are making beer. I mean, I have two business partners and myself. And we're married. We're a very small business. We're going to have very small capacity. And so there are times when craft brewers have had a hard time finding shelf space or getting accounts because of the influence of the larger brewers. But that shift is changing because the market is changing. I just believe that, looking at the other 36 states that have investigated these means to support the craft beer industry, they've created an accelerated rate of economic development that would well suit Nebraska to at least look at it. That's all we're asking right now is that we look at these issues as a means to accelerate economic development both in urban and rural areas. [LR175]

SENATOR KARPISEK: Finding shelf space though, that's a different issue than being able to self-distribute, isn't it? [LR175]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

CALEB POLLARD: Essentially, the way I look at it, Senator, is that, when I start up a craft brewery that's producing 2 to 500 barrels a year in production, I'm going to be out selling my brand almost exclusively because the production limits limit the availability to the markets that are available across the state. And there have been instances where larger breweries have pushed out opportunities for craft brewers to make their beer more readily available to the consumers that are demanding it. And all we're asking, again, is that this be a meaningful dialogue on ways in which we can improve the craft beer climate for the industry. [LR175]

SENATOR KARPISEK: The climate seems pretty good though because you're talking about how much it's grown. [LR175]

CALEB POLLARD: I think that that is a valid point. Again, I think that, in any instance, we can always look at ways to make things better. I have experience in my prior life as an economic development director and chamber director and where we have taken the same approach to other industries and we've created provisions within tax policy or within legislative policy that have accelerated growth, and it's had a tremendous positive impact on the state. And that's, essentially, the angle which we're bring to the table on this issue. [LR175]

SENATOR KARPISEK: And I agree that it does need to be looked at and studied. Senator Bloomfield. [LR175]

SENATOR BLOOMFIELD: Thank you. You made mention that your beer would have to travel 130 miles to end up next-door. Which distributor...where is the distributor at that you're... [LR175]

CALEB POLLARD: That would be assuming that we would work with H&H or Nebraskaland in Grand Island. [LR175]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR BLOOMFIELD: In Grand Island. [LR175]

CALEB POLLARD: If we go to another distributor, it goes farther than that. [LR175]

SENATOR BLOOMFIELD: Yeah. [LR175]

CALEB POLLARD: One we're talking with right now is outside of Omaha, and it would have to go to Omaha and then come back to Ord where...again, that same business, three doors down, to enjoy our beer. [LR175]

SENATOR BLOOMFIELD: Okay, thank you. [LR175]

SENATOR KARPISEK: And I'm sure that Mr. Rupe is going to go over some of this. But probably, one big...well, health and safety is an issue, why we have the...the way it is now. But tax collection is another big one. Is that...I mean, do you see that as an issue, so we make sure that taxes are collected? [LR175]

CALEB POLLARD: I have to pay property taxes and sales tax, along with two forms of excise taxes. And I think, from our perspective, with the way technology has taken everything in America today, there are provisions that are available to allow appropriate reporting for those taxes. And in the event that they're not properly reported in any industry, there's usually repercussions, as we all know. And so I think, from our standpoint, we're at a place in time where technology allows us to, I think, be a little bit more accountable than we were able to in the past. [LR175]

SENATOR KARPISEK: Very good. I mean, that's just one of the issues. [LR175]

CALEB POLLARD: I think it's a very valid issue. I want to make that very clear. And this, it's an important issue that I think needs to be discussed during the study. [LR175]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Okay. Any further questions? Seeing none, thank you, Mr. Pollard. [LR175]

CALEB POLLARD: Thank you. [LR175]

SENATOR KARPISEK: Anyone else? Welcome. [LR175]

MATT STINCHFIELD: (Exhibit 6) Thank you, Mr. Chairman. Chairman Karpisek, members of the General Affairs Committee, people of Nebraska, my name is Matt Stinchfield, M-a-t-t S-t-i-n-c-h-f-i-e-l-d. I'm the founder and managing member of Ploughshare Brewing Company. Ploughshare is a startup craft brewery to be located at 1630 P Street in Lincoln. I am a member of the Nebraska Craft Brewers Guild, and I'm testifying today in support of LR175. It should be noted that I concur with statements made previously by Mr. Pollard as the spokesperson of the Nebraska Craft Brewers Guild. However, I offer this testimony as the owner of a craft brewery. Thank you, Chairman Karpisek, Senators Sullivan and Coash, for introducing this resolution. Well, we heard earlier from Senator Sullivan the statutory definition of craft brewer as Nebraska views it. But there is another definition, and that is a craft brewer is a brewer who is small and independently owned. Locally, craft brewing in Nebraska began about 20 years ago, pioneered by such familiar names as Empyrean Brewing, Spilker Ales, Upstream Brewing, and so on. And as we've heard, there are 20 operational craft breweries in the state. This is up from 15 just two years ago. The growth and durability of this industry is just part of the story. There is also the future. According to the brewers association, another 14 breweries are in planning in Nebraska. I should know. I'm one of them. Supporting the craft brewing industry is not just to feel good. It brings jobs to Nebraska. In the case of my young company, we've projected, at the end of the first year, I will employ 12 full-time equivalents with about 25 people on the payroll. Nebraska brewers employ contractors of all sorts, buy local goods such as ingredients and promotional materials, and pay more kinds of tax than any business I can think of. Local craft beer is a Nebraska product. It's brewed and sold by Nebraska businesses

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

and it's consumed by thirsty Nebraskans. Beer is the alcoholic beverage of choice for Nebraskans. We are the eighth thirstiest state in the country on an adult, per-capita basis, whereas, we finished 24th in wine consumption and 48th in spirits. Beer is the most wholesome of alcoholic beverages and, with its low alcohol content, is also the most moderate one. LR175 seeks to conduct an interim study of the craft beer industry in Nebraska, provide a report on the study to the Legislature and, ultimately, to inform the modernization of tax policy in statutes, essential to encouraging the growth of Nebraska's craft beer industry. Today's testimony isn't designed to answer all the questions but, rather, to support authorization of the resolution to conduct the interim study. I would like to address the five points of the resolution from the standpoint of explaining why this study and the subsequent modernization of Nebraska craft beer rules are so critically important. Paragraph (1) of LR175 contemplates self-distribution as an additional means of allowing craft brewers access to the market. As you may know, currently, in Nebraska, a craft brewer may sell his or her beers to the retail consumer only at the brewery. Any placement of beer in a third-party retail setting--a restaurant, a tavern, a grocery store, a liquor store, a convenience store, a fair grounds, a ballpark, a civic arena, a golf resort, or the Elks Lodge--must be first made by selling the product to a distributor. This convenience--or kerfuffle, depending on how you look at it--costs the small brewer a wholesale markup of 25, 30, or 35 percent or more. This causes the small brewer to sell their product into the three-tier system for that much less, else they won't be priced competitively in the retail market. Distributors may testify that they do a lot for the fees that they charge and for the one-sided contracts they employ. They support on-premises sales and marketing; they clean tap lines, some better than others; and they collect state excise taxes. It isn't like these things are rocket science. I can tell you, from my own perspective, that if the representation of my beer in the market and the cleanliness of the tap lines from which it is served are critical to the success of my brand, then no one will do a better job at that than me and my staff. And as for collecting state excise tax, we're already proficient at recording and filing federal excise tax, state and local sales taxes, use taxes, business privilege taxes, property taxes, and employment taxes. I do not argue that a distributor should not get paid for its

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

role in delivering beer. But for a startup brewery, that significant handling fee represents tangible cash that can be used to stay above waterline during an enormously challenging startup period. With self-distribution, if the small brewer falls down and can't establish themselves in the market, it is their own fault. It doesn't become a dilemma centered around a distribution franchise. The success or failure of a beer should depend on beer drinker demand rather than artificial restraints to distribution. With limited self-distribution, startup brewers and brewpubs that wish to sell outside their four walls can test their products in the market without overloading the limited number of distributors with new and unproven products. It allows small brewers the chance to build brand recognition in the market through their own sweat equity. It encourages investment in additional labor and equipment and, importantly, self-distribution necessitates direct communication with retailers. This last point is significant because it allows the brewer to directly educate the retailer about his or her beers. It also educates the brewer in how the retail side of the three-tier system works. Later, when a small brewer grows to the point where they need the services of a distributor, they will make a better business partner with the distributor. They will have done a lot of the groundwork in building their brand and in establishing retail accounts, things that...which are typically incumbent upon the distributor, with some help from the brewer. With a proven brand a small brewer can enter the manufacturer-wholesale relationship with the goal of obtaining a fair and equitable contract--presently, about as rare as unicorns. All kidding aside, the history of self-distribution in other states has shown us that breweries' brands take hold in the market and their production increases to keep pace with demand, then self-distributing brewers will inevitably move into distribution contracts. Paragraph (2) lists comparability and equity of state excise tax paid by Nebraska craft brewers. Our state is currently in the highest quartile of state excise taxes and is the highest of all of our Midwest neighbors. State excise tax takes directly from the bottom line of a brewer's ledger and is a major factor in price competitiveness. Brewers pay state excise tax in whatever state their beer is sold. Our excise tax is so high that it incentivizes the sale of Nebraska beer in any neighboring state over our own. It also hampers the importation of craft beer from other states into Nebraska. Colorado brewers, for example, pay 5 cents

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

per gallon state excise tax if their beer is sold in their home state, versus 31 cents per gallon if sold in Nebraska. Now if you're wondering why I would encourage the sale of a Colorado craft beer where it would compete here with my own brands, the answer is that the greater the recognition by consumers of craft beer, the greater the overall market share we take from the major, multinational lager brewers. And after that, it up to each craft brewer to make the most of their brand. Paragraph (3) contemplates a Nebraska craft beer checkoff program where, in the craft beer industry, through such a vehicle as the Nebraska Craft Brewers Guild could receive a portion of excise dollars or other institutional support from such as the Nebraska Tourism Board to help further in the development and promotion of our industry. I recognize there are legal constraints in the implementation of such a program. But I believe the interim study should, at the least, characterize these challenges and look for alternatives so that we, as a state, can support the craft beer industry in a manner not dissimilar from the way we have done with farm wineries. Paragraph (4) mentions truth in labeling. I'm in support of this effort on any beer, whether produced in state or out of state. As it may pertain to the sale of growlers, which are two-quart takeout jugs, a number of opinions are circulating and the interim study should characterize these. And lastly, in Paragraph (5), the interim study should look at what can be done to support the agricultural aspects of Nebraska craft brewing. A number of farmers have begun growing hops over the last few years, and their hops are now showing up in local beers. Local fruits have also been used. Malting barley represents another product that would receive widespread use by local brewers, but we would need to see both growers planting this crop and local micromaltries converting the grains for brewing. All of these adjunct industries are examples of the economic stimulus that craft brewing brings to Nebraska beyond just the breweries themselves. In closing, according to the brewers association, our state is 1 of only 14 left in the nation that hasn't enacted self-distribution rules. Nebraskans are independent, I get that. We don't want to do something just because everyone else has. But other states have studied the obstacles facing craft brewers and, overwhelmingly, they have seen fit to modernize their rules. With LR175 there is no guaranteed outcome. We, at least, get to examine what other states have done, consider how those sorts of changes

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

would work here in Nebraska, and bring our findings back to the Legislature with sound and informed recommendations. I'm in favor of the interim study researching all of these issues. I encourage it to be adopted as written. I thank you for your time--I know I went about eight minutes, Senator--and I'm happy to field any questions. [LR175]

SENATOR KARPISEK: Thank you. Do we have any questions? Do you have an idea of how many gallons we're talking? [LR175]

MATT STINCHFIELD: Sir, to be frank, I don't want to negotiate against ourselves in the further discussions that we're going to have with distributors, so I would prefer not to tell you what my number is. Thank you. [LR175]

SENATOR KARPISEK: It's hard to do a study when we don't know a number to look at. And we just raised from 10 (thousand) to 20 (thousand), so. [LR175]

MATT STINCHFIELD: Well, if we look at Colorado as an example--I think they're regionally similar to us; granted, they have 241 breweries as of last count--their definition of a craft brewery is 25,000 barrels per year, somewhat similar to ours of 20 (thousand), and their self-distribution number is 25,000 barrels per year also. But I caution people to not just look at the number because, in actual fact, when a brewery gets to the point where it's growing and it's distributing more widely and its brands are taking off, it has to pay attention to the growth of its production and, inevitably, those small brewers then, if they have been self-distributing, will sign on with distributors. So I don't see this as a wholesale rewriting of the three-tier system and abolishing the role of distributors. Distributors have a fantastic role in the beer business. It's...but it is a...it's an obstacle for small brewers. It's a cost obstacle. It's a negotiation of terms. And these lopsided contracts which I mentioned are a fact of our industry. And I, for one, when I go to enter the distributor market and sell my beers wholesale, I want to have a brand that has traction, that's been proven, so that I have more of a level playing field when I'm negotiating my distributor contract. You might think of it as a big record company

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

signing on with a new band. And we've all heard stories about how those contracts don't work out well and it's always for the band that it doesn't work out well. So I think, you know, looking for equity and reasonable contracts is something that we all, as individual businesspeople, get to do. But creating an environment where we can come to the distributor with an established brand or brands is better for everybody. It's better for the distributor. They're more inclined to take us on. They're going to do the footwork to help market the product with us, rather than to just come out of the blue and say, you know, hey, I've got a crazy beer, it used to be a home brew and wouldn't you like to sell it.  
[LR175]

SENATOR KARPISEK: Okay. [LR175]

MATT STINCHFIELD: Thank you. [LR175]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you.  
[LR175]

MATT STINCHFIELD: Thank you, Senators. [LR175]

SENATOR KARPISEK: (Exhibit 10) I would just like to read into the record Project Extra Mile has given us a letter expressing some concerns in LR175. Anyone else? Welcome.  
[LR175]

