

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Revenue Committee February 13, 2020

**LINEHAN:** Good afternoon. Welcome to the Revenue Committee public hearing. My name is Lou Ann Linehan. I'm from Elkhorn, Nebraska, and represent the 39th Legislative District. I serve as your Chair of this committee. The committee will take up the bills, except I'm jumping ahead, on the order posted. Our hearing today is your public part of the legislative process. This is your opportunity to express your positions on the proposed legislation before us today. If you are unable to attend the public hearing and would like your position stated for the record, you must submit your written testimony by 5:00 p.m. the day prior to the hearing. To better facilitate today's proceedings, I ask that you abide by the following procedures. Please turn off your cell phones and other electronic devices. Move to the chairs in the front of the room when you're ready to testify. The order of testimony is introducer, proponents, opponents, neutral, and closing remarks. If you will be willing-- if you will be testifying, please complete the green form and hand it to the committee clerk when you come up to testify. If you have written materials that you would like to distribute to the committee, please hand them to the page to distribute. We will need 11 copies for all committee members and staff. If you need additional copies, please ask the page to make copies for you now and I'll introduce the pages in a moment. When you begin to testify, please state and spell both your last and first name for the record. Please be concise. It is my request that you limit your testimony to five minutes. We will use the light system so you'll have four minutes on green, one minute on yellow, and then please wrap up the comments. You should start wrapping up during the yellow light. If there are people wishing-- well, we're not in that situation today. If your remarks were reflecting in previous testimony or you would like your position to be known but not-- but do not wish to testify, please sign the white form at the back of the room and it will be included in the official record. Please speak directly into the microphone so our transcribers are able to hear your testimony clearly. I would like to introduce committee staff. To my immediate right is legal counsel, Mary Jane Egr Edson; to my immediate left is research analyst, Kay Bergquist; to my left at the end of the table is committee clerk, Grant Latimer. And now I would like committee members to introduce themselves, starting with--

**KOLTERMAN:** Mark Kolterman, District 24, Seward, York, and Polk Counties.

**LINDSTROM:** Brett Lindstrom, District 18, northwest Omaha.

**FRIESEN:** Curt Friesen, District 34, Hamilton, Merrick, Nance and part of Hall County.

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**BRIESE:** Tom Briese, District 41.

**LINEHAN:** Pages are-- are pages here? We have Noa, who is from Central City, Nebraska. She's at Doane majoring in history and political science. And Erin from Lincoln, Nebraska, is she--? She's at Doane majoring in political science, law, politics and society. So they're the ones if you need copies. Please remember that senators may come and go during our hearing as they have other bills to introduce in other committees. Refrain from applause or other indications of support or opposition. I'd also like to remind our committee members to speak directly into the microphones. Also for our audience, the microphones in the room are not for amplification, but for recording purposes only. Lastly, we are electronics equip committee and information is provided electronically as well as paper form. Therefore, you may see committee members referencing information on their electronic devices. Be assured that your presence here today and your testimony are important to us and critical to our state governments. With that I'm going to turn the committee over to Vice Chair Friesen.

**FRIESEN:** Thank you, Chairman Linehan. With that, we'll open the hearing on LB1013.

**LINEHAN:** Good afternoon, Vice Chairman Friesen and members of the Revenue Committee. My name is Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n, representing Legislative District 39. I'm here today to introduce LB1013. LB1013 changes the definition of cig-- cigars for purposes of the Master Settlement Agreement, or MSA. In 2019, the Legislature passed LB397 by Senator Briese. LB397 made several changes with the MSA, but two changes that are related to the bill-- excuse me, two of the changes are related to this bill. First, LB397 taxed filtered cigars as cigarettes. Second, LB397 requires filtered cigars to be considered part of the Master Settlement Agreement. When we passed LB397, Nebraska became the first and only state in the country to place filtered cigars under the purview of the Master Settlement Agreement. LB1013 removed cigars from the Master Settlement Agreement requirements and LB1013 does not change the taxation of filtered cigars as cigarettes. I introduced this bill because the cigar portion of LB397 has put many companies out-- out of the Nebraska marketplace. LB1013 allows filtered cigars come back in the marketplace because the MSA requirements are eliminated. A quick background on the Master Settlement Agreement or MSA. The Master Settlement Agreement is an accord reached November of 1998 between the states that-- excuse me, the State Attorneys General of the 46 states and five U.S. territories and the District of Columbia and the four largest cigarette

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manufacturers in America concerning the advertising, marketing, and promotion of cigarettes. In addition to requiring the tobacco industry to pay the settle-- to pay, the settling states billions of dollars annually forever, the MSA also imposed restrictions on the sale and marketing of cigarettes by participating cigarette manufacturers. The Master Settlement Agreement never did mention any reference to filtered cigars in the document. It was never the intent of the State Attorney Generals and the tobacco companies to include filtered cigars. It was only intended for cigarettes. In fact, the filtered cigars had been in the marketplace since the 1960s. Since 1998, no state has included filtered cigars within the scope of the MSA. The Nebraska AG's Office was the first to do so in 2019. We passed the legislation last year that has effectively eliminated several companies from the Nebraska market. Increasingly, the big four tobacco companies who entered into the MSA agreement in 1998 are not required to have their filtered cigars to be part of the MSA in Nebraska. But those companies not participating in the MSA must have their products as part of the MSA. I have experts here in the field coming behind me who can answer any questions you may have. I, of course, will try but they are much more knowledgeable than I am on this.

**FRIESEN:** Thank you, Chairwoman Linehan. Any questions from the committee? Seeing none, proponents who wish to testify for LB1013.

**DAVID SCOTT:** My name is David Scott, D-a-v-i-d, last name is Scott, S-c-o-t-t. I'm the CEO of Cheyenne International. We're a small tobacco products manufacturer located in Cleveland County, North Carolina, employ about 150 folks, and appreciate the opportunity to speak with you a few minutes today. We make both cigarettes and filtered cigars. We've been in business since '02, making cigarettes since '02, filtered cigars since '04. We are a compliant cigarette manufacturer meaning we-- we do all the appropriate things with the various state agencies, the Attorney General's Office, Department of Revenue to register with the state our cigarette products. And we're, you know, we-- we work diligently with each of the AG's in doing that. With respect to filtered cigars, the most important point to make is filtered cigars were never part of the MSA. When that agreement came into being in '98, the main purpose of that agreement was to reign in and punish, so to speak, the major tobacco companies for their prior activities. The word cigar-- nowhere little cigar ever appears in the Master Settlement Agreement. Several states have chosen to tax filtered cigars at a rate similar to cigarettes, just like last year's bill did in Nebraska. Five or six states tax the product at the same rate, but no other state kind of stepped out of-- out of the lane, so to speak, and decided to bring these cigar products under the MSA. In

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my view, it's totally inappropriate. Once again, never mentioned in the MSA. It increases, you know, the result of that, of course, is as we've chosen not to register with the state of Nebraska because we feel this is absolutely wrong for-- for several reasons. One, never part of the MSA. Two, as mentioned by the senator, the participating manufacturers can still sell their cigar products in the state without any Master Settlement obligation. And, in fact, the body that calculates the annual MSA obligation that is due and paid by all the participating manufacturers, that calculation does not include cigars. So no cigar is made by a participating manufacturer will be subject to this cost that the state of Nebraska through this-- through this bill, this law and then the regulations promulgated by the Department of Revenue would increase our costs by approximately 80 percent. So we, of course, have to pass that cost on to wholesalers. They pass it on to retailers, they pass it on to consumers. And it's-- and it's, I hate to use this word, fair because fair is in the eye of the beholders, but it's-- it's not right. It's absolutely wrong because cigars are not part of the MSA. Our cigar product-- before we made our first cigar, we had it tested. We subjected it to the-- to the TTB under their-- under their policies and procedures. They-- they tested our product. It is a cigar. It has a wrapper that is made of tobacco. It has tobacco that is cigar tobacco, which is harsher, not as much sugar as a cigarette tobacco has. So it is-- it is actual cigar tobacco and we package it and label it as cigar. So there's no confusion in the marketplace about what's inside our pack. And again, the TTB examined our product and said, in fact, it is a cigar under federal law. We've been through numerous audits by the TTB. They do that on a routine basis. Our products are cigars. And I do understand the issue about manufacturers who sell, I'll call it contraband products, products that they want to pass off as a cigar when in fact they might have a cigarette inside that pack. They simply have wrapped a stick in-- in brown paper and are attempting to-- to pass that off as a cigar product when in fact it's not. I get that. That might be a problem for this state or other states, but that-- but that is outside the bounds of, I think what, what the-- what the legislators should be trying to do, which is with respect to legitimate manufacturers making products that are truly cigars. Bringing that into the MSA is just not-- it's just not right. And I certainly appreciate your time. I know I don't have much time so I'll stop and feel happy to answer any questions.

