

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: I think we'll get going. Are you ready, Alex? OK. Good afternoon, everyone. Welcome to the General Affairs Committee. My name is Tom Briese. I'm the senator for District 41. I'm the Chair of this committee and will be conducting today's hearing. We're here today for the purpose of conducting seven bill hearings. Please note that LB1235 and LB1236 will be a combined hearing. If you wish to testify in person on any of the matters before us, we ask that you fill out one of the white sheets of paper. The white sheets are located on either side of the room. If you're here and you do not wish to testify, but you do wish to state your support or opposition for any of the matters before us, we ask that you fill in one of these sign-in sheets. If you do testify, we ask you to begin your testimony by stating and spelling your name for the record, which is very important for our Transcribers Office. The order of proceedings is that the introducers will be given an opportunity to open, then we will hear the proponent, opponent, and neutral testimony. We ask that you listen carefully to try not to be repetitive. We do use the light system in the General Affairs Committee. And can I ask how many folks are going to testify here today? Thank you. Each testifier will be afforded three minutes to testify and I'll be fairly strict on that, but if your time's up and you have considerably more to talk about, I assume there'll be-- somebody can ask you a question and keep going. But in the interest of time, we will go three minutes. When the yellow light comes on, you have one minute remaining and we ask that you begin concluding your remarks. When the red light comes on, your time is expired and we will open up the committee to any questions they may have of you. At this time, I'd like to encourage everyone to turn off or silence any cell phones or electronic devices, anything that makes noise. The committee is a committee that is equipped for electronics, so you may see members referencing their iPads, iPhones, or other electronic devices. I can assure you they're just researching the matters before us. If you have a prepared statement, an exhibit, or anything you'd like distributed to the committee members, we ask that you provide 12 copies to our committee clerk. If you don't have 12 copies, don't worry. Provide what you have to the committee clerk. With that, we'll proceed to the introduction of members starting on my far right with Senator Groene, please.

GROENE: Senator Groene, District 42.

ARCH: John Arch, District 14, Papillion-La Vista in Sarpy.

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

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General Affairs Committee January 31, 2022

LOWE: John Lowe, District 37: Kearney, Gibbon, and Shelton.

WAYNE: Justin Wayne, Senator-- District 13, north Omaha and northeast Douglas County.

BREWER: Tom Brewer, District 43, 13 counties of western Nebraska.

BRANDT: Tom Brandt, District 32: Fillmore, Thayer, Jefferson, Saline, and southwestern Lancaster Counties.

BRIESE: Thank you. And I'd also like to introduce to my immediate right legal counsel, Laurie Holman, and on the far left committee clerk, Alexander DeGarmo. I'd also introduce our pages. If you guys could stand up? We have Joseph Schafer. He's a history major at UNL. And we have Payton Larson, a political science and English major at UNL. Thank you, guys. And with that, I will turn the proceedings over to Vice Chairman John Lowe, as I will be introducing the first two bills.

LOWE: Thank you, Senator Briese, for bringing LB1204 and you may begin whenever.

BRIESE: OK. Well, thank you and good afternoon, Vice Chairman Lowe and fellow members of the General Affairs Committee. My name is Tom Briese, T-o-m B-r-i-e-s-e, and I represent District 41. I'm here today to introduce LB1204. This is a bill that makes several technical changes to the law at the request of the Nebraska Liquor Control Commission. The proposed bill contains administrative changes that will make the work of the commission easier and more efficient. These changes include allowing licenses to be sent electronically, removing the requirement that certain documents be filed in triplicate and removing the requirement that applications for licenses be signed by a notary public. I would be happy to try to answer any questions. I assume Mr. Rupe will be testifying behind me. Thank you.

LOWE: Thank you, Senator Briese. Are there any questions from the senators? Seeing none, will you stick around a close?

BRIESE: Yes.

LOWE: We'll take now the first proponent.

HOBERT RUPE: Thank you, Vice Chairman Lowe and members of the General Affairs Committee. My name is Hobie Rupe. I'm sorry, Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently have the honor of serving as the director of the Nebraska Liquor Control Commission. LB1204 is a