KIM KAVULAK: Thank you. Senator Karpisek, General Affairs Committee, thank you for hearing us today. I'm going to send you home with a little less paper. I don't have printed copy of my testimony, so I hope you will be...just bear with me and hear through what we have to say today. My name is Kim Kavulak, K-i-m K-a-v-u-l-a-k, and I am here representing both the Nebraska Craft Brewers Guild, as well as my company, Nebraska Brewing Company, currently located in Papillion and soon to be La Vista. We've heard lots of numbers here today. Again, thank you, Senator Sullivan, for introducing this, the

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

study, today. We've heard lots of numbers about what constitutes a craft brewery, what constitutes the number of barrels in this state, how many current operating breweries we have in the state. My company happens to fall into both categories of existing breweries and breweries in planning. Six years ago, when my husband and I quit our jobs to live our dream of owning a brewery, we had little idea how much work we were in for. It's a business we love very much and we're very passionate about it. So I'm here to testify today in support of LR175, particularly, on two facets. One is the limited self-distribution. While my company today would probably not enjoy the benefits of the limited self-distribution because, quite frankly, as both Mr. Pollard and Mr. Stinchfield testified, when your company gets to a certain point, you don't want to distribute. You want to let the people who do that well and know that job do it well. Six years ago, when we were a very small brewery that opened at what turned out to be a very inopportune time--it was the crash of the economy--we might have enjoyed the ability to walk next-door to our local grocery store and say, can you carry some of our product, walk next-door to our local bar and say, would you like to try our beer and sell it in your establishment. I empathize and sympathize with the up-and-coming breweries that are competing not only for that space in restaurants, in bars, in a competitive environment. But the industry has grown, fortunately, so much over the last six years that there's a lot of competition. So for them to be able to go in their hometowns, in their local markets, when they're very, very small could mean the difference between make or break. I understand that. I'm also here to testify on behalf of the excise tax. This one is a bigger deal to me. We are currently in the throes of an expansion. Over the course of our existence, in the last six years, in our brewpub we've established, probably, 20 to 30 jobs. Our brewery expansion will continue to expand that and, probably, look at another eight to ten jobs over the course of the next year. With the excise tax being the highest, as we've heard, in our Midwest region, those are monies that we could use to reinvest in jobs, in growth, in expansion, and make Nebraska a more competitive state in this industry. We heard the statistics on the growth in years 2011, 2012. They're on track for 2013. Quite frankly, those double-digit figures for the craft beer industry have run a decade back. So there's growth to be had. And many breweries open in surrounding

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

states because of the tax issue. It's...we're just not as competitive in this aspect. So we look to seek your support in addressing this in the legislative study, and we appreciate your support today. [LR175]

SENATOR KARPISEK: Thank you. Questions? Senator Bloomfield. [LR175]

SENATOR BLOOMFIELD: Thank you. You mentioned being able to go to the bar next-door. [LR175]

KIM KAVULAK: Um-hum. [LR175]

SENATOR BLOOMFIELD: So I have to come back to my question on the self-distribution. Do you think that it's more important to do it by the gallon or, maybe, within 50 miles of your brewery you could do it? [LR175]

KIM KAVULAK: I think, in my opinion, it's probably more by the barrel to the way we measure our production. The fact of the matter is that, whether it's, you know, five miles or ten miles or right next-door, really, the competitive level comes from the size of the business and just the ability to promote your own business, to make your self viable enough that you are attractive to a distributor as you grow your business to that point. [LR175]

SENATOR BLOOMFIELD: And if I were running a brewery up in my hometown of Hoskins and I was only making 1,000 barrels, I can't see me wanting to go to Scottsbluff to distribute it. [LR175]

KIM KAVULAK: And that's probably true, most certainly. But in Mr. Pollard's example, his nearest distributor is 65 miles. So for him to not be able to go to his local establishments and create those relationships and grow his business, he'll never grow out of that. I don't know what his personal business plan is. When we opened our

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

business six years ago, almost seven now, we thought we were going to be this great little brewpub and then we were going to pay the bills, and that's what we were...you know, we were going to be that Cheers. We enjoy that today. We do have that environment there. But the economy kind of forced us into a different hand. We currently distribute not only in the Omaha and Lincoln markets but statewide. We're currently in 12 states with 18 different distributors. Believe me, nobody wants to manage that. You turn that job over, at some point, to the people who do that well. But in our early days it might have benefited us and businesses like mine or Mr. Pollard's or Mr. Stinchfield's or the other 14 that are currently in planning to enjoy that latitude to establish those relationships. [LR175]

SENATOR BLOOMFIELD: Okay, thank you. [LR175]

SENATOR KARPISEK: Anything else? I would just like to...you can still go next-door and make that relationship. It's just that the beer would have to come from...through the distributor. [LR175]

KIM KAVULAK: Right. And we...and, absolutely, you're correct. And quite frankly, any brewery who doesn't go out and create those personal relationships is a little remiss. But again, in situations where, you know, if you're a three-man team, you only have so much time. And our business, quite frankly, as Mr. Pollard testified earlier, we're not in this to distribute beer. We're in it to make beer but, at a certain point, you have to grow those relationships and be able to get the beer out without damaging, you know, your team and still be able to grow. [LR175]

SENATOR KARPISEK: And I do understand. It seems silly that you can't take it next-door yourself. And if they run out and the distributor is...I get that. [LR175]

KIM KAVULAK: Yep. [LR175]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Thank you. [LR175]

KIM KAVULAK: Thank you. [LR175]

SENATOR KARPISEK: Thanks for coming. Anyone else? It looks like Mr. Rupe is batting cleanup on this one. Welcome back. [LR175]

HOBERT RUPE: Thank you. Once again, my name is Hobie Rupe, executive director of the Nebraska Liquor Control Commission. And I think, partially, my role today is reining in expectations or, at least, trying to make sure that there is...explain why the system is, how it works. First of all, I'm going to correct a misnomer that all three of the earlier testifiers said. The beer doesn't have to come to rest at the wholesale place. The rule in the Liquor Control Commission clearly states that alcohol must come to rest at a wholesaler, except it is not applied to the holders of Nebraska craft brewery licenses, for exactly the situation that you just brought up where they can deliver it to the person next-door, down the street. The paperwork then goes through the wholesale, and so the price...and so you're keeping uniformity over there. But the actual physical brewery beer does not have to come to rest. That was an old rule we did long ago when the craft brewery licenses first came up because of that specific complaint. So the commission did respond by a rule. That's actually a rule "BH"--before Hobie was around. So I just want to clarify that idea that not every beer is going to be traveling 120 miles. It might only be traveling a quarter mile down the street, the actual beer. Sort of, looking in the large term on it, you know, the issue whenever you're going to mess around with your three-tiered distribution system: states have got to be incredibly careful. If that's the one guide we get from the Granholm case, from the Supreme Court, which sort of...just to bring people back up to what the Granholm case stood for, Granholm was the seminal case that dealt with direct shipment of wine to consumers. Nebraska, we didn't have that problem. We had our direct shipping wine license. Other states, for instance--in this case, the Granholm case, primarily dealt with Michigan and New York--allowed their in-state distributors to sell but did not allow out-of-state entities that same prerogative.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

And the court was then forced to do a balancing test because, normally, something that favors an in-state entity over an out-of-state entity is just going to be struck down under a commerce clause violation under strict scrutiny. The advantage that liquor laws have is the scrutiny is lowered and it's a reasonable, rational basis because what the court has to do was, sort of, weigh two competing clauses of the U.S. Constitution, the commerce clause as well as the Twenty-First Amendment, giving states the regulatory scheme. And what Granholm said, I mean, if you boil it down to its basic nutshell, was be careful doing something in favor of in-state entities at the expense of out-of-state entities because that will probably get struck down. If you're going to allow something, you've got to allow other people similarly situated to do the same thing, whether they're domiciled in your state or not. Okay. So that sort of, you know, additional thing, why you always have to be careful when you're messing with the three-tiered system, is you have to look. Craft brewery licenses right now do violate the three-tiered system. They've got expansive rights at, you know, ...they've got rights at the manufacturing tier, although, with a limitation of 20,000 barrels. And then they can retail it. They can sell their own beer. The other issue which will have to be looked at if you're going to be looking at expanding their wholesale abilities is to look...that, currently, a craft brewery license can also get an additional retail license on top of the "L." So in other words, they can get a Class C liquor license, much like Lazlo's has. Lazlo's sells beer, wine, and spirits from other brands besides their own. In a lot of the other states that were referenced earlier, those beer entities are limited to solely selling their own product, so, you know...and one of the, sort of, the...that's one of the main differences between the craft breweries, as are set up in our statute, and the farm wineries. The farm wineries have rights at all three tiers, but there's limitations at all three tiers. They can only make their own stuff. They can only wholesale their own stuff. And at the retail level they can only sell their own stuff. They can't get an additional license on top of it. They're solely...they exist in all three tiers but only for their own products. Right now, most...a lot of the...and I think that's one thing that might have to be looked at. Excuse me. You might have to have a bifurcation of what's commonly called the "craft brewery license" because, when it was originally developed, the theory behind it was these are going to

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

be brewpubs, primarily, retail locations which are creating their own beers for sale. The earlier testifiers were 100 percent right. The American-style craft beer is the only area nationally where beer prices are...where beer sales are going up. Big beer sales are going down and, because of that, you have...I like the term "crafty beers." And the other ones I call are "faux crafts," where you have big breweries who develop their own craft-style beers. You know, they don't claim them. I mean, people don't realize that when I...when somebody asked me, they said, oh, I like small brewers, I like Blue Moon. And I said, you do realize Coors makes that, right, or Lienenkugel's or Goose Island or a whole host of them. So what you have to look at is...you know, when you're looking at it, is any changes, you might have to have that restructured because, right now, I'm not sure we want a retailer, full-on retailer, being able to control access to his beer to his competitors down the street. You know, they keep saying they want to sell the beer to the guy down the street. Well, maybe they do not want to sell to the guy who is competing against them, you know. And if they're both full-on bars, full-on C licenses, that might be an issue. The other issue: I'm sort of wondering, I mean, I was hearing, you know, two of the three testifiers who already testified...you know, I'm wondering if they're so...is there a problem already? Is there a problem growing in the craft beer license in...craft brewery in Nebraska? We've got 14 under development. Mr. Pollard's license was issued today, and Mr. Stitchfield's is...I'm not even sure Matt has an application on file yet. He might have an application on file with TTB. So, you know, I think they were testifying about issues when they're not even in the industry yet. You know, they're not, you know, selling alcohol. They're not making beer yet--at least, they shouldn't be. Taxation, we're high in our neighborhood. That's absolutely true. I'd said that before. The commission takes no position on what the tax rate is. But one of the reasons why, I'll sort of describe it. Why are we high in our nation, in our neighborhood? We, sort of, are neighbors of Colorado, Missouri, and are next-door neighbors to Wisconsin. What do all three of those entities have in common? Large manufacturers of brew who have been able to artificially keep those beer taxes low. So, you know, that's one reason we are skewed. I mean, just for the record, ours is 31 cents a gallon. And under the Granholm case, I think I would be leery about trying to do a special tax rate

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

for a craft brewery that would not be applicable across the board of beers. I mean, so I'm not sure you can decide...you know, you can tax one at a lower rate than the other taxation purposes. And remember, the beer tax rate brings in about \$15 million a year to the General Fund currently. So with that, I'd be happy to answer any questions. I just was trying to answer some of the questions that just got raised by the other testifiers. [LR175]

SENATOR KARPISEK: Senator Johnson. [LR175]

SENATOR JOHNSON: Thank you, Senator. Thanks, Mr. Rupe. The comments you made about, that a brewery can deliver to...around the corner and the distributor works on the paperwork. [LR175]

HOBERT RUPE: Um-hum. Yes. [LR175]

SENATOR JOHNSON: We also heard that, if they are involved with the distributor, they have to do another 25 percent markup in order to come out or in... [LR175]

HOBERT RUPE: Well, there will be some item, you know, that the...you know, I'm not sure how they're charging it if they're not doing the delivery cost as well. You...I mean, I'm not sure about that, you know. [LR175]

SENATOR JOHNSON: So what...okay. What are the fees then that they would pay if they...if I was a brewery and I delivered to you, around the corner, and the distributor handles the paperwork, is that the tax paperwork, and what's the fee? [LR175]

HOBERT RUPE: Yeah, a lot of it is the tax pays... [LR175]

SENATOR JOHNSON: What's the fee then? [LR175]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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HOBERT RUPE: Well, the...Nebraska, the wholesaler is required to remit the excise tax, the excise tax. And one of the reasons we do it that way is so that there's a check and balance because we're getting the manufacturing...we know what they say they're making and then we know what the wholesalers say they're selling. And so there's a way to cross-reference those. And that's with all beer. I mean, we get reports every month from Anheuser-Busch InBev, and then we cross-reference, you know, randomly cross-reference those reports against the wholesaler who said they received them. And so there's a way, you know...and so it's a self-policing mechanism for taxation purposes. [LR175]

SENATOR JOHNSON: Yeah, there's checks and balances there. [LR175]

HOBERT RUPE: Yeah. [LR175]

SENATOR JOHNSON: So the fee that they would be charging them then, would not have to increase their costs 25 percent. [LR175]

HOBERT RUPE: I'm...you'd...I'm not sure how they're doing that. I think you'd have to ask a wholesaler, you know, how they're...you know, are they charging you different if they're not doing the actual delivery. Most of the wholesalers are doing the actual delivery because, as Ms. Kavulak said, once they get to a certain size or market share, it doesn't make... [LR175]

SENATOR JOHNSON: Right. [LR175]

HOBERT RUPE: You know, the impetus that I forget is, you know, we're...you're hearing about how they're investing in their local business. You know, if they're going to be doing legitimate distribution, that's also going to be an increase in their investment because, you know, beer trucks aren't cheap. [LR175]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR JOHNSON: No. [LR175]

HOBERT RUPE: And so, you know, I think, you know, there's...you need to weigh that in. And that's sort of the investment that the wholesalers have made is they've got the fleet, they've got the contacts, they've got the system set up. So, you know, there is a value there. I...you'd have to ask them what the markup is, which is different. But I just wanted to clarify... [LR175]

SENATOR JOHNSON: Yeah. [LR175]