**FRIESEN:** Thank you, Mr. Scott. Senator Lindstrom.

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**LINDSTROM:** Thank you, Vice Chair Friesen. Thank you for being here, Mr. Scott. If I remember right, we were one of 46 states out of 50 states to participate in MSA.

**DAVID SCOTT:** Right. Right.

**LINDSTROM:** And under the original agreement, I think we bring in maybe 35-- it's a range 35 to 50 million to the state Nebraska with that. If the provision holds true, the original intent not to have cigars in that, in the original MSA, could we be in violation of that and actually not receive some of those dollars because we are in violation of MSA?

**DAVID SCOTT:** Well, I personally don't think so. Once again, I'm not an attorney.

**LINDSTROM:** OK.

**DAVID SCOTT:** I don't sit in on a national association of Attorney Generals meetings or a state's Attorney General meetings, etcetera, but it's my understanding once again, nowhere in the country is this applied. No one-- no other state has attempted to do this. Cigars are not part of the MSA. The calculation that the, you know, the national body does, does not include cigars in it.

**LINDSTROM:** So if we do tax it, we could be potentially in violation of that?

**DAVID SCOTT:** Beg your pardon?

**LINDSTROM:** If we do tax it, we could be in violation of MSA agreement, right?

**DAVID SCOTT:** You know, once again, I'm not an attorney, but it seems out-- out of bounds, right? It just seems out of bounds where applying the MSA to this product that's not part of the MSA seems incongruent, right? It doesn't make sense. You know, would-- would a big tobacco company tell the national association-- Association of Attorney Generals that if-- if Nebraska changes this law, they've undone something they shouldn't have undone? I don't know. This doesn't make any sense to me, so.

**LINDSTROM:** Well, we would be an outlier.

**DAVID SCOTT:** You're an outlier today for sure. And once again, if you have products in the state that someone believes are a cigarette inside a cigar pack, the state and its auditors who are in the field

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all the time have every right to take that pack, have that product tested, and they'll know whether that wrapper is, in fact, tobacco or whether it's just colored paper, right? And the state has every right, and should, you know, I want the state to go after those noncompliant manufacturers. That's very important to the companies that try to make products the right way and comply with all the laws. We're absolutely concerned about contraband, illegal product. Absolutely. And if there are products like that in Nebraska, I hope the state and the DLR and the law goes after those, those folks. But our product is a cigar. It's not part of the MSA. Our product and Swishers and-- and the other makers of cigar products who are not participating manufacturers, we shouldn't be punished because we're making a legitimate legal product that is, in fact, a cigar. We shouldn't be punished and have this additional competition.

**LINDSTROM:** I appreciate that. And I do think the Attorney General does a good job of trying to maintain tabs on the supply chain, but oftentimes, you know, sometimes--

**DAVID SCOTT:** Sure, there are.

**LINDSTROM:** --there's always bad actors out that-- I appreciate your comments, Mr. Scott.

**DAVID SCOTT:** Absolutely.

**LINDSTROM:** Thank you, Senator Lindstrom. Senator Briese.

**BRIESE:** Thank you, Vice Chairman Friesen. Thank you for your testimony.

**DAVID SCOTT:** Yes, sir.

**BRIESE:** You talked about the additional cost incurred by your company because of this. What-- what are those costs?

**DAVID SCOTT:** So in 2000--

**BRIESE:** What did those costs arise from?

**DAVID SCOTT:** I'm sorry, so in 2020, the escrow requirement per-- per carton for 10 packs is, I think it's \$7.37 a carton, is a escrow requirement that a nonparticipating manufacturer who would be able to register would put into escrow. A participating manufacturer wouldn't have that cost.

**BRIESE:** And that's--

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**DAVID SCOTT:** Significant.

**BRIESE:** Okay. You suggested nowhere else in the country this is done. It's my understanding maybe statutorily it's not done, but do some states accomplish the same thing here by regulations?

**DAVID SCOTT:** Not that I'm aware of, no, sir. So states have absolutely changed their tax rates. Massachusetts, Tennessee, Illinois, Montana, the ones I can remember off the top of my head, have all changed their ex-- state excise tax so that a-- a pack of 20 cigars, that tax rate on that pack is identical-- identical to the tax rate on a 20 pack of cigarettes. They've all done that. Not one of them has suggested, at least at this point, that our product is now because we tax it like a cigarette, they haven't jumped to the next step and say, well, because we tax it like a cigarette, it is a cigarette. No one's done that and-- and therefore said, and you have to register it as-- as a cigarette, put it-- go through the whole certification process and most importantly from a call standpoint, you know, make an escrow payment. No other state has done that.

**BRIESE:** And these products we're talking about, they're the size and shape of a cigarette, correct?

**DAVID SCOTT:** They are. So our product is-- is very similar to the 100 millimeter cigarette. Absolutely. These products have been made since the late '50s, early '60s. Every big tobacco company has made these-- these products from inception, all tobacco companies have made these machine-made filter cigars. But once again, under the federal statute it's very clear that the wrapper has to be in excess of two-thirds tobacco. The tobacco itself has to be cigar tobacco. It can't be cigarette tobacco, and you have to clearly label it, market it as a cigar. So if you meet all those three requirements, which we did, and when-- and the TTB tested our product, then you're a cigar. And-- and, in fact, back in, I don't know, in 2006 or so, several states joined together, went to the TTB and asked them, might you change your-- your-- your rules and regulations? You know, we would like you to reconsider and pull these into the cigarette classification. And the TTB said, no, thank you.

**BRIESE:** OK.

**DAVID SCOTT:** And they did not.

**BRIESE:** And these items that are shaped like a cigarette, they're sold in packs of 20 like a cigarette, typically.

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**DAVID SCOTT:** So they are-- they are packed, they're-- and our pack is-- there are other packs, but yes, ours is 20 to a--

**BRIESE:** Those packs are sold in cartons also like cigarettes?

**DAVID SCOTT:** They can be and some smoke shops might sell them in cartons, some modest stores sell them in the single packs. They're typically displayed in a different area, what's called the OTB, not cigarette section. Most stores set a market down, advertise them, and sell them in a different location distinguished from the cigarettes. Not-- not in every store, but most stores.

**BRIESE:** But to the uninformed consumer, they could be mistaken for cigarettes.

**DAVID SCOTT:** I don't know. I hear that all the time. I mean, you know, the pack, the carton says cigar. So if someone weren't a smoker were to pick one up, it's like thinking that was a cigarette, don't know how they do that and then smoked it, it's a totally different experience. It smokes like a cigar, it doesn't smoke like a cigarette. So I hear you. But-- but, you know, if you can read, you can see the words cigar, right?

**BRIESE:** And they are filtered like a cigarette.

**DAVID SCOTT:** They have filters, yes, sir, ours do.

**BRIESE:** OK.

**DAVID SCOTT:** Yeah.

**BRIESE:** Thank you very much.

**DAVID SCOTT:** Sure. Absolutely.

**FRIESEN:** Thank you, Senator Briese. Any other questions from the committee? Seeing none, thank you for your testimony.