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General Affairs Committee January 31, 2022

relatively simple bill. We might-- we're going to ask maybe for one small amendment to come forward to clean up. LB1204 came about as a result of the Legislature and the Governor approving a redistribution of some of the funds for us to start what we commonly called the CAMP project, the, the centralized alcohol management process, updating our computer system and, and licensing tax system for the first time since 1987 with a brand new system. As part of that, we were looking through some of the older regulations and realized a lot of them did not make sense. For instance, if the goal is to have somebody be able to file all these things electronically, having something filed in triplicate doesn't seem to make sense. The other issue that's, that is in there where we-- and also would ask for a cleanup on it is for the last four years, we've been setting out SDLs, special designated licenses, electronically and its systems worked very, very well and we'd like to be able to do that here, either to the Clerk's Office if the fees have not been paid, but also this is where we might need an amendment to if the fees have been paid directly to the licensee so they can print them off. Oftentimes, we were finding seven to ten days between us issuing a license and mailing it out before the businesses being able to open up. I mean, they're just waiting for the physical license to get there. So this would try to speed up that process and I would be happy to answer any questions. This is very-- just a technical, making it easier to-- for the applications to be filed, not in triplicate, not signed by a notary, and also make it easier for us to send these applications out electronically. Welcome to at least the late 20th century, so I'm holding-- "employings" uphold at least somewhat slowly.

LOWE: Thank you, Mr. Rupe. Are there any questions? Seeing none, thank you very much.

HOBERT RUPE: Thank you.

LOWE: Are there any more proponents? Seeing none, are there any opponents? Seeing none, are there any in the neutral? Seeing none, Senator Briese, would you like to close on LB1204? Senator Briese waives closing and we will now begin on LB1231. Senator Briese, welcome back to your committee.

BRIESE: Thank you again, Vice Chairman Lowe. My name is Tom Briese, T-o-m B-r-i-e-s-e. I'm here today to introduce LB1231. I'm bringing this bill on behalf of the Nebraska Liquor Control Commission. LB1231 adds reporting requirements to make it possible for the commission to more accurately and correctly identify alcoholic products being imported into or produced in Nebraska for taxation and distribution

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

purposes. Currently, all beverages sold for interstate distribution in the United States are required by law to file a certificate of labeling approval with the federal government. Many states require alcohol manufacturers and importers to file those with the state as well to ensure proper distribution and taxation. Some of these states include Kansas, Colorado, Missouri, Oklahoma, and Michigan. As new products come into the market, the requirements in this bill will be in place to ensure they are taxed and distributed correctly in Nebraska. And again, I'd be happy to try to answer any questions, but Mr. Rupe presumably will be testifying behind me. Thank you.

LOWE: All right. Thank you, Senator Briese. Are there any questions? Seeing none, you will be sticking around?

BRIESE: Yes.

LOWE: OK, thank you. Are there any proponents? I sure wish my bills were like this.

HOBERT RUPE: I figure this might go a little quicker or it might not be quick. Hello, Vice Chairman Lowe and members of the General Affairs Committee. Once again, I'm Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of the, the Nebraska Liquor Control Commission. This bill is separate because it's a little bit more complex than just the technical cleanups in LB1204, but they both came out of the same projects. As we were going forward doing the RFP, which should be-- knock on wood-- if they accept my last changes with purchasing, should be coming out next month for, for solicitation. It was, it was shown that we really needed to do something we wanted to do for years and that's do what a lot of other states do and track the products in and generally, as Senator Briese mentioned, use what's called a COLA, certificate of labeling authority. So it gives you an idea of the alcohol content, where it is, how it's classified. If anyone has gone to one of the alcohol superstores lately, you see the amount of SKUs and different products that are out there. It's not only bewildering, but it's continued to increase as everybody brings out different flavors, different styles, different profiles. Some things are hard to classify under our statute and so the theory would be that by doing the COLAS, we would be able then to have, you know, for lack of a better term, a database or a system of where-- what is in the state and then make sure it's taxed appropriately. The other benefit that it would have is the plan is for the website to also use GIS mapping so that-- and especially say for some beer products, which are based on beer territories, where if I'm a new bar, I could go on, click on my city, and I-- it should show you who has a particular product or who

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

has the territory for that agreement, make it easier, more accessible for people in the industry and also make it more transparent, which is, I think, something we always need to strive for as government regulators. The, the-- I believe that we-- and I-- and the legal counsel and I have talked. There might be a small amendment to make sure that this also would cover in-state production. Our-- as drafted, it's clear that it would, would deal with things being imported, but not the in-state, which would generally also apply, so we would be able to classify and categorize those. And as you remember with the-- as an example with the Senator-- with the Legislature and Governor sign-off on RTDs last year, we now have very similar products that can be-- you know, might-- one might be classified as a sealed spirit, one might be classified as an RTD based solely upon their ABV and so this is one way we're going to make sure that there's not any brand confusion or distribution or taxation confusion. So I'd be happy to answer any questions.

LOWE: Thank you, Executive Director Rupe. Senator Wayne.

WAYNE: What, what problem are you trying to solve in this matter?