HOBERT RUPE: ...earlier on because, you know, we did make an exception for the craft brewery licenses just to handle that exact location where, you know, they didn't want to have to, you know, drive it to the...at that time they didn't want to drive clear to the other side of Lincoln and back downtown for taking a beer, you know, two doors down. So that's why that exception is in the act. [LR175]

SENATOR JOHNSON: Appreciate that. Thank you. [LR175]

SENATOR KARPISEK: Any other questions? The excise tax, how do we make sure that that's getting collected if we don't...and I know that they've said, well, we have to pay all sorts of other taxes, which I agree. But that's all checked and balanced. [LR175]

HOBERT RUPE: I can tell you that the portion of the industry that we have had the most problem with collecting the appropriate excise tax is the farm winery industry. They're usually the ones we find the most problems with when we do, do an audit of them, because of the level of recordkeeping and because they're in charge of the, you know, the whole scheme up and down. Now the other problem, of course, is I have one auditor who does a whole bunch of other stuff besides his auditing. And, you know, he's in charge of auditing not only the 20, plus the 14 in play, 20-plus farm wineries, the 30-some beer wholesalers, the 3 liquor wholesalers. So, you know, it's a...one of the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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benefits to the existing system is it reduces the state burden on it. You know, we're...it's...you know, and I'm not sure that's a greater...I mean, it's a fact. I'm not sure it's a compelling fact. But, you know, we can get by having only one auditor because it is a two-part system where then our two accountants in our office can do a lot of the preaudit work by cross-referencing what's being shipped in and what's being declared. [LR175]

SENATOR KARPISEK: I could probably do a little math, but how many bottles of beer are in a gallon? [LR175]

HOBERT RUPE: You know, you wouldn't ask that to... [LR175]

SENATOR KARPISEK: Should I ask someone else? [LR175]

HOBERT RUPE: I can't remember how many. Let me see, it's...well, a traditional, you know, glass is...you know, pint, is 12 (sic--16) ounces. So 64...so, okay, I'm a lawyer. Math hurts my head. [LR175]

SENATOR KARPISEK: Yeah, I know. Ten. [LR175]

HOBERT RUPE: So... [LR175]

SENATOR LAUTENBAUGH: Isn't a gallon 128 ounces? [LR175]

HOBERT RUPE: Yeah. [LR175]

SENATOR LAUTENBAUGH: So they'd be ten point...yeah. [LR175]

SENATOR KARPISEK: Roughly, ten. [LR175]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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HOBERT RUPE: Ten, yeah, so. [LR175]

SENATOR KARPISEK: So I guess the 30 cents a gallon is about... [LR175]

HOBERT RUPE: Thirty-one cents a gallon. [LR175]

SENATOR KARPISEK: Thirty-one, divided by 10,... [LR175]

HOBERT RUPE: Yeah, 3.1 cents. [LR175]

SENATOR KARPISEK: 3.1 cents a glass, okay. [LR175]

HOBERT RUPE: A beer, a glass. [LR175]

SENATOR KARPISEK: And I understand. I think...we have, of course, a big tax study going on, so we know...we hear all about taxes that are less in other states. [LR175]

HOBERT RUPE: Yeah. [LR175]

SENATOR KARPISEK: I'm not on that committee, but I...thank God. [LR175]

HOBERT RUPE: Well, and just to clarify, not only do we have three neighboring...or three in our neighborhood who are major beer manufacturers, you also have two states bordering us who are control states, which is they are involved at the wholesale spirits, and spirits primarily, Iowa and Wyoming, where they're making a lot of their money off of their own markup by...you know, where they are the liquor wholesaler. So their taxes, you know, they're not, you know,...they might...because, I think, Iowa's beer tax, I think, is 19 cents, if I remember correctly. So it's quite a bit lower than ours, but they're also receiving all the money off their spirits as the wholesaler. [LR175]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Would you...I'm sure you won't want to either. But if we would go in this direction, somehow, a number of gallons or miles or barrels. [LR175]

HOBERT RUPE: You know, I think you'd have to look at what other states did, and I think you'd have to be very careful. You know, as to what's a small brewery, what's a big brewery, you know, I don't think you'd want to use the 20,000-barrel limit we raised just, what, two years ago. We did that primarily because some of our larger craft breweries are becoming regional breweries. I mean, they're in multiple states. You know, I think what you would probably want to do is, if you're looking at just doing an arbitrary number, which you would probably have to look at and divide that license, the existing license, into two: a brewpub license who wants to, sort of, continue under the existing scheme, and a small or nano- or micro-, you know, some other microbrewery. Because, right now, the brewpub and the microbrewery are considered the same. What's happened is you've got two really distinct models which have gone differently from that location. You've got...you know, and so...of course, and...but one of our largest manufacturers, you know, does both. I mean, that's Emphyrean and it's Lazlo's restaurant, so, you know, I mean, it'd be one of the ways you'd want to look at it, you know, as to how you'd want to, you know, monkey around. For instance, the one issue, as I said, you've got to be careful, just to, you know, always, you know...it's October, so it's time to tell scary stories. Illinois had...there was a big fight. Anheuser-Busch had owned a small percentage of a place called City Brewery (sic)...City Wholesaling (sic)...City Beer (sic--City Beverage) in Chicago, which is a wholesaler. And they, sort of, had that ownership interest under the table or not really broadcast it for a long time. And when the states tried to say, hey, wait, you can't be a manufacturer and a wholesaler, one of the defenses that they raised was that Illinois allowed their in-state beer manufacturers to self-distribute. And the judge in that case was forced with a problem about whether to ratchet down and allow everybody to sell to...allow them, basically, Anheuser-Busch, to self-distribute or ratchet it up and take it away from everybody. And at that point, they ratcheted it up and then they threw it back to the legislature. And I think they were, you know, working on trying a new bill which is tighter

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

than it was. So just, you know, that's, sort of, the warning letter. Whatever you do, we have to make sure that it's incredibly tightly drawn. In a lot of ways craft beer is where I would put the wine explosion 20, 25 years ago, and we saw that that issue, at least, went to the Supreme Court already once, maybe twice, coming up on self-distribution issues. So it's, you know, it's a minefield. I mean, you can probably do it. There's other states which have done it successfully. But you have to tread incredibly carefully to make sure that you're not, you know, opening up the floodgates. As you'll remember, just a couple years ago, because of a weakness in our system this committee recommended the Legislature adopted getting rid of the old Storz exception which allowed...which was put in place to allow Storz to do exactly what is being asked today: self-distribution. [LR175]

SENATOR KARPISEK: Thank you. Any questions? Senator Lautenbaugh. [LR175]

SENATOR LAUTENBAUGH: Thank you, Senator Karpisek. You have to work on your scary storytelling. [LR175]

HOBERT RUPE: Yeah, well, since it's probably going to be my name somewhere on the complaint, I, you know, I get...it's scary for me. [LR175]

SENATOR LAUTENBAUGH: Okay, fine. What would be the value of the geographic limit, because, it just seems to me, you'd be limiting the potential customers. I don't understand the value. [LR175]

HOBERT RUPE: I'm not sure a geographic limit would be the way to go. If you're going...if you're...I think most of the...and the problem then you...if you do have a geographic limit, I'm not sure, you know, how well that would pass constitutional muster, I mean, whether it's, sort of, a weird...I think if you do it, something in general that any manufacturer under, say--I'll just throw a number out and this is just for illustrative purposes only, not for a recommendation--5,000 barrels, any manufacturer under 5,000

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

barrels may self-distribute, you know, to entities in Nebraska, we'd probably better because, you know, where it's coming is, so far, most of...I'm not...I mean, actually, I was...I think I'm going to back off that now. I mean, it's an urban and a rural. You know, there's places. You know, one of our earliest breweries is in Cortland, you know, down there. You know, so you've had the urban places. You've had, you know, a lot of brewpubs in Lincoln, a lot up in Omaha. But you've got some, you know, in Kearney, you've got them in Cortland, you know, as...because I signed it the other day, there's going to be one in Ord, Mr. Pollard's. You know, so I'm not sure it's a geographic issue. I mean, I think it...Mr. Pollard's idea of geographic sort of plays home because the next closest wholesaler is 65, 60 miles away down in Grand Island. And so it sort of plays it differently than other, but I think you'd...if you're going to do an exception, it's got to be limited solely on production. And I think you...it would have to be well below the 20,000 barrels limit. [LR175]

SENATOR LAUTENBAUGH: I mean, I don't live in a small town. But it seems, to me, if I lived in a small town, I would want the ability to market where there's lots of people. [LR175]

HOBERT RUPE: Yes. [LR175]

SENATOR LAUTENBAUGH: So the geographic limit might be a disadvantage. [LR175]

HOBERT RUPE: Yes. You know, I'm assuming that Mr. Pollard wants to sell beer to more than just the population of Ord; otherwise, his beer would be very small indeed. I mean, he's going to want to expand it, you know, growing it slightly. But he's, I mean, he's going to have to try to get into the larger metropolitan areas, and he's going to need a wholesaler, probably, of some sort, eventually, to do that... [LR175]

SENATOR LAUTENBAUGH: Someday. [LR175]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

HOBERT RUPE: ...because, otherwise, the cost is going to be prohibitive. [LR175]

SENATOR KARPISEK: Any other questions? I don't see any. Thank you. [LR175]

HOBERT RUPE: Thank you. [LR175]

SENATOR KARPISEK: Anyone else who wants to testify on LR175? I don't see any. Senator Sullivan? Okay, thank you, everyone, on that. That will end the hearing on LR175. Now we will have LR258 by Senator Krist. I didn't introduce Senator Krist when he came in the room, but now he's here. Welcome, Senator Krist. [LR175]

SENATOR KRIST: Thank you, Senator Karpisek. My apologies to the committee for my absence, but I have something else going on down the hallway that's also a concern so I've been splitting time. I've introduced Legislative Resolution 258. It is pretty self-explanatory. I introduced LB444 during the session and it still resides in this committee and I ask that it stay here until we take a good look at it. Essentially what I'm asking is, is there a reason why there should be a more structured, standardized training for people who serve alcohol to avoid some of the problems that we have seen, including death, in the past year? And we've seen it before, it's not just the past year. And the other overriding question, I think, is when you have an establishment that is open, should you have someone who is 21 or over supervising those that are 19? And just to remind the committee and those who are in attendance, we're here because we lowered our drinking age years ago. And then we raised it back to where it's at and we did not take that ability to serve alcohol away from the 19-year-old when it came back up to 21, partially. We're also here because in the supermarket environment and other environments, that is extended service for someone who is less than 21 years of age and 19 and over, in terms of selling the alcoholic beverage. Very clear, I think. Very simple. With the information I hope we gather and we hear, we may tailor or we may shelf LB444. But I think we owe it to ourselves to take a good look at it. Thank you, Senators. [LR258]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Thank you, Senator Krist. Any questions? Seeing none, would anyone like to testify on LR258? Can I see a show of hands how many people plan to? One, two, three four, okay, five, thank you. Welcome back, Mr. Moylan. [LR258]

JIM MOYLAN: Thank you, Mr. Chairman, it's nice to be here with you guys. [LR258]

SENATOR KARPISEK: You're not under oath, I guess. (Laughter) [LR258]

JIM MOYLAN: I'm Jim Moylan, J-i-m M-o-y-l-a-n, attorney and counselor for the Nebraska Licensed Beverage Association, the state association of liquor retailers. I appreciate Senator Krist's idea. And why not expose this and let's get a good hearing on it, whether 19-year-olds should be able to work alone in establishments. Now we'll look at the resolution. Number one: Which, if any, licensees should be affected? Well, it's really all of them because all of them, at some time or another, will have somebody 19 years or older in the establishment, especially the small mom-and-pop stores throughout the state, as well as convenience stores. Sometimes there's only one person in there. Which, if any, licensee employees should be affected? Well, it's the children from the mom-and-pop stores, for one thing, and then a lot of university students who work in establishments in order to make enough money to continue their education. They're the main ones. Now, I guess who it's putting at a disadvantage are really the 19-year-olds more than anybody because they need jobs and it's a great place to work. They make good money in tips, you know, just in the bar alone, you know; but especially the mom-and-pop stores, and there's a lot of them throughout the state. Now--and I didn't bring a copy with me--six or seven years ago I prepared a contract for the licensee to use between them and their employees, which included 19-year-olds--a two-page document that included everything that a person should know about retailing alcoholic beverages. And it also provided a paragraph or two for what the penalty would be if you violate any of the provisions of the law as they're laid out in that contract. And I've had two or three people call me, it's the best thing they ever had. Number one thing,

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

it provided that they could be suspended or discharged if they violated any of them. So it was a savior for them from the standpoint of having a good defense if they're sued for dismissing them for some reason or another. And that goes out to all the members and it's a pretty good educational tool. And most of them are using them now, you know. So I think that's about all I have to say. Any questions? If not, thank you. [LR258]

SENATOR KARPISEK: Thank you, Mr. Moylan. Welcome back. [LR258]

KATHY SIEFKEN: (Exhibit 7) Chairman Karpisek and members of the committee, it's good to be here again. [LR258]

SENATOR KARPISEK: You also are not under oath. We've got a lot of hot air in here today. [LR258]

KATHY SIEFKEN: Hey. My name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n. I am the executive director and registered lobbyist for the Nebraska Grocery Industry Association. And I think it is good to discuss training. Training is a good thing. We train our people all the time. Whether it should be mandated by the state of Nebraska or even by a local municipality is another question. The handout that I provided you is information that I have given you in the past. I copied pages out of this book which you were given last year. And since I gave them to you last year, I only have one left, so you got copies this year. This is information that was put together by the... "Lancaster County by the Numbers," and it was by the Substance Abuse Coalition, which was a great group that really did some great things in Nebraska to keep alcohol out of the hands of minors. Unfortunately, they lost their funding. And that really was a sad day when that happened because they were a great group that really did make a difference. The figures that you have before you, up above there on top, those are the figures that were given to the city council members in Lincoln when they first started talking about the permit process and required training for servers and sellers. And if you take a look at that, the bottom line is that 93 percent of the minors are not getting their alcohol from