**DAVID SCOTT:** Thank you, appreciate it.

**KATHY SIEFKEN:** Good afternoon, Senator Friesen, and members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n and I am here representing the Nebraska Grocery Industry Association in support of LB1013, and we thank Senator Linehan for bringing this bill. Our association represents grocery stores, convenience stores, and over 85 percent of the tobacco distributors in the state of Nebraska. As a result of the membership we represent, we are in close contact with

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the AG's Office and the Department of Revenue regarding tobacco issues. When LB397 was passed last year, it changed the definition of a cigarette to include little cigars. Prior to the hearing, I visited with one of the assistant AG's and asked him about the new definition. I was informed that it isn't a big deal, we are just trying to capture those products. The manufacturers are reformate-- reformatting to intentionally circumvent the law. And I have to tell you that as an industry, we don't support illegal or gray market products. We don't support anyone that would intentionally circumvent the law. We do everything that we can to support the legal industry and the products they sell and as a result of the AG's comment, we came in in support of the bill. The interpretation by the AG was much different than what we expected. Their interpretation is if an act-- if it-- if it talks like a duck and walks like a duck, it's a duck. And that's not really fair because that's like saying that a weed is the same thing as a flower because they both grow in a garden, not the same thing. The new interpretation changed legal products on the shelves of our member stores into contraband overnight. Product that our members legally paid for and sold suddenly became illegal. We were not given a sell-through date and most of the product was placed into totes and either the retailer attempted to send the product back to the distributed-- distributor or it was destroyed. In addition to the new definition, we are no longer able to sell these products to our customers. Our members lost thousands of dollars in product, even though the distributors are even-- are able to ship to other states. That doesn't really happen because of the freshness dates and once a carton is open and those packages are damaged, consumers simply will not purchase those goods so they don't ship them from retailer to retailer. Currently, we estimate that not only have our members lost sales, the state of Nebraska has lost a very conservative estimate of a half a million dollars in excise taxes that are no longer collected because these items are not allowed to be sold in the state of Nebraska. We urge you to pass this simple fix that adopts a new definition that mirrors the feds. If you have any questions, I'd be happy to answer.

**FRIESEN:** Thank you, Ms. Siefken. Any questions from the committee?  
Senator Briese.

**BRIESE:** Thank you, Vice Chairman. Thanks for your testimony. What is the retail price of a-- maybe should have asked the last testifier, retail price of one of these packs?

**KATHY SIEFKEN:** I can't tell you that. I'm not a smoker. I don't use the product. I don't buy them. I have no idea.

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**BRIESE:** OK. Tobacco excise tax is, what, 20 percent of the retail price?

**KATHY SIEFKEN:** Yes.

**BRIESE:** Cigarette tax is 64 cents.

**KATHY SIEFKEN:** But this entire category disappeared. And given the fact that we represent 85 percent of the industry that sells tobacco products, when this first came to light-- and actually the Department of Revenue called me and said, do you realize what this bill does? And then they explained it to me and I had no idea at all that that's how it was going to be interpreted. But even at that time, before it was implemented, our members, the 85 percent that-- represent 85 percent of the sales, tallied all of their numbers and their very conservative estimate was half a million dollars in excise taxes that were being collected on these products based on the new definition.

**BRIESE:** OK. And why were the products rendered illegal? Why do you have to take them off the shelf?

**KATHY SIEFKEN:** For a number of reasons. There were three reasons. One, little cigars are not wrapped in fireproof paper. They're not made that way. The sellers of these products had to be part of the-- be listed on the directory. And my question to my members was, what is the cost of that? And the answer was, it costs about \$100,000 for anyone as an individual company to register on the directory. And then there was-- there was one more issue that-- but those were the two main things, the directory and the fire-safe paper.

**BRIESE:** OK. Thank you.

**FRIESEN:** Thank you, Senator Briese. Any other questions from the committee? Seeing none, thank you for your testimony.

**KATHY SIEFKEN:** Thank you.

**SEAN KELLEY:** Good afternoon, Vice Chairman Friesen, members of the Revenue Committee, my name is Sean Kelley, S-e-a-n K-e-l-l-e-y, appearing today as a registered lobbyist for the Cigar Association of America. The Cigar Association of America is a trade organization of cigar manufacturers founded in 1937. We're here today in support of LB1013 and thank Senator Linehan for introducing this bill. As you guys heard earlier, our members do not object to being taxed as a cigarette. We disagree with that interpretation. We're not here to change that. We'll live with that taxation rule. However, we are here

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and as you see in LB1013 what it does is takes us out of the requirements of the MSA. That is something that cigar manufacturers have never experienced across our country and it makes their product virtually out of the market. And to illustrate that point, when the Department of Revenue implemented those rules, a couple of our members actually filed suit, namely because under equal protection argument that participating original members of the MSA were not subject to MSA, but our members were because we were not original members. So this is a legislative solution to this problem. Senator Briese, to your question earlier about, you know, it's the same size as a cigarette and that filtered cigar, that is true, but I think a better analogy would be, you know, it's like a beer in a can and a soda in a can, but once you take a drink, you realize it's not the same thing and same thing with a filtered cigar or cigarette. You light it up and you find out real fast what the difference is. As to price, filtered cigars are about half the-- half the price of a pack of cigarettes. And as this committee knows better than anybody, nobody comes to you asking you to pay money to the state of Nebraska. We're here today, we want to get back in the marketplace and we want to pay tax on filtered cigars so we can get back, sell to the state of Nebraska. So with that, I'm happy to answer any questions you may have.

**FRIESEN:** Thank you, Mr. Kelley. Any questions from the committee? Seeing none, thank you--

**SEAN KELLEY:** Thank you.

**FRIESEN:** --for your testimony. Any other proponents wish to testify? Seeing none, anyone wish to testify in opposition to LB1013? Seeing none, anybody wish to testify in a neutral capacity? Seeing none, we have one letter, an opponent or Daniel Muellemen, Assistant Attorney General. Senator Linehan, come back and close.

**LINEHAN:** Thank you, so this is-- it seems pretty simple to me. If we-- if we don't change it, we're just-- these are not going to be available in Nebraska and we lose tax revenue. So I think we should pass the law and get the tax revenue. And I'm a reformed smoker, so I don't know the difference either, but I think I probably if I-- I'm familiar enough with what a cigarette tastes like, it doesn't taste like a cigar. So I hope we can get this out of committee and get this to Floor.

**FRIESEN:** Thank you, Chairman Linehan. Any questions from the committee? Seeing none--

**LINEHAN:** Thank you very much.

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**FRIESEN:** --we'll close the hearing on LB1013. We'll now open the hearing on LB987. Welcome, Senator Pansing Brooks.

**PANSING BROOKS:** Thank you, Vice Chair Friesen. Shall we go ahead and--

**FRIESEN:** Yep.

**PANSING BROOKS:** --everybody ready? OK. Thank you, Chair Linehan, and members of the Revenue Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28 right here in the heart of Lincoln. I'm here today to introduce LB987, which removes the sales tax, sales and use tax exemption on dating and escort services. LB987 also provides that the revenue generated by the removal of this exemption be credited to the Human Trafficking Victim Assistance Fund. According to the Nebraska Department of Revenue's 2018 Tax Expenditure Report, we currently exempt social escorts in day-- dating services from taxation. I've passed out page 18 of this report for your information. You will see escorts mentioned specifically within the category, quote, other personal services, unquote. The entire category estimates a revenue loss of more than \$1.1 million. I learned of this last session, was quite shocked this exemption even exists. When I mentioned this exemption to others, they are shocked as well. I saw that an elimination of this exemption has also been proposed in other tax bills as well, including Senator Briese's LB507. Senator Briese's bill is actually what brought this ridiculous tax exemption to light for me. An exemption can actually be seen, you know, I don't need to tell all of you this, but as a state tax in support of a business and in this case, my belief is that we are supporting some hideous predatory businesses with this exemption. When I saw this exemption, I immediately thought the revenue from the exemption could be a good funding source for trafficking victims. There are several reasons for this. First, survivors are in desperate need of well-funded services. Second, law enforcement tells us that the more resources and protections that survivors have, the more the survivors feel comfortable cooperating with law enforcement in order to help stop the traffickers. Third, trafficking through dating and escort websites and apps continue to be a problem, even after websites like Backpage and Craigslist personnels have shut down. It makes sense to use the revenue from this tax to help victims. It is similar to the way we tax cigarettes and then use the proceeds to help those whose health is harmed by tobacco. We also use proceeds from the lottery to help those with gambling addictions. I see this tax much-- in much the same way. It isn't meant to criticize all dating apps. I'm sure that there are those that safe-- where safeguards are in place for trafficking victims, but there are many operating under a veil of