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

retailers, they're getting it from other places. So when you...and there are other pieces of information that corroborate that. And as a matter of fact, if you go to the bottom of the page, it tells you about the actual compliance checks that are done by law enforcement across the state of Nebraska. And there are four compliance checks that were included in this study that is back...and it's included as an attachment. And the compliance rate, we're at 93 percent compliance in some of those. There were a couple that weren't included in this that I pulled out of newspapers and they were at 91 percent and 92 percent. So even when law enforcement goes into retail operations and they do compliance checks in grocery stores, bars, C-stores, and restaurants, the compliance really is rather high. And I believe that the reason it's rather high is because we have, over the years, adopted training programs. As a matter of fact, the Grocers Association has a training program that is geared toward off-sale environments. And it's because we have done that, the Restaurant Association has done that, the bars have done that, and they are actually training their people to make a difference and not make those sales to minors. So to come in and mandate training when we are already fairly successful...now I would also agree that there's 7 percent out there and we're trying to improve on that number. But when you start thinking about the fact that 93 percent of the retailers or those people that are selling alcohol are complying with the law, that's a pretty high percentage. And I'm very proud that Nebraska has reached that level. One of the problems that we have with local communities starting their own and passing their own ordinances, like Lincoln has done, is that it becomes a patchwork of training requirements across the state. And to give you an example, North Platte's training--it's required--they passed an ordinance a couple years ago. That one doesn't even meet the Liquor Control Commission's standards. So if you're in North Platte, you have a special little program that only works in North Platte. Kearney passed a training program and they are requiring their servers and sellers to be trained. But their training program is a mirror...if it is a training program that has already been approved by the Liquor Control Commission, that's good enough for Kearney. And that's really the way it works best for the cities when they pass those kind of ordinances. And then we have the city of Lincoln which I hold up as a poster child of everything that's gone wrong. Now I'm

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Rough Draft

General Affairs Committee  
October 04, 2013

---

sure they won't agree with me. But the city of Lincoln put together a program with a permitting process and they are allowed to do that and we can't change that. I mean, they have the authority to do that. But in order for someone that works in a grocery store to get the appropriate training, they would use our training program that is in the environment of a C-store or the front end of a grocery store. They have to take that training. Then they have to turn around and take another test. And they test out of ours and they become certified. Then they have to take another test to prove to the city of Lincoln that they took the test that they just took through our Web site, and then they have to take another test to prove that they understand the local ordinances. And I would hope that we could streamline that process. I'm not sure...it would be a brave man that would step forward and say the local programs have to go away and you all have to adhere to one set of training because Lincoln has already done what they've done. However, it's very difficult for us, as retailers, to deal with that. What we would like to see is manager training statewide, because frankly, if your managers are trained and your managers trained their employees, that's how you get compliance of up to 93 percent. And that is what our grocery stores and our retailers across the state have done. They have trained their people by training their managers first. Now it's not mandated at this point, but I guess my point is, is that the industry is doing everything that it can to make sure that we're doing things right. And to give credit where credit is due, the Beverage Association is--and Kristin is here, I don't know if she's planning to come up and talk or not--but the Beverage Association is actually putting on a free workshop training program. They're bringing in the State Patrol, it's approved by the Liquor Control Commission, they're taking it to seven communities across the state of Nebraska and it's free to every retailer that signs up, that preregisters for those classes. So my point is, at the end of the day, we are, as an industry, being very responsible. We think we're doing a very good job. And to mandate that the government step in and require training is not something that we think we need right now because we think we're doing a great job. So if you have any questions, I'd be happy to answer any.

[LR258]

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Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: Thank you. Senator Krist. [LR258]

SENATOR KRIST: One of the reasons that I came forward with the LR, is I did listen to you all when you said you don't want to be told what to do, the government shouldn't step in. But I think I'd like to make the point, if the managers are the device by which we guarantee quality throughout the system, don't you think the managers have to be 21 and have to be in the establishment if things are going on in the establishment and they're selling? I'm asking for an opinion, I know. But it seems to me like one of the problems that we had in several of the situations which I tried to address is, 19-year-old, peer pressure, nobody is there to enforce. You're suggesting that the manager is that quality control. He's not or she's not, if they're not present. If you would like to respond, that's great. [LR258]

KATHY SIEFKEN: I can't argue with that thought process. And I'm speaking only for grocery stores. I can tell you that as long as there's a 21-year-old that is present, we would not be opposed to that. We have 19-year-olds that are selling alcohol at the front end of our grocery stores. And if they were not allowed to sell at all, that would be a huge problem because we can barely find enough people to man the front end, as it is, that are 19 and older. But to have a 21-year-old on the premises, a lot of our...we're already there. [LR258]

SENATOR KRIST: Okay. [LR258]

KATHY SIEFKEN: I don't know how other industries in the alcohol industry would respond to that though. [LR258]

SENATOR KRIST: Thank you. [LR258]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LR258]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

KATHY SIEFKEN: Thank you. [LR258]

SENATOR KARPISEK: Welcome. [LR258]

JIM PARTINGTON: (Exhibit 8) Thank you, Senator Karpisek and members of the committee. My name is Jim Partington, J-i-m P-a-r-t-i-n-g-t-o-n, and I'm the executive director of the Nebraska Restaurant Association. I believe that the resolution has identified issues that deserve to be studied, and I think that this is a worthwhile endeavor going forward. I do have some concerns. When you identify a need for certification, you're talking some criterion that should be used for that which, most likely, would be training or experience or a combination of both, I would guess. And restaurant success depends on effective staff training in several areas: food safety, venue offerings, customer relations, procedures, laws and regulations, as well as responsible alcohol service. So successful restaurants are already involved in a training course for their staff. They vary in quality and they vary depending on the size of the restaurant, whether it's a franchise that has a standard across all stores type of training program or whether it's a standalone restaurant. The National Restaurant Association offers training covering these critical areas, both on-line and in the classroom. They involve ServSafe manager training, ServSafe food handler training, and the handout I've passed out to you kind of outlines what's involved with the ServSafe Alcohol training program. They also have a sale star server training program that identifies ways to train the servers to be more effective to do more than just come up and ask you if you want a hot dog or a hamburger and give you the check. So there's a variety of training methods that we have available to our restaurants through our membership in our association. These are courses developed by subject matter experts at the National Restaurant Association. They're updated periodically to ensure compliance with new legislation. Instructors are certified and course records are kept by the national association. The restaurant industry supports training and considers a well-trained wait staff essential for the safety and satisfaction of customers and for profitability. As in most endeavors, the devil is in the details. As we go forward here, we need to get a picture of exactly how this

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

develops and what's involved in it before we could say one way or another what we supported or didn't support. One of the important criteria is that any training considered should be effective, economical, and not impose an undue administrative burden on restaurant owners, and not just be imposed on top of other training that's already in place and just be an added burden instead of a replacement for what's already there. So in general, I'd say this is a worthwhile discussion going forward. We'd like to be a part of it. And I would open that up for any questions you might have. [LR258]

SENATOR KARPISEK: Thank you, Mr. Partington. Any questions or comments? Seeing none, thank you. [LR258]

JIM PARTINGTON: Thank you. [LR258]

SENATOR KARPISEK: You got off easy. Welcome back, Mr. Batt. [LR258]

BOB BATT: Thank you, sir. My name is Bob Batt, B-a-t-t. I'm the chairman of the Nebraska Liquor Control Commission, been so for five and a half years. This is a subject matter that's very near and dear to my heart in all of the things that I have seen every month in our hearings. Number one, the training is inadequate, just to start it off in the right mode. There are so many deficiencies that we see every month, 30, 40 times a month, of people who fail to...one is compliance checks and there's a lot of failures. You know that Nebraska has a very interesting system. We have two kinds of driver's licenses: vertical means you're a minor, nothing else; horizontal license means you're an adult. We ask a lot of people who are not only the managers, but owners, and don't know the difference. We see a lot of failure on basics. And this is why, when they do compliance checks, there are a lot of failures. And they said, oh, I didn't have my glasses on. Oh, I was too busy. We had a person who works with the Patrol which is a very organized program of compliance checks. We had an individual, a female, who was 15 years old. She wasn't old enough to have a driver's license. She used her learner's permit--and it was vertical--and she was sold to in three different

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

establishments. And I saw her picture. She looked like she was 12 and they still sold her. But that's only half the story. The other half of the story and probably even a bigger problem has to do with overservice. And not only if it's in Lincoln on O Street on game days or if it's out in Ord or if it's in North Platte or whatever it is, there's a lot of bars, restaurants, even C-stores. We had a case in the middle of Nebraska last month where, at a C-store, that an individual came in, was highly intoxicated and they sold a bottle of vodka. The person happened to also be a minor. The minor was so intoxicated he took his purchase out, walked into traffic and didn't know where he was and got killed. While they never got a drink out of that bottle, they never should have been sold in the first place. It's an extreme case which resulted in death. But we see many, many. In Senator Krist's application of one of his things, we really do think that there should be somebody on premises who's 21 or over. We find that a lot of young people have, from the age of about 15 to about 20, sometimes 21, have a very different take on invincibility, how intoxicated, binge drinking, end up either sick, killed in accidents or end up dead. That is a very real problem. That's why we have a 21 drinking age. I was, you know, drank before I was 21 but that was the '60s. Things change and things are a lot different now and there's a lot more exposure to alcohol. It's also true that 75 percent of all the alcohol in the hands of minors comes from things other than licensed establishments. The number one source for alcohol for kids is their parents. They raid the liquor cabinet, the parents are permissive, they give it to them, or they get it from an older brother or a boyfriend, girlfriend, aunt, uncle, etcetera. That's where the majority of them are obtaining alcohol. If we tripled the tax on alcohol, it wouldn't make any difference. Number one, they would get it from the family. Number two, they'd steal it. A lot of them are not that...their mode of operation is not to go into the store or to the bar and try and buy it. They're either going to steal it or get it from somebody who's friendly to them. But we need to tighten up. I also think that we should eliminate all the city laws dealing with liquor education because we have different modes in Kearney, North Platte, Lincoln. We have zero training in Omaha and it shows. Lincoln actually runs a good system because at least they care. And they also have great police oversight. They have a liquor unit that goes in and talks to bars and works with them and trains them. And now Grand

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Island is getting that way and a few of the other cities. But we need more of that but we need it on a uniform basis across the state. One person shouldn't have anything and another locality in the state be overburdened with training. It should be one uniform program. Once again, unfortunately, we see the bad side. But we also...you go in the bars and you do inspections. We work with the Patrol as observers. And there's people--Lincoln, Omaha, wherever in the state--that have been there 30, 40 years in the business and never have had one infraction. It's because they know how to run the business, they're professionals at it. And we get some...we had one bar that we relieved of a license last month in Omaha and she hadn't been in the business this time for, let's see, it's about five months. And she lost her license because we had zero tolerance for some of the shenanigans they were pulling. So we have them all over the place. But that's why we have a central liquor authority. We also should have central training. And it really needs to...we talk about professionalizing the industry, this is a good opportunity to do it. So in conclusion, we're in favor of one training program to up the standards and to have people, say, have more skin in the game when they get a liquor license so they don't go in and have...we had one bar that had quarter beers and dollar shots. So for ten bucks, these kids in early 20s are going in and just getting drunk as could be because it was cheap. And they were...absolutely knew that they were selling to someone who is intoxicated. So if we try to up their professionalism, make it harder to do this, we're going to have less dead bodies on the street or we'll have less people in Cornhusker Place or less people that are crippled and all the bad ills of drinking and driving. But if you get too strict, remember, prohibition doesn't work. Thank you. [LR258]

SENATOR KARPISEK: Senator Bloomfield. [LR258]

SENATOR BLOOMFIELD: Thank you, Senator Karpisek. You mentioned having a person of 21 on premises. Would you be content with that or would you rather see us go back to 21 to serve? [LR258]

BOB BATT: Well, I'm also a practical person. I don't think there's enough available labor

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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in Nebraska. You have to balance between the two things, especially in small towns, that you can always get it. I'd also take it one step at a time to up the deal. By the way, if I'm reading it right--but I can't comment on the case because it hasn't been adjudicated yet--the person who was 19 or 20 who was serving that individual who also happened to be a minor who ended up being dead, that person just broke every rule in the book. So all the rules in the world didn't do any good if you do illegal behaviors. But I'm not sure we can do that and keep a lot of places open in this state. We really do think about, we have big city, medium sized, but you see so many in small towns where that bar or cafe is the entire social center of the state. And we have to watch it that we don't shoot ourselves in the foot over that deal and cause the only restaurant, bar, or whatever to go out of business because they don't have enough labor on the deal. So we always have to be...remind ourselves of we have a lot of small towns in Nebraska. So it's...one size does not fit all but except in training. Does that answer your question, sir? [LR258]

SENATOR BLOOMFIELD: It really doesn't but you beat around the bush as well as...but if we... [LR258]

BOB BATT: Well, I can cut to the chase, sir. [LR258]

SENATOR BLOOMFIELD: Well, that's what I wish you would do. Would you rather we went to 21 to serve? [LR258]

ROBERT BATT: No, sir. No. [LR258]

SENATOR BLOOMFIELD: Okay, thank you. [LR258]

ROBERT BATT: Is that concise enough, sir? [LR258]

SENATOR BLOOMFIELD: That answered the question. [LR258]

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Rough Draft

General Affairs Committee  
October 04, 2013

---

ROBERT BATT: All right. [LR258]

SENATOR KARPISEK: Senator Johnson. [LR258]

SENATOR JOHNSON: Thank you, Senator. You said centralized training or standardized as much as we can. We've got restaurants that might have different situations than grocery store sales, liquor stores, bars. We talked this morning with the SDL licenses and things like that for training to be involved in those. [LR258]

BOB BATT: Right. [LR258]

SENATOR JOHNSON: How complicated will this system be in order to educate each one of these situations or can there be pretty much a standardized... [LR258]