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secrecy without protections. I've passed out an Associated Press article that shows how these dating apps are coming under increased scrutiny at the federal level as officials are seeking information on sex offenders and minors using these services. In Nebraska, we know that a high number of individuals in Nebraska are sold for sex and are too young to buy alcohol in Nebraska, yet they're being purchased for sex according to the Women's Fund and others, clearly including the Attorney General's Office. Clearly we still have much to learn about what is happening online. As to the existence of this exemption in the first place, I have learned that we all-- we tax all retail sales on tangible personal products unless specifically exempt. However, we do not tax services unless they are specifically enumerated in statute. Even though this exemption might be an oversight, it still reflects a purposeful and intentional public policy, which our state continues to endorse, thereby supporting this industry by essentially creating an affirmative exemption. I previously met with Tax Commissioner Fulton and legislative liaison Lydia Brasch to get a clearer picture of revenue that could be raised by eliminating this exemption and learned I would need to bring a bill in order to generate a fiscal note that would give us a better idea. So I decided to introduce this bill in part to get a better idea of the potential revenue. Unfortunately, as you can see from the fiscal note, we didn't get that. While we know it would generate revenue, officials at the Nebraska Department of Revenue cannot even attempt to tell us how much. Regardless of the revenue generation, I believe that removing this tax exemption could serve other useful functions. It might be, ser-- it might serve as a useful tool for law enforcement if they are unable to establish the elements necessary to support a felony charge of human trafficking. Tax egs-- tax evasion could be one more arrow in the quiver of law enforcement enabling law enforcement to charge traffickers. I will remind this committee that that is exactly how Al Capone was caught and imprisoned, not for-- not for the multiple killings that he orchestrated, but ultimately because of tax evasion. So I ask you to look at this as a removal of a tax exemption, which covers the actions of some heinous individuals, traffickers, who are taking advantage of vulnerable Nebraskans. I believe advancing the elimination of this exemption followed by a credit of the revenue generated to the Human Trafficking Victim Assistance Fund, is the right policy decision for the state. And in closing, I ask you to advance LB987 to General File. Thank you.

**LINEHAN:** Thank you, Senator Pansing Brooks. Are there questions from the committee? Seeing none, thank you very much.

**PANSING BROOKS:** Wow. Thank you.

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**LINEHAN:** You're welcome. Are there-- will you stay here to close?

**PANSING BROOKS:** Probably.

**LINEHAN:** OK. Are there proponents?

**NATE GRASZ:** Good afternoon, Chair Linehan and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z, and I'm the policy director for the Nebraska Family Alliance. We represent a statewide network of thousands of individuals, families, and faith leaders who support efforts to prevent trafficking, increase awareness, provide rescue and restoration to victims, and punish those who attempt to sell and purchase human beings as commodities. We know that Nebraska is not isolated from the scourge of human trafficking. This is in large part because today there are many online avenues for traffickers to get connected with victims. As the digital age has progressed, the use of dating apps has become a norm. Tragically, this rise in dating app usage has also been linked to numerous cases of human trafficking, as traffickers are turning to popular social media and dating websites to do their recruiting online. Since the shutdown of websites such as Backpage.com that were known to perpetuate prostitution and sex trafficking, traffickers have shifted towards dating apps as a means of recruitment for their sex trafficking schemes. From January 2015 through July, 2018 the National Human Trafficking Hotline documented 969 potential victims of sex trafficking who were recruited on Internet platforms. This includes at least 147 victims who were recruited on a dating site. Like any business, legal or illegal, demand drives the supply. Human traffickers victimized vulnerable people out of their desires to profit from the demand. But in this case, the supply is children and young women and men. One of the biggest myths about human trafficking is that it mostly occurs abroad in countries where resources are scarce. But a 2015 report from the Governor's Task Force on Human Trafficking found that at least 47 Nebraska schoolgirls are known to be trafficked each year. In a 2017 study found that 900 individuals are advertised for sex online each month in Nebraska. Personally, I will never forget receiving a call at our-- at our office from a mother in central Nebraska who was desperate for help after her teenage daughter became a victim of sex trafficking after being preyed upon and groomed online by a trafficker posing as a job recruiter for modeling work in another state. With just a click of a button, traffickers are able to lure in victims with manipulative tactics, often preying on the most defenseless individuals by introducing ideas of a better life or promises of affection. Thankfully, our state Legislature has been active in passing numerous anti-trafficking bills

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into law. Given what we know about the increasing use of technology and Internet platforms for locating and grooming victims of sex trafficking, it makes sense for the state to also seek new revenue streams to increase funding for the Human Trafficking Victim Assistance Fund. We deeply appreciate the tireless dedication of Senator Pansing Brooks and her staff to ensuring that our state is taking all appropriate action to combat human trafficking and AIDS survivors, and we encourage the committee's support for LB987. Thank you.

**LINEHAN:** Thank you. Are there questions from the committee? Seeing none, thank you very much for being here.

**NATE GRASZ:** Thank you for your time.

**LINEHAN:** Other proponents?

**TOM VENZOR:** Good afternoon, Chairwoman Linehan, and members of the Revenue Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r, and I'm the executive director of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the Gospel of Life through engaging, educating, and empowering public officials, Catholic Lady, and the general public. We'd just like to thank Senator Pansing Brooks for bringing this bill, LB987, and for just all the other work that she's done generally on human trafficking as well as the support that many of you have already provided on that issue up to the state. The NCC generally supports the concept here in LB987 and encourages the committee to explore the connection that exists between dating and escort services and human trafficking and how victims and survivors of human trafficking can be better served by good public policy. Pope Francis has spoken unambiguously when it comes to human trafficking. He refers to it as an atrocious scourge, an apparent plague, in an open wound on the body of contemporary society. Underlying moral principles concerning respect for the dignity of the human person are what lead the church to intervene in every phase of trafficking of human beings since she wants to protect them from deception and solicitation, she wants to find them and free them when they are transported and reduced to slavery and she wants to assist them once they are freed. The church also calls on our institutions, both public and private, to be truly effective in the struggle against the scourge of human trafficking. And we think that in this instance, by providing a tax on dating and escorting services, the Legislature can find an important way forward for being more effective in ending the modern form of slavery that is human trafficking. And in the interest of time, I think Senator Pansing Brooks and Mr. Grasz have laid out, I think a lot of the very

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good policy reasons for why we would also support LB997, and with that we would just urge the committee to advance the bill.

**LINEHAN:** Thank you, Mr. Venzor. Are there questions from the committee? Seeing none, thank you very much.

**TOM VENZOR:** Thank you.

**LINEHAN:** Are there other proponents? Are there any opponents? Anyone wanting to testify in a neutral position? Letters for the record, we have proponent, Marcia Blum, National Association of Social Workers. And Senator Pansing Brooks, would you like to close?

**PANSING BROOKS:** I would. I'll just briefly say I want to thank Nate Grasz from the Nebraska Family Alliance and Tom Venzor from the Nebraska Catholic Conference. They have been integral in making these changes and helping our Legislature move forward and move from an F-rating by both Polaris and Shared Hope to an A-rating as a state. So that's number one, and that includes all of us here because we have all promoted those-- that legislation. The other thing I just want to quickly talk about was the Human Trafficking Victim Assistance Fund. Right now, there's-- there are zero dollars in that fund. We are providing nothing for services to victims of human trafficking. Senator Linehan has introduced LB518, which is currently on Final Reading and that provides a process to ensure financial resources are available for victims. But we still need funding. So that is part of the reason I brought this bill, LB987, so that we could start becoming creative in how we can provide some of this funding to these very vulnerable victims that are described in other committees as having very traumatic PTSD. And you know, you can understand somebody that's raped multiple times a day, what kind of trauma that would be. So, you know, this-- this amount wouldn't be anywhere nearly enough, but it is a start and it's a recognition that we are wanting to provide some help to those victims who are so vulnerable in our state. So with that, thank you for letting me bring this bill.

**LINEHAN:** Thank you very much. Are there questions from the committee? Seeing none, thank you very much for being here.

**PANSING BROOKS:** Thank you.

**LINEHAN:** With that, we close the hearing on LB987. And then we're going to have to-- we're going to go to LB1109. Because Senator-- oh, somebody go get-- we have to go get Senator Chambers. Somebody want to get?