BOB BATT: Well, I think it's a standardized training. The one thing that we try to teach in our course and our standards is there's 50 visible signs of intoxication. One of the biggest problems you get is overservice. Also serving minors is a bad thing because they don't deal with alcohol like adults do. We need...selling to someone and spotting whether or not that they are, you know, their head is on the bar or they're laying on the floor or they can't speak well or they're knocking their drinks over, that works in most instances. I mean, a C-store is not like going to Lazlo's or a sit-down restaurant. It's a different thing but it's still, don't sell to people who are intoxicated. Don't sell to minors. Don't sell to people who are having real trouble. There is no shame in denying someone. Buying alcohol is not a right, just like a liquor license is not a right, it's a privilege. So I think that you could use a uniform training standard throughout. But there's a lot of resistance to it but we just see that we need it every month. You get a store, whether it's in Lincoln or it's in Ord or anywhere it is, they come in and they fail a compliance check because a person held up a minor ID. And the clerk or...and sometimes the owner looks at the minor ID, see's the person is 15 or 16 years old and sells them. That person needs to be trained just to tell the difference on what it means.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

And if they don't care what it means, using progressive discipline, they'll no longer be in business because we're going to get rid of them if they sell whoever, even if they absolutely know that they're a minor. You know, regulating alcohol is not easy but it works. The system works and we just need to up the training and not think that, hey, we can do whatever we want, we're out here or in downtown on O Street. We don't go along with that at all. It's not a free-for-all. The state has always regulated alcohol since they repealed Prohibition and they still need to. It keeps out organized crime. It keeps kids from getting killed. It keeps intoxicated people from getting killed. It's like, I always think of the Samantha Spady case when she got killed in Colorado when she...because she got "drunked" up. The people at the bar overserved her and she laid down and nobody took care of her and she aspirated and it killed her. Just a young lady. It was a horrible case. But that happens all the time, or they go out and get killed. We just need to up the bar on training and that is a responsibility of the Legislature to mandate it and for the commission to carry it out. [LR258]

SENATOR JOHNSON: Thank you. [LR258]

SENATOR KARPISEK: Thank you. Any other questions? Seeing none, thank you. [LR258]

ROBERT BATT: Okay, thank you. [LR258]

SENATOR KARPISEK: Mr. Keigher. [LR258]

TIM KEIGHER: Good afternoon, Chairman Karpisek and members of the committee. My name is Tim Keigher, it's K-e-i-g-h-e-r, and I am the executive director and lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association. I guess this is a difficult issue. I wasn't going to get up here and add to the "pummelry," but I do agree with most of what Mr. Partington and Ms. Siefken said. I think that the one thing that I wanted to say is, the 21-year-old I think is a bigger issue for, at least, us in the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

convenience store industry, especially in rural Nebraska. You know, I don't know if there's much difference between a 19-year-old and a 21-year-old. I mean, peer pressure is peer pressure. You know, the example that Mr. Batt gave of the rural community, I would question, did the clerk selling the alcohol to the person know the person? My guess is they probably did. You know, we spend a lot of time and money training. I can't tell you that every one of my members does the same training program on customer service, tobacco sales, alcohol sales, you know, money handling, that the larger ones do. But we spend a lot of time and money doing training already. We value our liquor license. We know it's a privilege to sell it. None of us believe that there is one 12-pack of beer sale that is going to make or break us in a day. So I really don't see the incentive that the retailer has. And you have had employees. You know it's very difficult to get a group of ten employees to all do and react to the same situation in the same way. So I guess, you know, we're willing to work with you, Senator Krist, we always have, and appreciate your openness. But that's really all I had to add, so thank you.  
[LR258]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thanks. Welcome.  
[LR258]

NICOLE CARRITT: Thank you. Senator Karpisek, members of the committee, I'm Nicole Carritt, N-i-c-o-l-e C-a-r-r-i-t-t, and I'm here representing Project Extra Mile. And first of all, we just want to thank Senator Krist and the committee for looking into this important issue. We appreciate the efforts to recognize that this is a piece of the puzzle in terms of preventing youth access to alcohol through retail sources. There's no question that certifying the staff of liquor license outlets, including managers of those locations, is an important public health step for the state to take. A certification program would help ensure the owners, managers, and staff of establishments that serve alcohol have the knowledge and skills to help them serve alcohol responsibly and to fulfill their legal requirements of alcohol service. To avoid sales to minors, as well as sales to intoxicated persons, we would urge that any such certification be mandatory for all

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

businesses licensed to sell alcohol. While training and certification is a good start, enforcement efforts are a key component to ensuring that the training efforts are effective. Research findings indicate that policies are more effective when there's an expectation that those who do not comply will suffer consequences. We would urge that penalties for violations for those certified increase in severity for repeat violations and that penalty be imposed, not only on the server, but continue to be penalized against the licensee and that they're also held accountable. Additionally, we would suggest that owners, managers, and servers and sellers be required to recertify or to have some sort of update on those certifications, to be thinking of a time line for that as you look into the issue further. Finally, we see value in requiring retailers that sell alcohol be required to have at least one person who is 21 years of age or older on the premises when the establishment is open for business. However, our concern goes further--as has been discussed here today--in that we would suggest that a server must be of age to serve alcohol, at least in an on-sale establishment. We understand youth and their inability to fully comprehend the potential consequences and harms that can result from the sale of alcohol and the ability for them to be pressured by their peers, potentially resulting in kids serving to kids or to intoxicated. Server, seller, and manager training and certification has been needed for a very long time. It is overdue. It should be opposed by absolutely no one who genuinely believes Nebraska can and should do better on this issue. So we just want to thank you again for looking into this really important issue. And I'd be happy to help as we go further or to answer any questions you might have. [LR258]

SENATOR KARPISEK: Thank you. Do we have any questions? Don't see any. [LR258]

NICOLE CARRITT: Thanks. [LR258]

SENATOR KARPISEK: Thank you. Welcome. [LR258]

TAD FRAIZER: Good afternoon, Mr. Chair, members of the committee. My name is

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Tad, T-a-d Fraizer, F-r-a-i-z-e-r. I'm a board member and volunteer lobbyist for Updowntowners, Inc., which is now known as GOLincolnGO events group based here in Lincoln. Please excuse me, I'm on the tail end of a cold and the voice kind of comes and goes. I did appear before you at the time of the hearing on Senator Krist's LB444 earlier in the session. And at the time, Senator Krist indicated that his bill was not directly intended to cover nonprofits such as ourselves. But I did want to just briefly appear before you and put forward the information of a small segment of those involved in alcohol licenses, specifically, special designated licenses. I wasn't able to appear this morning for that part of the discussion but wish I could have been here. Our event group has existed since 1984. We're a nonprofit based in Lincoln. Our mission is to put on special events, festivals and other activities, to enhance our community, especially our downtown area. Some of our events have been alcohol free. For 25 years, we put on the Star City Holiday Parade in Lincoln. Some of our events have involved alcohol sales under special designated licenses. You may have heard of the July Jamm Festival that we put on for about 15 years and now the Celebrate Lincoln Festival that we put on, kind of a summer music festival. So we've had experience getting special designated license for about a quarter century now. We obviously support responsible service. We've worked closely with the Liquor Commission, the city of Lincoln, the Lincoln City Police Department. I don't believe we've ever had a significant problem or citation over our history. Just as far as this specific study resolution, we would have no problem with manager or supervisor training or the requirement to have someone 21 on site as a supervisor at any time. You know, our steering committee and such, we're all of age. That would not be a real issue with us. Training, we've worked through. We...actually because of the Lincoln ordinance, we had to comply with server training this past year. However, I would be in favor of a more statewide standard. And, frankly, although we were able to comply with the Lincoln ordinance this year, it is an issue for nonprofits that put on festivals and such, whether it's our festivals here in Lincoln or, you know, a volunteer fire department putting on a street dance or Wilber Czech Festival--I've raised that before--to make sure that every single volunteer has been run through a full-fledged training program. You're asking people to come up and work a festival. You know, will

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

you give us X number of hours? And, oh, by the way, will you take an X-hour training program and go through a testing program? And being a volunteer event, some of our events will run two days. I'm sure in other localities they're even longer than that. You may have 100 or 200 shift slots to fill. Obviously, some people will re-up and serve multiple shifts. But there are more, probably, than an average retail establishment or grocery store or something that we would have to run through training. And, again, being volunteers, you have a significant turnover so the people that you train one year may not be around to be trained another year. So I think we could certainly comply with some managerial or supervisory level training. We could certainly comply with having at least someone 21 or over available on site at all times during the course of a festival. But we would like to express our concerns about if a training requirement came through that every single volunteer for every single shift would go through a formal training program. And I'd be happy to try to answer any questions that the committee might have. [LR258]

SENATOR KARPISEK: Thank you. Any questions? Seeing none, thank you. [LR258]

TAD FRAIZER: Thank you. [LR258]

SENATOR KARPISEK: Anyone else? Welcome back. [LR258]

HOBERT RUPE: Good afternoon. I guess I'll sort of look at some of the technical issues that have been raised. I think, you know, Commissioner Batt went through the position of the commission that we do like training. Just to give you a little history of where certified training has come from the state, there is actually a statewide standard. It happened in 2007, 53-117.03 was created. And that was part of a push for dramshop liability, if anybody will recall that. The dramshop liability didn't go through. However, the portion which said that the commission shall create and promulgate rules for certified training programs did go through. At that time, it was my understanding that that was going to be part of an olive branch from the bill's introducer, Senator Kruse, to the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

industry to sort of give an affirmative defense that if you've taken one of these certified training programs, you're going to be, you know, immune from suit under the dramshop law. Dramshop didn't go anywhere but the duty for us to do a training program went through. So what the heck did we do with it once we had the mandate to do it and how would we utilize it? Well, you guys all should have a copy of the new or, well, they are now called...the old red books are gone. They're purple books now. They're purple this year. They were sent out in January early this year so, hopefully, you have copies of them. And you can see in chapter 14, the minimum standards which the commission adopted. Now that's a floor, not a ceiling. And it gives forth the criteria based upon the statute of what we believe the minimum training should be required. And as Chairman Batt alluded to, it's more than just minors. It's how you see visibly intoxicated, do you understand how alcohol affects a body, how do you do an intervention with somebody, you know. Having sat through every single program that is now certified, I think we have 13 of them, they all say don't call somebody a drunk because that will just upset them and they don't like that. Just sort of...you know, there's ways to cut somebody off without creating a violence issue. So there is a minimum standard out there and there are some that are...go forth. As stated earlier, some cities have done, by ordinance, their own training. And I guess I'll take...disagree with Ms. Siefken. I think Lincoln's is actually one of the best. Lincoln allows somebody who's taken a different mandatory server training--you know, one of our other ones--to test out, you know, basically to pass a test showing that not only did they pass the test at the time but they actually retained the knowledge and know what it meant. And then has the separate portion for their own liquor laws. And one of those important liquor laws, just as an example, cities can regulate...they can't regulate less stringently than the state can. They can go more stringently so long as they're not in conflict. Lincoln has an ordinance that somebody 21 must be on premises any time a place is selling alcohol. They've got a Lincoln city ordinance which applies to the other part of this bill already. So it has been done in other cities. The key thing...what I did, as director, when Lincoln decided to do...it was just...and I'll...if I'm wrong, I'm sure somebody will correct me. The requirement that they did, it had to do...they had...you had mandatory server training was linked to the

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

decision to allow them to go to 2:00 a.m. The city council said, okay, we're going to allow you to go to 2:00 a.m. for closing but we're going to expand it. For years, Lincoln had a manager...all the managers had to take a manager's course. But the Lincoln City Council get a mandate that they shall create and promulgate a server training rule. Well, thinking that eventually that statewide training would come up again, I was at least smart enough--I showed some intellect at that time--to sort of work and watch them, how they did it because I wanted to see how the second largest city was going to implement it because one of the biggest complaints the last time that mandatory server training had come before the Legislature was, there was not capacity to train 50,000-plus people because that's roughly how many people are in the beverage service industry. So we worked closely with them, how they did it. And how they did it, a lot of it was on-line. Parts of it were linked to a training program that the commission had already funded, you know, an on-line training program. When we had the requirement that we create minimum standards, we wanted to make sure there was one available to the whole state; so this went through the University of Nebraska. Because...and, so far, how we've used training programs and making sure everybody has to do it is, is it often will be utilized as a condition on the license. Somebody comes in, they fail the compliance check or they had a fight. First offense, not only will they get a suspension but there will also be a condition placed upon the (inaudible) and all their staff have to complete one of our certified training classes and get proof to us back within 60. You know, the courses that we can place reasonable restrictions on licenses, the commission has long believed that's a reasonable restriction to have somebody take the training if there's already been proof that they failed it. So we were sitting and watching how Lincoln implemented it. I think Lincoln's done a really good job. They're not perfect. There's ways you can fix it and change it. The argument there's not capacity, I think is gone. There's 13-plus training programs that we've approved. I know, I sat through every single one of them to make sure. Some of them are better than others. I can't really say some are...you know, and some are, you know...I'm old, I might like live better than on on-line. But the information, the minimum standards are there. So there is a minimum standard already set up by law, set up by rule. And that if the

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Legislature wanted to make it mandatory, I believe that the implementation would be much easier than it was eight years ago when this Legislature last dealt with the issue. With that, I'd be happy to answer any questions. [LR258]

SENATOR KARPISEK: Thank you. Senator Bloomfield. [LR258]

SENATOR BLOOMFIELD: Mr. Rupe, Mr. Fraizer's comment about something like Czech Days or, again, going back to my service club where you may have 10 or 12 different servers through the night. How do you handle that, because you don't know who they're going to be when the night begins? [LR258]

HOBERT RUPE: You know, I'm going to say, right now, I can understand his position but I don't agree with it. If you're going to be slinging beer, you should have a minimum understanding of how to look for an ID if you're asked to, how to identify signs of visible intoxication, and how to do an intervention. If you're going to be standing out and holding yourself out as a professional and sell alcohol, you know, you should... [LR258]

SENATOR BLOOMFIELD: I don't hold these guys to be professionals. [LR258]

HOBERT RUPE: Well, exactly. You might want to be a professional, I mean, because as I said earlier on the earlier things, one of the issues we had the most problems with on SDLs were on street dances held by volunteer fire departments because there's no requirement, there's no training. It was amateur hour. So I understand, you know, that there...you know, I mean, you know, Legislature is all about the art of the compromise part of the deal. But if you're asking for my perspective as a regulator, I don't see a difference between somebody selling me a beer at Czech Days as opposed to if I'm going down to Duffy's. [LR258]

SENATOR BLOOMFIELD: Okay, thank you. [LR258]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR KARPISEK: I just want to say that if they're not professionals, they'd be getting paid. Hence, the problem. [LR258]

HOBERT RUPE: Well, and I understand there's a difference. And trust me, if I show up at Czech Days, I'm pretty sure I wouldn't get served. [LR258]

SENATOR KARPISEK: Well, you'd probably get a lot on you. Senator Krist. [LR258]

SENATOR KRIST: Just to clarify, because it's in the book. If you have a liquor license, which the club does, the book says or the manual says, there's a minimum certification and these are the things you should do. [LR258]

HOBERT RUPE: If you have to take a training. There's no requirement that they take it. That's what happened. [LR258]

SENATOR KRIST: But that's your guideline if they do. So there would be nothing wrong with the VFW club or a service club saying, here's the kind of things we don't want you to do: We don't want you to hit anybody in the mouth, don't call them a drunk, etcetera, etcetera. And essentially, they would be complying with your directive, right? [LR258]

HOBERT RUPE: Yeah. What the rule says, it sets forth the minimum requirements for the programs that we will...that the programs have to meet. And so then we've approved those programs. You heard, you know, ServSafe is an approved program. Ms. Siefken's retailer program is an approved program. TIPS is an approved program. You know, a lot of states, when they look at mandatory server training, they've gone one of two ways. They've either gone that we're going to have one state system that everyone must take the state's system. It's very bureaucracy, there's more people required to do it. Or people go through sort of a permit where you say, we're going to license, you know, servers, you know, providers to do it with oversight, which is what ours is already set up for because we already have a legislative mandate to have certified training programs.

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

Right now, there's no requirement that anybody uses them, except now what the commission will do on specific cases, we'll order them to take one of those courses. [LR258]

SENATOR KRIST: Okay. Thank you. [LR258]

SENATOR KARPISEK: Any other questions? Seeing none, thank you. [LR258]

HOBERT RUPE: Thank you. [LR258]

SENATOR KARPISEK: Anyone else on LR258? Going once, going twice, okay. That will end the hearing on LR258. And we will now move to LR283. If you could assume the chair, please. [LR258]

SENATOR KRIST: Yes, sir. LR283 examines the issue related to the acquisition and the use of electronic cigarettes by minors. Senator Karpisek, when you are ready. [LR283]

SENATOR KARPISEK: Thank you, Senator Krist and member of the committee. 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. As Senator Krist said, we are talking about the acquisition and use of electronic or e-cigarettes by minors. Occasionally, technology outpaces policy. This seems to be the case with electronic cigarettes. Recent interest in whether minors should be allowed to purchase or possess electronic cigarettes seems to stem from a recent CDC study that showed that the use of electronic cigarettes by middle school and high school students had more than doubled from 2011 to 2012. I decided to utilize the committee's catchall interim study to examine the issues of whether minors should be allowed to purchase and possess electronic cigarettes. I feel that there's not been enough study on what the health effects are for minors. I will not argue at all that electronic cigarettes are better for adults than tobacco cigarettes. I also do not intend to

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

get into the taxation of electronic cigarettes to make them taxed like a tobacco product. My whole intent with this study is just to see about minors having possession or purchasing. I'll take any questions. [LR283]

SENATOR KRIST: Thank you. Senator Bloomfield. [LR283]

SENATOR BLOOMFIELD: Thank you, Senator Krist. Senator Karpisek, in what amounts you've looked at this yet, have you seen whether or not...how use of the electronic cigarette with a teenager, does that lead to or prevent them eventually going to the tobacco cigarette? Have you done anything in that area? [LR283]

SENATOR KARPISEK: I haven't. I've just read a little bit. I guess, in my opinion and it's only my opinion, I think that it might lead to them going to regular tobacco cigarettes. [LR283]

SENATOR BLOOMFIELD: I've looked at two different little studies on it too. And one said it does and one said it didn't. That's why I wondered if you'd found anything. [LR283]

SENATOR KARPISEK: We're pretty used to two or three or ten different conflicting studies around here. But I guess it's just a question of if minors...I mean, would you have your ten-year-old, five-year-old having an electronic cigarette? I don't know. [LR283]

SENATOR KRIST: Thank you. Any other questions for Senator Karpisek? Okay. The first testifier, please. [LR283]

JIM MOYLAN: (Exhibit 9) Mr. Chairman and members of the committee, I'm Jim Moylan, again. And I'm here representing RAI Reynolds Tobacco Company. We appreciate the opportunity to appear before you on this issue. As you know, several of

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

the tobacco companies are now manufacturing and selling e-cigs, they call them, electronic cigarettes, along with the many other products. Reynolds is the second largest cigarette maker and distributor in the country, and they have many brands just like all the rest of the companies have. But anyhow, we're here today mostly to encourage the including of persons under 18 to prevent them from smoking e-cigs. Right now, the law does not cover that, and so we support that. I have a handout here for the reasons that they think that it ought to be banned for people under 18. So I'll let you take up that and if there's any questions I'd be happy to try to answer them. [LR283]

SENATOR KRIST: Thank you for being brief and concise. And thanks for the handout. Thank you, Mr. Moylan. [LR283]

JIM MOYLAN: Now I have a few other items to come under this LR283 later that doesn't involve cigarettes. Should I do it now or come back? [LR283]

SENATOR KRIST: If it's not... [LR283]

JIM MOYLAN: I'll come back. All right. [LR283]

SENATOR KRIST: Okay, yeah. Thanks. Next testifier. [LR283]

DAVID HOLMQUIST: Senators, committee members, my name is David Holmquist, H-o-l-m-q-u-i-s-t. I'm a registered lobbyist representing the American Cancer Society Cancer Action Network. I reside in Omaha in Legislative District 18. I appear before you today to offer some general thoughts on the possibility of banning the sale of e-cigarettes to minors. Over the past 50 years, no single organization has done more in the public policy arena to alert the public to the dangers of smoking. Our policy work over those 50 years has been directly related to hard scientific data gathered by independent scientists across the U.S. and the world. Let me be clear. We support keeping all tobacco products out of the hands of minors, those under the age of 18. We

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

also support learning more about these products and their potential. A lot of claims are being made in support of e-cigarettes, as well as some claims in opposition to these products. We are interested in learning as much as we can about these nicotine delivery devices before we take a stand on any position. We encourage a deliberate and thoughtful approach to this issue and we are concerned that no measures are taken that could undermine the other positive steps that have been made in Nebraska and across the country to minimize the harm caused by tobacco use. The Food and Drug Administration has been engaged in trying to learn more about these products in an effort to understand what authority they might or might not have to provide oversight over the products. The jury is still out. At this time, there is no credible science-based indication that these electronic cigarettes are less harmful than traditional tobacco products. And the possibility certainly exists that they could cause more harm because they might seem less dangerous and appear to be more user friendly due to the flavorings that are imparted to the users. Senator Karpisek has said in an article in the Lincoln Journal Star, "We've heard a lot of people asking why they, e-cigarettes, should be legal for people under age 18 when normal cigarettes are not. They still dispense nicotine, but I do not think that there have been enough studies to really know what the long-term health effects are." And I think Senator Karpisek reiterated that in his opening statements. So I would urge the committee, and you as individual senators, to take a very cautious approach if considering any legislation concerning e-cigarettes. Given the fact that all other tobacco products may not be sold to or used by those under 18, we would urge you to go no further than restricting sales and use of these products to people 18 years of age or older at this time. Thank you for the opportunity to appear today and I'd take any questions you might have. [LR283]

SENATOR COASH: Thank you very much. Any questions? I don't see any. [LR283]

DAVID HOLMQUIST: Thank you. [LR283]

SENATOR COASH: We appreciate you coming up. [LR283]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

MICK MINES: Senators, my name is Mick Mines, M-i-c-k M-i-n-e-s. I'm a registered lobbyist for the Nebraska Grocery Industry Association. We, too, support the regulation or the establishing an 18-year-old age for minors to purchase vapor products, electronic cigarettes. And we urge the committee to advance a bill to the floor to do just that. As we all know, vapor delivery is a delivery system for nicotine. We, too, support the past testimony that's discussed that there's just too little information out there right now. We look to the FDA to develop regulations. We think these products need to be regulated but we are also of the opinion that these are not tobacco products, should not be taxed as tobacco products. And that's really the issue down the road, we believe, is when and how these products will be taxed. We believe they are not cigarette products and should not be taxed as cigarette products. So we support what you're doing and look forward to legislation next year. I'd invite any questions. [LR283]

SENATOR COASH: Thank you, Senator Mines. Senator Johnson. [LR283]

SENATOR JOHNSON: Thank you. Thank you, Chairman. You're talking about the nicotine side of it, tobacco side of it. If these e-cigarettes can dispense some other type of aromas, to me it still could be an addiction to something. What's your...what would be your... [LR283]

MICK MINES: Well, and I think, exactly, Senator. I think that's exactly the point is, some of these liquids are infused with flavors, cotton candy or whatever flavor they want. And I think there's too little information about the impact of that, particularly if they're steered towards kids. And we look for the Food and Drug Administration to give us...and they're studying that right now. So we believe and hope that there will be regulation, particularly in the delivery of the nicotine itself so there are standards on if a consumer expects the product to deliver a certain amount of nicotine, it should deliver that amount. We should also, as consumers, be assured that the product itself isn't harmful, the water vapor isn't harmful to us with impurities. So we think the jury is still out on that. But above all, we

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

think that minors shouldn't have the opportunity to buy these products. And from a taxation standpoint, we're not on board with any taxes. By the way, we've provided sample or an example language to the committee for legislation. It's very broad. And I know, between now and next year, you'll come up with particular language that applies just to Nebraska. [LR283]

SENATOR JOHNSON: Thank you. [LR283]

SENATOR COASH: Thank you, Mr. Mines. Any other questions? I don't see any. Thanks for coming. [LR283]

MICK MINES: Thank you. [LR283]

SENATOR COASH: Welcome. [LR283]

TIM KEIGHER: Senator Coash, members of the committee, again, my name is Tim Keigher, K-e-i-g-h-e-r. I'm the executive director and registered lobbyist for the Nebraska Petroleum Marketers and Convenience Store Association. I guess I just thought I would share with you that I did send an e-mail to my board members and asked them if they had any issue of making the e-cigarettes only available to 18-year-olds or older or if they had any issue with putting them behind the counter. And on both accounts, they did not have any issues with that so that's all I had to add. [LR283]

SENATOR COASH: Thank you. Mr. Keigher, If these are age restricted, does that require them to be behind the counter? [LR283]

TIM KEIGHER: I don't believe it does require that. But my members said they're putting them behind the counter because of the cost of them and an issue with theft, as they have put cigarettes behind the counter for a long time. [LR283]

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Rough Draft

General Affairs Committee  
October 04, 2013

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SENATOR COASH: Okay. Thank you. Any other questions? Seeing none, thank you. Is anyone else here to testify on LR283? Come on up. [LR283]

SEAN GEORGE: All right, I just want to say thank you, General Affairs Committee, for having this meeting today. My name is Sean George, G-e-o-r-g-e, and I'm the owner of Husker E-Cigs in Omaha, Nebraska. First, I just want to start out by saying I support the banning the sale of electronic cigarettes to minors, although I do believe they are far less hazardous. And I do...it does make sense to ban the sale of products containing nicotine to those under the age of 18. And I do believe it is a current law in 25 states right now. However, I want to...I, basically, would not support any bill that would classify an electronic cigarette as a tobacco product or taxing them as a tobacco product or the ban or use of them as where smoking is banned. I believe the states of Wyoming, Kansas, and Colorado, which are Midwestern states like us, all ban sales to minors but do not impose other burdensome regulations. And basically, I guess my story as being a former smoker for over 20 years, electronic cigarettes, I believe, have changed my life. About a year and a half ago, I wasn't looking to ever quit smoking. I've tried all the other smoking cessations out there. I have tried the gum. I have tried Chantix. I even went as far as doing hypnosis. And none of those worked for me. The only thing that did work for me was a three-month boot camp in the Marine Corps, you know. So anyway, I feel a lot better. I can tell you, on a personal level, the reason why I opened my store is because I'm very passionate about it. I do...I've heard some talk about flavoring other than tobacco flavors. And I would ask you, the committee, that if you were a former smoker, you would know the taste and smell of tobacco. Now if you were not a smoker, you would know the smell of tobacco. And it doesn't smell very good and you can probably imagine what the taste is. So flavoring in tobacco, to me, or in an electronic cigarette, the flavoring means a lot because after a few days of not smoking, your taste buds come back to you. And I'm no scientist by any means, but I know myself. And I know that I don't like the smell of tobacco anymore or the smell of smoke. But the people around me when I do use my electronic cigarette, they enjoy the smell. It's

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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usually of a cherry flavor or blueberry or something like that. But I do know that there is a lot of research being done currently, right now, with electronic cigarettes. But I also know there's research that has been done. And the research that has been done by both Boston University and Drexel University, which was done here recently, basically came out and said there's zero to minimal health risks using electronic cigarettes. And not only that, I know everybody's big debate, some of it, is the use of the word "nicotine." Well, you don't have to have nicotine in this. Some people, when they come down, you know, you start off maybe at a higher level of nicotine when you're trying to quit smoking. But you can go to zero nicotine. So I don't think the word "nicotine" is very substantial in the fact that...you know, just like the patch. When you use the patch, they lower your dosage of nicotine as you go down. This, in electronic cigarettes, is similar. You can get to the zero nicotine level and maybe completely get off of it, just like people can completely get off the patch. The reason why this works so well for myself is because it's very realistic. It feels good to me. It gives me something to do similar to people when they wake up in the morning, they have to have their cup of coffee or in the evening they have their cup of coffee after their dinner. This is what I like to do. And I'm open for questions. [LR283]