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**FRIESEN:** Senator Wayne. Where's Wayne?

**LINEHAN:** Well, Senator Wayne's in another hearing doing another bill. So we have to-- it's like, move the chairs around. There he is. Welcome, Senator Chambers.

**CHAMBERS:** Thank you.

**LINEHAN:** We will now open the hearing on LB1109.

**CHAMBERS:** I'm Ernie Chambers. I represent the 11th Legislative District in Omaha. Do you have any questions? This is a bill that I'm sure Senator Lindstrom could fill you in on technical details, so I'm not going to take a long time. I will state what I would like to do. I would like to take the sales tax off water. As Senator Lindstrom probably pointed out on the bill he had, all these-- this equipment that they utilized to put the system in place, that equipment might be subject to sales tax and use tax, some of it. And then the water that goes into the person's home is subject to a sales tax, but not just the sales tax on that water, but that other is rolled into what they've got to pay. And I think that it is unconscionable to the point of being immoral, as I've put in my statement of intent, because water is an essential not just for sanitation and fighting fires, but for the health of the individual. And my theory is that in the same way that food is not subject to a sales tax, water ought not be subject either. I saw the-- they call it a fiscal statement, and they had mentioned something about the state of the General Fund would be less the first year. This would take place in October and would take effect six million-plus dollars. I know that the Appropriations Committee, there are certain senators who deal with finances, taxes, and many of them are on this committee, but what I have to look at first is the principle that is involved. And I am personally aware of people who had their water turned off because they could not pay. And the state is not sympathetic nor the utility companies to somebody who genuinely doesn't have the money to pay the utility bills. Maybe they say you should have been born into a different family. You shouldn't have had children. You should have saved some money when you started out as a child so that you could pay. I don't know what is in their mind, but in a society such as this where the country is deemed to be developed, there should be some concern about the basic necessities that people need just to maintain life and health. Water is one of those and that is why I want to take the sales tax off. I don't know about that taxing that goes on the utility that provides the water. Other people can look at that. I'm looking at the aspect that relates to the residential water that families use. The bill as drafted does not break that out by itself. But there is no way, in my view, that what

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I'm looking at could produce a fiscal note of \$6 million. When I asked to have a bill drafted, it was near the limit or the deadline for having a bill drafted, so all I could indicate was that I would like to take the sales tax off water and I should have said residential water. I have said what I have in my mind. And unlike when I'm on the floor, just taking time for the purpose of taking time, I want to get before you as clearly and succinctly as I can what it is I'm trying to do. And all of you have dealt with these kind of issues from the standpoint of revenue. You have an expert on your committee who's going after a much more ambitious aspect of this. And I don't think necessarily that they compete with each other, but if they do, you all notice how careful I am an analytical, I hate to say it but mine has more merit if you have to choose one or the other. But I think the intent that we could say is being constructed by Senator Lindstrom's bill and mine can accommodate both these ideas. I don't think that it would diminish revenue to the state by the amount that is envisioned in the fiscal note. But even if it did, I would still push for the bill. And now I will ask you, do you have, or say that if you have any questions, I will do the best I can to answer them.

**LINEHAN:** Thank you, Senator Chambers. Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Madam Chair. This morning in debate, did I offer you a piece of candy?

**CHAMBERS:** During the debate?

**McCOLLISTER:** Yes.

**CHAMBERS:** My mind is usually dealing with such heavy matters, I don't really remember.

**McCOLLISTER:** Oh, I do.

**CHAMBERS:** OK.

**McCOLLISTER:** Would you consider pop and candy in the same vein that you considered residential water-- pop and candy a necessity of life.

**CHAMBERS:** Oh, you mean for consumption by a person?

**McCOLLISTER:** Yes.

**CHAMBERS:** No, I put water in a much-- at a much higher need basis than I would pop and candy. And I know that they are not taxed.

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**McCOLLISTER:** If by removing the sales tax exemption for pop and candy, we could generate 30 million dollars for some useful way, would you support that?

**CHAMBERS:** Are you saying that if I would agree to a trade, you all will advance this bill? [LAUGHTER]

**McCOLLISTER:** We could talk further on that. I'm not saying that.  
[LAUGHTER]

**CHAMBERS:** I do place water in a category of much greater need. First of all, it of itself is wholesome. You know, to be hydrated is necessary for-- you can even prevent these stones that are very painful to pass by having adequate consumption of water. But I'm not aware that candy would achieve the same purpose. So if I had to rate them, water I would rate as much more needful.

**McCOLLISTER:** Well, I will offer you more candy on Tuesday.

**CHAMBERS:** Well, I'm just at the point of trying to reduce my intake of sugar.

**McCOLLISTER:** OK. Thank you, Senator Chambers.

**LINEHAN:** Thank you, Senator McCollister. Senator Friesen.

**FRIESEN:** Thank you, Chairwoman Linehan. It's kind of an honor to have you here. I don't get to see you in Revenue very often, so.

**CHAMBERS:** You know with boxing when somebody comes like that then you either go in your shell or you've lost it, so I'll just wait.

**FRIESEN:** We've-- I mean in the discussion of water, I mean, the drinking water that's delivered, a very small percentage of it is for drinking. Most of it is for flushing toilets, watering lawns. If-- and I think each municipality sets a base amount of water that so and so many gallons per person, or whatever, that comes at a flat fee. If you would exempt the first portion from sales tax, what you would call the drinking water, and then they would still apply the drinking-- or the tax to the rest of the water delivered would that--

**CHAMBERS:** Not everybody would use it in that way. And I just would like to see the residential water exempted because I cannot specify. Now, they don't say that irri-- water for irrigation is exempt if you only use center pivot. If you use it for integrate-- irrigation you don't have to pay. It's not say-- it's not subject to the sales tax.

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**FRIESEN:** No, manufacturing and agriculture use are exempt.

**CHAMBERS:** And these are the big ones with the power who get the favorite treatment. And if they were as weak and unorganized-- I'm just saying disorganized. Unorganized as a common citizen, then they would be paying taxes too.

**FRIESEN:** That's a little misleading, though, I mean you have a system that you have to pay for to deliver it. I've paid for my own system to deliver that water. I'm not dependent upon another entity, a republic entity to deliver it. There is little difference there, I would say, but.

**CHAMBERS:** But the difference, not to interrupt, although that's what I might seem to be doing, if you can afford to pay for that delivery system, you're not in the category of the residential uses of water that I'm talking about.

**FRIESEN:** Right. We're talking about different systems and I-- my system where I use for drinking water, I do pay sales tax on its installation and repairs and I just don't pay a per gallon fee, and I get that. I mean, I've-- I've argued both sides. I didn't know if we should ever-- should charge sales tax on water delivery. I could go either way. But right now the system is built and everyone is dependent on that revenue. And so there were different methods of trying to get some of that back.

**CHAMBERS:** And Senator Friesen, here's where I'll be completely honest with you. If I were not trying to take the tax off residential water, maybe I wouldn't even mention that water for irrigation is not taxed. But I see the farm sector, the rural sector, however, they designate themselves, as being-- having a type of organization and commonality in terms of what they need and they had the political clout to get that done. For the residential situation, you're never going to organize all of the people and the ones most onerously hit by the sales tax on water, certainly you're not going to have time to try to organize and nobody would try to organize in any way.

**FRIESEN:** If you could help us ag people organize a little better, we've wanted some property tax reduction for a lot of years. We don't seem to have a lot of clout here.

**CHAMBERS:** Well, I was working with Senator Loran Schmit when he was here and I did work a lot on farm issues. And Loran told me that I had good ideas, but he said, Ernie, if you have eight farmers, then you're gonna have twelve organizations. [LAUGHTER] And at first I thought he

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was just talking, but then I did actually see where it-- how what he was talking about.

**FRIESEN:** We've weaned down the number of organizations, but you'll still have about eight ideas.

**CHAMBERS:** Right.

**FRIESEN:** Thank you, Senator Chambers.

**LINEHAN:** Thank you, Senator Friesen. Are there other questions from the committee? Seeing none, thank you very much for being here.

**CHAMBERS:** When I see the expressions on the faces of my colleagues and their smiles, and they are smiles from the teeth out, then I don't see much hope for this bill. [LAUGHTER] But it was something that I had to do because as a prin-- on principle and I won't be coming back this way again, and in four years, either I will be dead or you all will be dead, but this is probably the last time this group will all be here together. And I think what you all ought to do is give me a good sendoff, a bon voyage, [LAUGHTER] and I haven't asked this committee for anything before, and it's no money out of your pocket, it's no sweat off your nose, but there are a lot of people would be extremely grateful and thankful. And this last thing, I have saved money. Ever since I was a child, my mother told me, Ernie, if you make thirty-five cents and in those days that was some money. And I-- at my age, I was-- when I make that, I'll have some money. But to make the point, she said, if you make thirty-five cents, save a dime. And although if you go to the store, if you went a certain number of blocks, they give you a dime. If it wasn't that far, they might give you a nickel. But I would say I'm in a position now where I have helped pay people for the funerals for people's children because I'd see them out there on the street corners. I don't know if they do this in the white community, but they have signs that say they're washing cars and trying to raise money for a funeral. And when I found out that that was so, even though I don't believe in funerals, I'm going to be cremated. But I'm going to wait until the appropriate time. [LAUGHTER] I just couldn't bear to see that because I knew how much pain people were going through to lose a child and then to have to be out there, so I just-- I would do that. I have actually paid people's utility bills because it bothered me to see people who've got children and their heat is going to be turned off, or it was turned off, and I don't know where some people get the idea that in the wintertime they won't turn your heat off, but they will. And I know it for a fact. People who didn't have water and it wasn't in me to look the other way, and I always will try to help people who have nothing they can give me, there's no

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way, and to the extent that was possible, I would do it in a way so that they didn't know that it was coming from me, but because of the community that I've lived in all my life. And I don't have to be in this Legislature. I've had offers, even at my advanced age to associate my name with various law firms and they'd pay me, but I'm not interested in their money or that kind of money. So I'm not a man of means, but what I do have, I'm willing to share it. And I cannot take care of all of the people who have their water cut off. So I bring a bill like this and it's not just to play on your sympathy, but if that would do it, then that's why I'm saying it. And that's all that I would have. And if you have any questions, I'll answer them. And if you're through with me, then I will see what is going to happen during the rest of the hearing.

**LINEHAN:** Senator Kolterman.

**KOLTERMAN:** Thank you, Senator Lindstrom-- [LAUGHTER] Linehan. Senator Chambers, thanks for coming today. I'd like to just tell you that the last time we had this much fun in a hearing it was about horse massage. [LAUGHTER]

**CHAMBERS:** It was what?

**KOLTERMAN:** We had a hearing like this about horse massage one time. I think he ended it by saying Rub-a-dub.

**LINEHAN:** Thank you, Senator Kolterman. Senator Groene.

**GROENE:** Senator Chambers, what I got out of what your 15 minutes of speaking there, what I got out of that was what Ben Franklin said, the only thing constant in life is death and taxes and you just agreed with that.

**CHAMBERS:** I don't know what the result of that is, so I'm just gonna let it hang in the air. [LAUGHTER]

**LINEHAN:** Thank you, Senator Groene. Are there other questions from the committee? Thank you very much for being here.

**CHAMBERS:** Well, I will not-- well, I won't promise not to close because somebody may say something.

**LINEHAN:** OK. All right. Are there proponents? Are there opponents?

**DONNA WALLER:** Senator Linehan, and members of the Revenue Committee, my name is Donna Waller, D-o-n-n-a W-a-l-l-e-r. I'm the treasurer and revenue manager for the city of Omaha. And I'm also testifying on

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behalf of the League of Nebraska Munis-- Municipalities. I want to thank you for the opportunity to offer testimony in opposition of LB1109. The city of Omaha would lose approximately \$1.5 million annually if LB1109 passes. With this loss of revenue, the city would have two basic options, either cut services, or increase other revenue. Service cuts of 1.5 million could include approximately 15 police officers or firefighters, closing most of our 13 swimming pools, or closing one to two of our libraries. The only revenue source to replace this amount of revenue would be property tax by increasing the levy about one-half of a percent. The Save Omaha relies on sales tax to help fund all of our day-to-day operations, including various city administrative and service departments such as our police, fire, library, planning, parks and recs, etcetera. Thank you again for the opportunity to testify and I would be happy to try to answer questions you may have.

**LINEHAN:** Thank you. Senator McCollister.

**McCOLLISTER:** Yeah, thank you, Senator Linehan. I know from my days on the MUD board that MUD has at least two classes of customers, water customers. The numbers you just gave out, is that for all classes of MUD customers or just the residential?

**DONNA WALLER:** I believe that's both. We just-- basically we took what our bill, what we see in our payments. But it's hard for us to identify exactly what we receive in sales tax, but just from what they pay us, we looked at the bills and tried to assume what the sales tax was from it.

**McCOLLISTER:** Well, if we simply took the sales tax away from the residential customers, I think that may constitute just a third of the water volume that MUD sells. So, yeah, that may be something we could look at. And, you know, perhaps mitigate some of the losses you've experienced. Thank you.

**LINEHAN:** Thank you, Senator McCollister. Are there other questions from the committee? Seeing none, thank you for being here.

**DONNA WALLER:** Thank you.

**LINEHAN:** Are there other opponents? Is there anyone wanting to testify in the neutral position? I do have letters for the record. Proponents: Joey Adler, Holland Children's Movement; Rick Kubat, Metropolitan Utilities District of Omaha. Opponents: Mayor Douglas Kindig, city of La Vista; Mayor Rusty Hike, city of Bellevue; Mayor Jim Timmerman, city of Gretna; Mayor David Black, city of Papillion; Mayor Bob

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Roseland, city of Springfield; and Nicole Fox, Platte Institute. No one was neutral, Senator Chambers, would you like to close?

**CHAMBERS:** Briefly.

**LINEHAN:** Certainly.

**CHAMBERS:** Madam Chair, and members of the committee, to use an old expression, I knew the usual suspects would be here, but Omaha especially is able to cut out little areas to favor people, for example, around 108th and Dodge is not blighted, it is not substandard, but a multi-billionaire whose last name is Ricketts wanted to get some TIF money for-- over hundreds of thousands of dollars, the city council agreed, in order that it would benefit the headquarters that would be constructed for Ameritrade. The one who had started that company does not live in Omaha, does not live in Nebraska because he does not want to pay income tax, so he lives in Jackson Hole, Wyoming. So after he got the TIF money and got that designation, the people in that area of the city were very offended. They were outraged. They said that it casts a pall over their area, which is not substandard, which is not blighted, and the businesses and the people who might live close enough to be affected by it, had spent money and gone to great lengths to maintain their property. But this individual who didn't need TIF funding was given that consideration by the city of Omaha. Then when he got a better deal, and I know he's supposed to not be running it, but he's there. I'm talking about Joe Ricketts. Schwab is located, I think, in California, and when they made an offer, and there'll be a huge profit to Ricketts, they sold T.D. Ameritrade. So it could be a matter of politicians understanding rich people better than they do poor people. Right now in Omaha there is a certain building on Center Street, or someplace, and a guy wants to build some apartments and he wants to use TIF funding and to do it he has to have them focus just on that one building, not the area being blighted and substandard, but declare the building blighted and substandard, and Omaha is talking about giving him that. That would never be done for poor people. So I'm not surprised that the cities who feel they might lose some sales tax revenue would come here and object. But that does not deter me from trying to do what I think should be done for the people who not only cannot afford this money, but cannot afford to be here, cannot afford to be lobbyists, hire lobbyists, and in reality, don't even know that there is any avenue by which they could even ask for some relief. All they know is that they get the water bill, they look at how much is paid-- is due and it must be due by such and such a time. And if they haven't got it and a situation is reached where they haven't been able to pay, the water is

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shut off. And I could argue, if you would let these people get the small amount of water that they're going to need, it's not gonna diminish the supply of water and it's not going to hurt anybody. Well, that argument doesn't hold water if you let me say that and that's all that I will say, but I couldn't not say something in response to what had been said in opposition. So if you have no questions, I will get out of here now.