SENATOR COASH: Senator Krist. [LR283]

SENATOR KRIST: Full disclosure: I happened to do my own investigation this weekend and visited Mr. George's shop near my district, just outside of my district. But so, for the record, a couple of things that I learned from you, I think it's important to give that perspective. Right now, you're loading the cartridge for the e-cigarette in your shop and you're controlling, basically, what the customer wants to put into the cigarette, right? [LR283]

SEAN GEORGE: Yes. [LR283]

SENATOR KRIST: We talked about the availability and potential for people to get to a

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

point where they can load their own. And that is going...my worry and I told you the same thing, is that's going to be a control issue in the future. A police officer or someone in the public is, potentially--and it's an inhalator so, I mean, you can put anything you want to in it and get whatever buzz you want to. So that may be something that we need to look at down the road. And I think that that's important for the discussion as we continue to gather the information. I think the other thing that we talked about, which was very clear, your store doesn't sell to anyone that's under 18 right now. That's the way you do business. [LR283]

SEAN GEORGE: That is correct. We have a sign on our door that says, "Must be 18 to Enter," and we do card everyone who comes in the door that looks under the age of 30. [LR283]

SENATOR KRIST: And I applaud that. Again, my concern is that if we don't ban vaping everywhere we ban smoking, we're going to have some issues. I could see somebody vaping in the back of this room and, really, what's to prevent them from doing that. And it really is, to me, kind of a distraction in this environment or in a courtroom. So we're going to have to talk about that as well. And I think that's responsibility, so. [LR283]

SEAN GEORGE: I agree with that to some circumstances. But I also agree to it, like, I agree with it in the sense like in the classroom you're not allowed to chew gum. [LR283]

SENATOR KRIST: Right. [LR283]

SEAN GEORGE: Okay? That's where I would agree with it at. Now in a business environment, I would leave that up to the employer. [LR283]

SENATOR KRIST: Absolutely. And I support also, although it doesn't seem to bother me in a bar situation where people, rather than walking outside and creating the cloud, they could sit at the bar and actually vape. And that's going on right now. So we're going

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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to have to differentiate, I think, where it is culturally correct, if you will, or socially correct to vape, because that's going to become an issue. I already know that the Omaha Public School System has had several encounters with vaping and there's no rule against vaping so there they are, so. Thanks for coming forward and thanks for sharing the information. I'm sure this discussion will go on. [LR283]

SEAN GEORGE: Yeah. [LR283]

SENATOR KRIST: But again, I applaud the fact that you're already self-policing, in a way, and keeping it out of the hands of folks who are under 18. [LR283]

SEAN GEORGE: Yep. Any other questions? [LR283]

SENATOR COASH: Thank you, Senator Krist. I have a question for you and this is mainly for my own curiosity. You're a retailer. [LR283]

SEAN GEORGE: Correct. [LR283]

SENATOR COASH: Who's your wholesaler? [LR283]

SEAN GEORGE: I buy different devices from different people and different companies. Usually, I buy a lot of my stuff from China, direct, which...and then after that, I buy some things in the United States, you know, from people. It's kind of wherever I can get the best kind of deal at. [LR283]

SENATOR COASH: Right. The reason I ask, and if you can address this it would be helpful, I was led to believe that some of the tobacco companies are the actual manufacturers of these e-cigarettes. And I didn't know if that was true or not so I thought you might be the person to answer that. [LR283]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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SEAN GEORGE: Sure. I believe R.J. Reynolds and Lorillard and some other big tobacco companies do own their own electronic cigarettes and do their own...I don't know if they do their own distribution. I would assume they go through distribution centers like their tobacco. I've been approached by one of them, one of their sales people. But other than that, that's about as much as I know on that level. [LR283]

SENATOR COASH: All right. [LR283]

SEAN GEORGE: But I know they're joining in the industry of electronic cigarettes. [LR283]

SENATOR COASH: Interesting. Thank you for your testimony. [LR283]

SEAN GEORGE: Uh-huh. [LR283]

SENATOR COASH: Seeing no other questions, thank you for coming out, Mr. George. [LR283]

SEAN GEORGE: Right. [LR283]

SENATOR COASH: Next testifier. [LR283]

JAMIE HAWKINS: I want to thank you for having this open discussion today. My name is Jamie Hawkins, J-a-m-i-e H-a-w-k-i-n-s. And I'm just a schmo off the street who heard that you were talking about electronic cigarettes today and keeping them out of the hands of minors, which I'm kind of in a neutral spot. I don't know if there's a big cause for minors vaping. But I just wanted to share to you what electronic cigarettes have done to my life. October 16, 2009, was the last time I smoked a cigarette. It's the best decision I've ever made. It has changed my life in a way I can't imagine. Hacking up blood in the morning from smoking for 20 years. Not being able to walk up a flight of

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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stairs. I'm already pretty out of shape. To put me, you know, smoking for 20 years...and it was going to be the end. You know, I knew that cigarettes were deadly and I couldn't stop. I tried everything. And four years ago, the electronic cigarette I believe saved my life. It's something I don't want to keep out of the hands of anybody who smokes. I've converted, dare I say, 50 people in my close friends and family because I've seen the effects. And I so desperately want more studies to happen. And I think there's an opportunity for Nebraska to be a leader here. We have one of the best heart healthcares in the nation, this center here. One of the biggest problems with, you know, heart attacks, is smoking. And I really think there's an opportunity here. Instead of letting the FDA and some other government organizations or states around us decide how to regulate this and end up throwing it in just with cigarettes. I think there's an opportunity that we can, you know, do our own research, say we're going to be the leaders, we're going to see if this is healthy, and if it is healthy, we're going to promote it. For this bill that's coming up, I do know of one parent who had been in a fight with their kids to keep them from smoking. And this parent was a vaper. He used the electronic cigarette. And he punished his kids to all ends, took away football, took away everything he could to get them to stop smoking in between classes and, you know, behind the gas station. And if it's the choice between smoking--even if you're a minor--and vaping an electronic cigarette, there's a fine line. Are you going to let them get hooked on a cigarette like I did when I was 16? Or are you going to let the parents and, you know,...ban them from being in school but let the parents take a part in raising their kids? So I just warn, you know, the committee to look at all angles and, hopefully, not miss an opportunity to be a leader in this field. [LR283]

SENATOR COASH: Very good. Thank you very much. Hold on one second. Senator Johnson. [LR283]

SENATOR JOHNSON: Yeah. First of all, thank you for coming in off the street, part of the public. That's what these hearings are for. [LR283]

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Rough Draft

General Affairs Committee  
October 04, 2013

---

JAMIE HAWKINS: Yep. [LR283]

SENATOR JOHNSON: I was going to ask the question and you answered it but I'll follow up a little bit. I made an assumption that you might, in your 20 years, you might have started smoking before you were 18. And I guess you kind of explained that. [LR283]

JAMIE HAWKINS: Yes. [LR283]

SENATOR JOHNSON: So I understand your position of a minor being hooked on it. [LR283]

JAMIE HAWKINS: It is the worst mistake...the worst decision I've made in my life. [LR283]

SENATOR JOHNSON: Yeah. So I appreciate your testimony. Thank you. [LR283]

SENATOR COASH: Thank you, Senator Johnson. Seeing no other questions, appreciate your testifying today. [LR283]

JAMIE HAWKINS: Thank you. [LR283]

AARON GUENTER: One more? [LR283]

SENATOR COASH: Sure. Come on up. Welcome. [LR283]

AARON GUENTER: Thanks for your time, Senator, Chairman. I'm Aaron Guenter, A-a-r-o-n G-u-e-n-t-e-r. I am a co-owner of GNS Vapor here in Lincoln. We sell exclusively electronic cigarettes. And our opposition from day one was when we first opened that door, the first thing that went up was a sign that said "Nobody under 18."

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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We can make electronic cigarettes without nicotine in them. But even at that point, you're still...you wouldn't want to allow minors to even have them without the nicotine because it is that hand-to-mouth oral fixation that you could create an addicted smoker, you know, by allowing the minors to start. So we've always supported nobody under 18 can buy these. And I think we should keep them out of the hands of minors. You know, electronic cigarettes, to me, have always been a tool to get to the people that have already become addicted to the cigarettes and give them a safer alternative, a shot at improving their health or adding some years back to their life. It's not there to hook the kids and get them started on an addiction that they never had in the first place. So that's kind of our stance that we take and we've always taken it, you know, right here in Lincoln. So I just wanted to share that we support the ban of sales to minors, so.  
[LR283]

SENATOR COASH: Do you charge sales tax on your product? [LR283]

AARON GUENTER: Yes. [LR283]

SENATOR COASH: Okay. All right. Thank you. Any other questions? All right, thanks for coming out. [LR283]

AARON GUENTER: Thank you. [LR283]

SENATOR COASH: Come on up. Welcome. [LR283]

TIM BOWEN: Hi. My name is Tim Bowen. I'm the business development manager for a company in Omaha, Nebraska, by the name of Plumes. Plumes was one of the first e-cig retailers. I'll rephrase that, one of the first successful e-cig retailers to open its doors in the Omaha area back in October of last year. Since opening, Plumes has developed a relationship with over 7,000 smokers in the Omaha area. I had an opportunity a week or so ago to be interviewed by KETV. And there was some innuendo

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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regarding, you know, the color of the devices and the flavorings of the e-juices as being, you know, palatable to children. And the company's official position is we do not sell to anybody under the age of 18 years of age. And it is both signed and posted. It's on our Web site. It's on our front door. And we, like the other retailers that you've heard, do card anybody that looks to be youthful. However, I was a little aggravated, a little agitated by the innuendo that, possibly, pink, blue, red vaporizer devices would be there to entice somebody that was youthful into coming into the store. I've been with Plumes since December of last year and I have never, ever seen a child or a line of children that have stood at the front door trying to come in so that they could buy bubble gum flavored e-juices and vaporizers. I mean, it just doesn't happen. Nor have I ever seen a nonsmoker come into our business and tell us that today I am going to begin to use nicotine. All of our customers have been customers, like myself, who had been smokers, who likely looked at themselves in the mirror and realized that there is something called mortality and you're not going to last forever and you know you've had 40 years, since 1964, of hearing how bad cigarettes were for you. But that did not stop me or our customers from lighting up in the morning and smoking during the day and smoking at night. I mean, it just...it's not enough that there are health risks associated with cigarette smoking. So I wanted to let you all know that Plumes is in favor of the 18-year-old age. And that, you know, we felt like we were doing something about it to begin with and that there is, to the best of my knowledge, and I'm familiar with most of the retailers in this room, none of them are of the moral character that they would willingly sell to somebody that they believed was under the age. Now, there is a dilemma. And that is that there are children that use cigarette products and it's very true. And this happens to us probably three, four times a week: A customer will come to us, an adult, a parent will come to us and they will say, my son or daughter is a smoker; I can't get them to quit; I want to buy an e-cigarette for them; will you sell me an e-cigarette for my son or daughter? To that, we have had to say "no" repeatedly because, in good conscience and, you know, going along with our own policy of not selling it directly to a minor, we won't sell them to them. But there is that question that is asked consistently by many, many of our customers. Something you may want to think

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

about. If...do I...well, having seen the effects of e-cigarettes and their use on the number of customers that we have serviced in the Omaha area, do I feel that e-cigarettes are a better alternative than smoking a cigarette? My answer would have to be "yes." Countless numbers of our clientele have left traditional cigarette smoking behind, and now vape only. At last count, I did this...I checked up about probably two weeks ago, we had 238 people that had transitioned from nicotine use to nonnicotine e-juice, okay? So these were people that were probably smoking a pack, two packs a day of cigarettes, that had come into the store, that had bought nicotine levels at likely a lesser level than what they were getting from cigarettes and stepping down their nicotine usage, going maybe from 16 milligrams of nicotine to 11, and then to 6, and then to 3, and then 0. And so now all they're doing is, basically, puffing and blowing vapor. The two primary ingredients, by the way, that are in the e-juices are propylene glycol, a common chemical, if you will, that is in many, many, many different food items that are consumed. It's in lipstick, it's in cosmetics. Propylene glycol is one of them and the other one is something called vegetable glycerin, which is, all of us since we were little babies have been exposed to vegetable glycerin either in shampoos, skin creams, hair care products, things of this nature. The additives that give it the flavor, the taste that have been in question are typically food flavorings. So I hope this gives some insight. I just wanted, again, to give you Plumes' perspective on it all. And if you have any questions, I might be able to answer them for you. [LR283]

SENATOR COASH: Senator Johnson. [LR283]

SENATOR JOHNSON: Thank you. We've heard from a school district that's banning it now. And we've heard today from the retailers, former smokers, the value of it. How are so many of these students acquiring or getting e-cigarettes now? Is it from retailers that are selling to them or is it the parent that's buying it for them? Any thoughts? [LR283]

TIM BOWEN: To be honest with you, I think it's the parent that's getting them...getting it for the children. The other thing that I've got to point out is that, because e-cigarettes

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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are a new industry, it is a new business, if you were...it would be very easy to multiply the use in the statistics because, you know, prior to really 2013, there was not a great abundance of e-cigarettes in the market for somebody to acquire. Okay? They can be purchased at convenience stores. They can be purchased at, you know, large grocery chains. They can be purchased in private stores like ours and Husker E-Cigs and, soon to be, American Vapor and GNS Vapor that are popping up. Really, those stores are popping up to serve the needs of the smoker who is looking for an alternative to a burning cigarette. So if a poll was made and there was one person that had said that they had tried it and now there are two, we have a 100 percent increase in the use of e-cigs in our schools. You know, I don't...it is not my place to push my morality in any way. But I would rather have my son or daughter use an e-cigarette than ever light a cigarette. I remember I stole one of my dad's Winstons when I was about 10 years old. And I went to a creek with two or three of my friends and we lit it up. And that was pretty cool, you know. I really didn't have another cigarette until I was about 23 years of age. I'm 58 now and I smoked a long time. Prior to e-cigarettes, I could not speak a paragraph without coughing, without, you know, having some of the adverse effects of smoking, I was winded, I had the smoker's rasp. All of that's gone in really about 90 days after I started the electronic cigarettes. So no, I don't believe that you have any retailers that are advocating, you know, come on kids. I don't see that. And I don't think really that there are a lot of 14-, 15-, 16-year-olds, maybe some 17-year-olds, okay, that have the guts really to go to the counter and say, I want this. You'll get a gutty one every now and again. I mean, that's the nature of kids. But they...we don't see it in our stores, you know. We just don't see it in our stores. It's really the adults. [LR283]