**LINEHAN:** Oh, do we have any questions from the committee? In your opening-- and I probably should have asked it then, you talked about the fiscal note. So you think the fiscal note is-- goes beyond just residential payers because your bill didn't say just residential?

**CHAMBERS:** It would, yes. Uh-huh.

**LINEHAN:** OK. Well, that would be interesting to know what it would cost if it is just residential.

**CHAMBERS:** Because that-- right. OK.

**LINEHAN:** Or what Senator Friesen suggested, the amount that's assumed for drinking water. So thank you very much. It's an honor to have you here.

**CHAMBERS:** And as I say, your resident expert can go into more detail if you need it. Thank you very much.

**LINEHAN:** Thank you very much.

**CHAMBERS:** By the way, I thought of this as a place named after me, and it's first name was torture, Torture Chambers, but it wasn't bad at all. [LAUGHTER] Thank you.

**LINEHAN:** So with that, we'll close the hearing on LB1109 and open the hearing, the last of our day, LB980 [SIC]. Senator Wayne. Good afternoon.

**WAYNE:** Good afternoon, Chairwoman Linehan, and members of the Revenue Committee. My name is Justin Wayne, J-u-s-t-i-n W-a-y-n-e, and I represent Legislative District 13, which is north Omaha and northeast Douglas County. LB989, will add a standard sales tax to all digital advertising over the Internet that markets or promotes a particular goods, service, or political candidate or message. LB989 is a simple bill. It apparently is unchartered territories. This is the first year the bill has been introduced from what I understand in any Legislature except I did find Maryland is grapple-- grappling with the same issue.

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This is not some national movement. This came about because I bought some yard signs. I bought a yard sign for my campaign and I bought a yard sign for my construction company and I paid a sales tax on it. Then I took that same logo and put it on Facebook and I didn't pay a sales tax. And I thought, that's odd. It's the exact same thing, doing the exact same thing, and there's no sales tax. So I thought, well, maybe I could fund some of my programs if we make it kind of consistent. Well, then I dug into it and what I found out is that billboards are sometimes not-- or are not taxed if they're a part of the ground. Buses that are traveling who use the exact same logo are not taxed, but benches that the buses stop at, maybe tasch-- taxed if they're not attached to the ground. All the time this is the exact same logo, taxed or not taxed depending on how it's dealt with that day. That just seems very odd to me. So as we-- as I started looking at this, I looked at the online sales tax that was passed by us last year, Senator Briese. And Senator McCollister introduced a bill similar I think that-- both you guys did. And I thought as we move to a digital world, we need to make sure our taxing statutes mimic that. The marketplace for advertising digital-- digitally advertising is huge. According to the fiscal office, it's around one hundred eight billion dollars every year that is spent nationwide and that number continues to increase each year. Of that one hundred eight billion, Nebraska shares of those purchased amounts only about point six-- point six of the total. While Nebraska accounts for over half of a percent of all the money spent on digital advertising, the revenue from this bill is considered-- considerable. The Revenue Department noted that the fiscal note of this bill could generate almost \$40 million in year '20--'21 and '22. While this is completely a new issue here, how to navigate the tax in the digital economy is an important question that this committee is going to have to struggle with and the amendment that I passed out, I think clarifies and actually solves many of the issues that were brought up in some of the opposition letters about unfair and how do we tax it. I do realize that there is a bundling issue that we have in Nebraska when it comes to advertising, but that's simple. We can unbundle it and you tax what is actually placed. We can have the conversation about newspapers and those kind of things where we have historically exempt, but at the end of the day, it never made sense to me why I can take the same logo and put it in different places and sometimes it's taxed and sometimes it's not. It's the exact same logo. It's Wayne for Nebraska or Trailblazer Constructors. It's that simple. I don't understand it, and that's kind of where that started from. Again, this is not part of some movement across the country that I'm a part of, but if you look across the world, there are other countries that are taxing digital advertising in many forms. So while the federal government lags behind this issue,

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I do not think this is unconstitutional. I do not think this violates any federal law. I think it's similar to the industries of states that push state versus Wayfair. And to be quite honest, I feel pretty good that the people who lined up against my bill are the same people who lined up against Wayfair and the Supreme Court sided with the opposite sides. So maybe they'll, you know, decide for my favor. So I think it's the opportunity for Nebraska to lead. I think when we talk about property taxes, this is a great revenue stream, Senator Briese and Senator Friesen, Chairwoman Linehan, and I say let's lead in this industry. Let's-- let's make it viable, but let's make it taxable like everything else that we do when it comes to buying and selling goods and sales tax. And with that, I'll answer any questions.

**LINEHAN:** Thank you, Senator Wayne. Are there questions from the committee? Is there a way to-- you mentioned newspapers and I'm concerned about the future of newspapers. Is there-- how would this affect newspapers?

**WAYNE:** I think newspapers also have a special designation as far as IRS codes, but I think if not, we can-- we can define that in Nebraska and exempt newspapers. The concern I have is not trying to-- and I met with some people from the industry. I am not trying to tax commercials. I think that's a conversation we can have. I'm trying to tax yard signs, billboards. And so I think we can even define it as the placement has to be less than so many seconds. Like I'm literally just concentrating on billboards, yard signs. I'm not trying to tax mini-- mini-movies or anything like that, but I do find it interesting that when I leave Target and I get on my phone, there's a Target ad. That should be taxed. To me that's no different than running up to my house and dropping a bit-- a yard sign in it. And that's how I'm looking at it, so I would be willing to exempt newspapers and other-- other media but I think this is uncharted territory that we as a state, as we continue to look for revenue streams and just like with the online retailer. And a lot of the arguments apply like online retailer, the mom and pop printing stores. I use a local one in Millard, since I-- I coached his kids since second grade. They've seen a hit from online printing, online advertising. They don't have as many yard signs as they used to have because of that. So all the arguments that pertain to brick and mortar buildings that were used in the online sales tax debate we had for two years in a row, apply here. We are losing those main street print stores that many of our towns no longer have because they moved to advertising on the digital media and they're still printing the same thing. They're still printing the yard sign. They're just putting it in our face on our phone instead of in our yard.

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**LINEHAN:** Thank you, Senator Wayne. Other questions? Senator Briese.

**BRIESE:** Thank you, Chairman Linehan. Thank you for bringing this, Senator Wayne. Have you tried to determine the percent of what we're talking about here that could be considered purchased by a business to promote a business purpose?

**WAYNE:** No, I have not looked business-to-business transaction, but I do think that will still fall in line with their writeoffs and their business expense account, but I have not looked at that. And I think-- my goal was just trying to literally capture what I did at the print store when I-- when I go to a print store and we do pay that. When we print off a flyer at a print shop, we pay a sales tax on it.

**BRIESE:** OK. Thank you.

**LINEHAN:** Thank you, Senator Briese. Other questions from the committee? Seeing none, thank you very much.

**WAYNE:** I know we have a lot of support for this bill and a lot of letters of support, so I don't think I'll be here for close.

**LINEHAN:** All right. Are there proponents wishing to testify? Are there opponents wishing to testify? Yeah, guys, if you're going to testify, come on up.

**KORBY GILBERTSON:** Good afternoon, Chairwoman Linehan, members of the committee, for the record, my name is Korby Gilbertson. That's spelled K-o-r-b-y G-i-l-b-e-r-t-s-o-n, appearing today as a registered lobbyist on behalf of 29 different groups. In order to save you from having to have a parade up here, a number of associations and businesses went together and asked me to draft a letter on everyone's behalf. And so I won't read it to you because I know that you can all do that, but I will read the names into the record so that they are part of the record of the committee hearing: The American Council of Engineering Companies of Nebraska; American Institute of Architects, Nebraska Chapter; American Massage Therapy Association, Nebraska Chapter; Associated General Contractors, Nebraska Building Chapter; Greater Omaha Chamber; Home Builders of Lincoln/Metro Omaha Builders Association Coalition; Iowa Nebraska Equipment Dealers Association; Lincoln Chamber of Commerce; Motion Picture Association; National Federation of Independent Business; Nebraska Auctioneers Association; Nebraska Advocacy Group/Nebraska Broadband Coalition; Nebraska Bankers Association; Nebraska Beverage Association; Nebraska Broadcasters Association; Nebraska Chamber; Nebraska Independent Auto Dealers Association; Nebraska Independent Community Bankers; Nebraska Licensed

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Beverage Association; Nebraska New Car and Truck Dealers Association; Nebraska Petroleum Marketers and Convenience Stores Association; Nebraska Press Association; Nebraska Realtors Association; Nebraska Restaurant Association; Nebraska Retail Federation; Nebraska Society of Certified Public Accountants; Nebraska Telecommunications Association; Professional Towers Association of Nebraska and Tyson Foods Inc. Well, I still have a green light. I want to touch on two things that there is a large group of associations that have met probably over the last 20 years and have worked together regarding issues like service-- sales taxes on services and have always focused on a number of things that should be considered before any sales tax is placed on a service. And one of the biggest ones is the portability of that service and many associations and business have said if this would go into effect here, it is a digital service, it's not necessarily done-- that it needs to be done here in Nebraska. They will then hire out-of-state people to do it, which would obviously drastically impact the revenue. I'd also point out that other states have tried this in the past, including Iowa, and then they have repealed that tax. So with that, I'd be happy to answer any questions.

**LINEHAN:** Thank you very much for being here. Do we have questions from the committee? Seeing none, thank you very much.

**KORBY GILBERTSON:** Thank you.

**JIM TIMM:** Good afternoon, Chairwoman Linehan, members of the Revenue Committee. It's dangerous to put a broadcaster behind a microphone, you may never get it back. My name is Jim Timm. That's J-i-m T-i-m-m. I serve as president and executive director of the Nebraska Broadcasters Association. We represent the states FCC license over the air, radio and television stations all across the state. I'm here to testify in opposition to LB989, as we believe it would be highly disruptive to our members, to other media outlets and media companies, and ultimately to the business climate here in Nebraska. Our list of concerns is somewhat lengthy, but I can work through them very briefly. Advertising represents the largest, and in many cases, the exclusive source of operating income for TV and radio stations in markets of every size across the state. Attacks on digital advertisements would result in immediate reduction in that income to stations because companies would not increase their ad budgets to account for their tax. Their budget would be what their budget would be and the media outlets would end up receiving an amount less in order to construct the tax. That results in less advertising, which ultimately results in less sales and less income tax revenue generated from sales tax. This would result for media companies in a loss of

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jobs. It would impact the amount and timeliness of the content that TV and radio stations are licensed by the FCC to produce to keep our public informed. Our member stations commonly sell digital advertising along with over the year and other forms of messaging. This raises the risk that through Nebraska's bundled transaction statute, other forms of advertising may also be taxed in this attempt to tax only digital advertising. Advertising is the engine that fuels our economy. Less advertising would result in fewer sales. Fewer sales means reduced revenue, fewer jobs, ultimately leaving less taxable revenue for the state. A tax on digital advertising would only add to the narrative of Nebraska being a state that is unfriendly to business. History has proven that any tax on advertising has the opposite result of its intention. Arizona, Florida and Iowa, have each passed respective measures many, many years ago, only to quickly repeal them due to the immediate damage done to their state's economies. Further, each state found it to be very difficult and expensive to administer, enforce, collect and audit. Beyond the economic impact, we have two other concerns. One is a possible violation of the permanent Internet Tax Freedom Act, which was enacted by Congress to prohibit states from imposing discriminatory taxes on electronic commerce. LB989 also raises a First Amendment concern by specifically imposing a tax on political messaging that would, in effect, regulate free speech by forcing only digital advertising providers to either cease allowing Nebraska customers to view those ads or to substantially raise their fees. Our member stations are challenged with many of the same things in their businesses that you face as our legislators, namely how to operate within a budget when revenue increases are hard to find and expenses keep rising. History has proven in three other states that an attempt to raise revenue through taxing advertising quickly has the opposite effect. We ask that you not make that same mistake here in Nebraska and that you do not allow LB989 to advance. Thank you for your time and I'd be happy to answer any questions.

**LINEHAN:** Thank you very much for being here. Are there questions?  
Senator Briese.

**BRIESE:** Thank you, Chairman Linehan. Thank you for your testimony. What percent of the advertising sold by the companies you represent here would be considered purchased by businesses for business use?

**JIM TIMM:** We don't collect that data from our membership, so I don't have a Nebraska specific number that I could give you. I know in the broadcast industry it's been climbing nationwide 5 to 6 percent of the revenue. But factor in nationwide you've got big markets like New York, L.A., Chicago and with our smaller population, we don't get near

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the advertising dollars in our state. So I'm sorry, I don't have an exact figure for you.

**BRIESE:** Thank you.

**LINEHAN:** Thank you, Senator Briese. Are there other questions from the committee? Thank you very much for being here.

**JIM TIMM:** Thank you for your time.

**LINEHAN:** Next opponent.

**DUSTIN ANTONELLO:** Good afternoon, Chairwoman Linehan, and members of the Revenue Committee. My name is Dustin Antonello, which is spelled D-u-s-t-i-n A-n-t-o-n-e-l-l-o. I'm here today speaking on behalf of the Lincoln Independent Business Association in opposition to LB989. Taxing the sale of digital advertisements will hurt small businesses that rely on digital advertising to get the word out about their businesses. The taxes that companies like Facebook and Google will have to pay on digital advertising will simply be passed on in the form of higher costs to businesses who use those platforms to advertise. Tax on digital advertisements will also impact consumers who enjoy access to free content on the Internet, thanks to revenue from digital ads. This tax will not only impact the free content provided by Facebook, YouTube, Twitter and other big tech giants, it will also hurt millions of newspapers, small publishers, blogs and app developers. If these content providers are unable to absorb the costs of this tax, they may have to start asking their customers to pay a subscription fee to access their content. We already have seen this happening with newspaper, small and large, across the country. If LB989 is enacted, Nebraska would be the first state in the country to impose a tax on digital ads. The only other state considering such a tax is Maryland, and they would at least exempt companies with revenues below 100 million dollars. To date, taxes on digital advertising have only been enacted by European countries. Nebraska became the only state in the U.S. to tax digital ads, we'll be at a major competitive disadvantage in a burgeoning industry. Total advertising revenue reached \$108 billion in 2018, up from \$43 billion in 2013, according to Forbes. LB989 will lead to increased costs for businesses and consumers and put the digital advertising market in Nebraska behind other states. I urge you to oppose LB989. Thank you. I'd be happy to answer any questions.

**LINEHAN:** Thank you very much. Do we have any questions from the committee? Seeing none, thank you very much.

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**DUSTIN ANTONELLO:** Thank you.

**KATHY SIEFKEN:** Good afternoon, members of the committee, my name is Kathy Siefken, K-a-t-h-y S-i-e-f-k-e-n, here today in-- representing the Nebraska Grocery Industry Association in opposition to LB989, basically because advertising via Internet and social media can be purchased anywhere and passage of this bill would simply move the point of purchase out of state. We do like to purchase locally if we can, and we think that this will have an overall negative impact on the businesses in this state that offer these services. So for that reason, we are opposed. If you have any questions, I'd be happy to answer.

**LINEHAN:** Thank you very much. Are there questions from the committee? Seeing none, thank you.

**KATHY SIEFKEN:** Thank you.

**LINEHAN:** Are there other opponents? Does anybody want to testify in the neutral position? I have letters for the record. So proponents, none. Opponents: Patrick Reynolds, Council of State Taxation; Tyler Diers, TechNet; Rose Feliciano, I'm sorry Rose; Internet Association; Dennis DeRossett, Nebraska Press Association; Allen Beermann, Nebraska Press Association; Ernie Bredar, Omaha; Tom Houck, Houck Transit Advertising; Kindra Foster, Foster Executive Writing and Editing, L.L.C.; Mark Nebergall, Software Finance and Tax Executives Council; Jim Timm, Nebraska Broadcasters Association; Ron Barnes, Google; Kelsey Pritchard; Kimberly Daniels, The Scoular Company; Greg Anderson, Bailey Lauerman; and Nicole Fox, Platte Institute. We also received 57 form letters in op-- emails in opposition. There was no one in a neutral position. Senator Wayne left, so happy Thursday. We are closing the Revenue Committee hearing on LB989.