SENATOR JOHNSON: Thank you. [LR283]

TIM BOWEN: Sure. [LR283]

SENATOR COASH: You don't...are you aware of any? [LR283]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

TIM BOWEN: Sir? [LR283]

SENATOR COASH: Are you aware of any retailers who do sell to minors? [LR283]

TIM BOWEN: No, I'm not. I really am not. I'm not. And I...we wholesale, as well, to other stores. And, you know, it is a moral issue really amongst the owners. And everybody shakes their head. I mean their business is more important to them than that. Their reputations are more important than that. None of them would want to be called in on the carpet to answer publicly to, you know, selling something that they shouldn't sell. But I'm sure, too, that they all have experienced the same questions from parents that are, what do I do to get my child away from a cigarette? You know, if they're not going to smoke, I'd rather them do this than to have a cigarette. And so that, gentlemen, that is going to be a burden I leave with you. We say "no." [LR283]

SENATOR COASH: Are you aware or let me ask you, does Plumes also sell straight tobacco products? [LR283]

TIM BOWEN: We sell no tobacco products. We are e-cigarette devices and e-cigarette juices, e-juice alone. [LR283]

SENATOR COASH: Are you aware of any retailers that, in addition to selling e-cigarettes, also sell tobacco? [LR283]

TIM BOWEN: Yes. I mean,... [LR283]

SENATOR COASH: I'm just curious... [LR283]

TIM BOWEN: Sure. [LR283]

SENATOR COASH: ...if that's also part of the business. [LR283]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

TIM BOWEN: What you see in most big retail stores, big-box stores, grocery stores, grocery chains, the e-cigarettes are an impulse item. There is not a smoker alive today, I believe--I really believe this--that is proud that they're a smoker. I think, statistically, you'll find that most smokers have tried a minimum of, say, six to nine times to quit smoking. There is a whole industry that is built around stopping smoking. We have transdermal patches that use, essentially, the same type of nicotine that we use to, you know, put it...wear it on your arm and you'll be healed. You won't have to smoke anymore. We have chewing gums. We have Nicotrol, which is an inhalant, which is a nicotine that is made pharmaceutically for people to inhale. Eli Lilly, I believe, also has a patent now on an e-cigarette. It isn't just Lorillard and R.J. Reynolds. So anyway, in the big-box retail stores, these are impulse items. They're, try one of these, you'll get 400 puffs, you'll get some nicotine from it, and see if this isn't something that you might try or like instead of a cigarette. The realities are, in our opinion--and I'm speaking only for Plumes--is that the nicotine levels that are involved in these small devices are high. They're typically 18 or 24 milligrams of nicotine which we consider to be high. Our average customer--and again, there are quite a number of average customers that we have--use only 11 milligrams of nicotine and are very satisfied by the result that they get from that 11 milligrams of nicotine. So, you know, maybe kids are stealing them. I don't know. [LR283]

SENATOR COASH: Okay. Thank you. [LR283]

TIM BOWEN: Okay. [LR283]

SENATOR COASH: Any more questions? I don't see any. Thanks for coming down and tell us what's going on. [LR283]

TIM BOWEN: Okay. Thank you. [LR283]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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SENATOR COASH: Is there any more...anyone else here to testify on LR283? Come on up. [LR283]

STEVE RAMOS: Hello. My name is Steve Ramos, S-t-e-v-e R-a-m-o-s. Senator Coash is my senator and thank you for bringing this up. I just kind of want to say a little bit about what vaping has done for me. I was a...let's see. I tried to smoke cigarettes for about six years. I probably inhaled twice. I wanted to be cool, you know, so I did. But what I ended up actually doing was chewing tobacco and I chewed tobacco for 20 years until--I'm sorry, I'm nervous--I met the guys at GNS and talked to them and they helped me. They set me up with a vaporizer kit. And it took a while because when you chew, you constantly have the nicotine going to you constantly. And I chewed from morning to night. When I switched to vaping, I had to actually go outside and vape and I wouldn't get that constant nicotine so it was a little bit different. It took me a while to be able to replace the nicotine from chewing with vaping but it worked. It took about three weeks. My wife also smoked for about 20 years. And she saw the success that I had vaping and I told her I would buy her the equipment if she wanted but she would have to buy her own liquid. And finally, she is, like, let's go get some flavors. And she quit smoking that night. And right now I'm 3.5 months and she's 3.5 months tobacco free. So it's really cool. I'm also a member of the vaping community on-line, so a lot of people that own different stores that actually make the juices and sell them on-line and stuff like that. And pretty much all of them are completely fine with not selling to minors. They have no problem with that at all. They, you know, they're doing this, first of all, because they're a business, they want to make money. But they also want to help people get off tobacco. And it's just...I'm glad I started vaping. I'm not chewing anymore. So thanks. [LR283]

SENATOR COASH: Thanks, Steve. Let me ask you this: When you bought the vaping liquid on-line... [LR283]

STEVE RAMOS: Yep. [LR283]

Transcript Prepared By the Clerk of the Legislature  
Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

---

SENATOR COASH: ...were you...through that process, were you mandated to prove your age? [LR283]

STEVE RAMOS: Only...and the only way that I did that was by using a credit card... [LR283]

SENATOR COASH: Okay. [LR283]

STEVE RAMOS: ...because PayPal does not like to be involved with tobacco purchases. And they kind of see the e-liquids as a tobacco product, which it isn't, but... [LR283]

SENATOR COASH: Well, I'm just...when you mentioned you're part of the on-line community it made me think that this is a product that, yeah, you could go down to the store but you could probably find it on-line as well. And I'm just wondering if there...if it's...we've been asking questions about how these are getting in the hands of minors. And I'm wondering if that's an alternative way if they're not...you know, it's just as easy as ordering a CD on-line, as, you know, Amazon or something. You could order an e-cigarette and be a minor and get your hands on it. [LR283]

STEVE RAMOS: You would have to use, like, your parent's credit card if you did that. That would be the only way to get around it. It's like how adult Web sites can charge for content and you have to prove you're 18 with a credit card. So they'd have to establish a way to do that. [LR283]

SENATOR COASH: That makes sense. All right. Thanks a lot for coming out, Steve. [LR283]

STEVE RAMOS: Uh-huh. [LR283]

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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SENATOR COASH: Any other questions before we let him off the hook? I don't see any. And the Chair is coming back. Is anybody here...anyone else here to testify? [LR283]

JIM MOYLAN: Yeah. A couple of follow-up things from this morning, mostly probably in rebuttal to Mr. Rupe. But this one here is kind of important. Under 53-179, that's the hours that you can sell liquor in. After 1:15 you have to have all the liquor containers off the table. And here's the way it reads: It shall be unlawful on property licensed by a retailer to allow liquor in open containers to remain or be in possession or control of any purpose for consumption between the hours, you know, 15 minutes afterwards. Now the State Patrol, and even locals, are going by and going in and citing them when they have empty bottles in there. Now a lot of times, it takes them a lot of time, you know, to clean up in there and there might be empty bottles sitting around. So I think...and I don't know how to get to it, I don't think we need legislation. Somehow we just have to get to the State Patrol and the locals and tell them, if it's an empty bottle, you don't cite them. If there's liquor in it, then fine. [LR283]

SENATOR COASH: Are you reading from statute or rules and regs? [LR283]

JIM MOYLAN: No, I'm reading from the statute. [LR283]

SENATOR COASH: From the statute. Okay. Thank you, Mr. Moylan. [LR283]

JIM MOYLAN: So somehow, maybe the Chairman will take it up. There were two other items this morning. One of them was on the sale of draft beer. All right, now, I don't think they need any legislation on that. You know, right now they can sell beer on- and off-sale, you know, and in packages. Is all they have to do is take their, you know, their draft beer in gallons or whatever it is, put a cap on it, and then maybe regulate the size. That would be the only thing the commission would have to do. And it would be no

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Transcriber's Office  
Rough Draft

General Affairs Committee  
October 04, 2013

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different than selling a quart of beer or a can of beer. You could...you know, you can open a can of beer quicker than you'd even open a gallon of beer if you took it out of the place, you know. And the only other thing was SDLs. And I mentioned it to Senator Karpisek this morning. A good suggestion might be is to...you can allow the nonprofits to get their SDLs but have the ones with the K, CKs, the catering, just since they have a catering license, not even have to apply, you know, for an SDL. That would cut down on a lot of work. And they're already in the business, they know the customers, they know how to take care of minors, they know how to watch for intoxicated people, they have the expertise. And I think that would cut down on a lot of the SDLs over there. Just some suggestions. Any questions? Oh, one other thing, Senator Coash. You asked about who's selling them. Reynolds Tobacco Company sells two brands. One of them is a Swedish brand under the Zonnick brand name. And then Reynolds has their own RJRV Vapor Company, so. [LR283]

SENATOR COASH: Very good. Thank you, Mr. Moylan. [LR283]

JIM MOYLAN: Thank you. [LR283]

SENATOR KARPISEK: Thank you. Did you want to...something on the e-cigs, still? Not you, Jim, sorry. You're good? All right. Anyone else on the e-cigs? Yes, sir. Welcome. [LR283]

BRAD CHAUSSEE: Thank you. My name is Brad Chaussee, I represent [Caterpillarvapes.com](http://Caterpillarvapes.com) out of Omaha, Nebraska. I'm not going to reiterate a lot of what they talked about. We kind of get the general idea. A little bit of my background and how I got into it is, I started smoking--believe it or not--when I was 20. I don't have the 14-year-old story from there. Did that for 13 years, had three great children along the way. And one day they approached me when they were older saying that they would like their father to be around for them when they grow up, and they wanted me to quit. So that pushed me into the direction of electronic cigarettes. I went through all of what

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Rough Draft

General Affairs Committee  
October 04, 2013

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everybody was talking about, the patch, Chantix and all the rest of it, and none of it worked. From there, my life has...obviously, it's changed dramatically. It's the greatest thing. And I'm helping a friend out with this company to grow it and to reach out to other people and to help out and help them quit smoking also. We do sell the nicotine from the highest of 2.4 is as high as we go. There's some sites that will go higher and we don't believe that that's necessary. It's a little too much. And all the way down to zero. I guess my point is, and from what I was listening to, it took me 40 different flavors to find something that I liked. You know, when I turned 18 one day, I just didn't stop liking flavors. It really, it helps me, it helped me. I found out that juicy peach was my favorite and that's what got me to quit smoking. I tried tons of them and I kept going back to the cigarettes. And then I go try a new flavor, go back to the cigarettes, and then finally got to the one that I liked. So removing the flavoring would, in my opinion, be counterproductive to that. Liquors have flavorings. Vodkas have different flavorings. And, you know, does that appeal to the kids? So that's about all I wanted to say. Since then, I have tried smoking a cigarette. So to say that vaping is a gateway to tobacco, it wouldn't be appropriate in my case. The taste difference from food flavoring from a nice taste to an ashtray, to go to that, to open the door up to that, I just don't see how that would be something that would be appealing to anybody. [LR283]

SENATOR COASH: Thank you. I have a question. You said you're an on-line retailer? [LR283]

BRAD CHAUSSEE: Correct. [LR283]

SENATOR COASH: I asked Steve earlier, how do you, being an on-line retailer and not seeing the customer face to face, how are you...I mean, do you have a policy on age for your products? [LR283]

BRAD CHAUSSEE: A lot of Web site dealers will have the click in. It's really...it's, "Are you 18 or not?" That's exactly what it is. You click if you're 18, "yes," and if you're not,

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Rough Draft

General Affairs Committee  
October 04, 2013

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"no." And that's as far as it goes, because a lot of them, it's the cost ratio. For USPS to do age verification, you've got to pay extra. And we feel that that's coming anyway so we'll be ready for it. And, of course, we don't sell to minors. We have one shop and we don't do that either, just like the rest of them do. So we do see that coming. [LR283]

SENATOR COASH: But your customers just have to self...I mean you...they self-disclose their age and you... [LR283]

BRAD CHAUSSEE: On the front page before you can even enter... [LR283]

SENATOR COASH: Are you 18? Hit enter and... [LR283]

BRAD CHAUSSEE: And then enter. And then from there, if you've got a credit card, you're more than likely, but. [LR283]

SENATOR COASH: Okay. All right. But there is...not that you're using it now but you're saying that there is an option for you, as an on-line retailer, to take a step further to verify the age through the postal service? [LR283]

BRAD CHAUSSEE: There is. There is. And it's just like liquor on-line. It's the same thing. When they deliver it, I believe--and I don't know all the details on this--is they have to sign. So the mailman comes up, they have to sign. Check ID. Okay, there you go. [LR283]

SENATOR COASH: Okay. All right. Thank you. [LR283]

BRAD CHAUSSEE: Verification process. Thank you. [LR283]

SENATOR KARPISEK: Thank you. Anyone else? Don't see anybody. Thank you. That was a very good hearing. I just want to reiterate for you guys, changing the tax structure

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Rough Draft

General Affairs Committee  
October 04, 2013

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is absolutely nothing that I even thought about. I think they're a good product, we don't want to make them more expensive for people to use. The flavors thing too. You got a great point with the liquors. Anyway, I just want to throw that out there for you guys so you don't stress. Smoking them somewhere where you can't smoke, I fought the smoking ban so I wouldn't try to ban these somewhere, so. Anyway, thanks for coming. (See also Exhibits 11, 12, 13) [LR283]