HOBERT RUPE: There often will be a-- categories we'll-- it's very similar products, if they come in, will look very similarly, but based upon our statutes, would be taxed differently based solely upon an alcohol content and they might be by the same brand. And so, for instance, you might have a ready-to-drink margarita mix, which would come in-- a ready-to-go margarita, which we tax at the RTD drink [INAUDIBLE] because it's 8 percent. The concentrate, which looks very similar, very similar packaging, but comes in at 16 percent alcohol would be taxed at the higher rate. And so often they're going to be similar brand confusion, especially as more and more brands hit the market. And so what we're-- we've been wanting to do this for a couple of years, but under our existing system, we didn't think a fiscal note of additional staff would have been worth it. At this point, we're at a good point where we can actually build this in because most states have similar systems. We can build this into the RFP and have it from the get go. And so we probably would ask for an operational date of probably January 1, 2024, for it to trigger where they have to do it because then-- I hate to tell somebody they have to do something when they don't have the mechanism ready to go.

WAYNE: So is this a-- this is a policy recommendation.

HOBERT RUPE: This is very much, very much a policy recommendation.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

WAYNE: And at the beginning of this, Senator Briese said this was brought on your behalf.

HOBERT RUPE: Yes.

WAYNE: So could you say all the things you just said in a neutral capacity?

HOBERT RUPE: Hypothetically, I could say them, but it would be, it would be similarly hypocrite in that under 53-117.03, the commission is tasked with the duty to recommend to the Governor and by and through the members of the Legislature changes to the act. This was in our legislative letter that came out last fall and if it's-- we're asking for something, I believe we should be prepared to testify in support to make sure our position isn't seen as neutral.

WAYNE: So what hap--

HOBERT RUPE: Most times, I would testify neutral on areas where we had to take a position.

WAYNE: So what happens if we reject this policy?

HOBERT RUPE: I think brand confusion would continue.

WAYNE: But you would still execute the law if what we-- that's current, wouldn't you?

HOBERT RUPE: Yeah, yeah, but there's no requirement for these to be filed currently.

WAYNE: So you would still-- so the-- then you would still follow the law.

HOBERT RUPE: We still follow the existing law. And I can tell you, you know, based upon recent audits where we find-- have found cata-- things mischaracterized and then had to do late tax assessment of penalties, you know, we'd rather people pay the appropriate tax at the time rather than, you know, paying it, you know, six months later because they had something miscategorized.

WAYNE: But at the end of the day, I just want to make sure I'm clear. You could have said everything you said in the neutral capacity.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

HOBERT RUPE: I could have said everything I said in the neutral capacity, but as I said, we were here under 53-117, which says we shall recommend. This is one of our recommendations.

WAYNE: Thank you.

LOWE: Thank you, Senator Wayne. Are there more questions? Senator Groene.

GROENE: Only been on the committee a year, so maybe this is a dumb question, but who collects the tax?

HOBERT RUPE: The commission tech collects the tax.

GROENE: No, who, who, who-- you got a manufacturer, you got a shipper, you got a-- who do you collect the tax from, I guess?

HOBERT RUPE: Oh, from-- it depends on what it is. The vast majority of-- by volume of product would be collected at the wholesale tier. So in other words, if a pallet of beer is shipped into Quality Brands of Lincoln here, the tax is then collected by Quality Brands and reported on their monthly tax statement. If a pallet of wine deliv-- is delivered, say, to Southern Wine and Spirits, they-- it would go into their inventory and then that tax would be collected once they-- it leaves their inventory for further distribution. So the tax timing is a little bit different. We also collect directly from the manufacturers for Nebraska in-state producers. So Nebraska craft brewers, Nebraska spirit craft distilleries, and Nebraska farm wineries file those form, forms with us directly and we also receive out-of-state direct shipping taxes on an annual basis directly from either the manufacturer or the agent for those products.

GROENE: So who do-- you say they get-- the alcohol content might be different on the same brand of a margarita mix. Who decides that?

HOBERT RUPE: That would-- the--

GROENE: I mean, who sits there and looks at the palette of stuff and says that I got to pay 85 cents on, this I got to pay \$1.50.

HOBERT RUPE: Generally, the COLA controls. That's why we're sort of linking this to the federal requirement.

GROENE: Who controls it?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

HOBERT RUPE: The COLA, the certificate of labeling authority. If I am a manufacturer of alcohol and I wish to distribute my alcohol in, in the United States, I have to get what's called a COLA from TTB, the Tax and Trade Bureau. That's-- that will show the manufacturer location, the alcohol by volume, you know, all the information that we-- that's required by them. Most states-- and we would recommend Nebraska-- you know, why reinvent the wheel-- would piggyback on that, that information to make sure that it's categorized clearly.

GROENE: How's it done now?

HOBERT RUPE: Pardon?

GROENE: How's it done now?

HOBERT RUPE: Trust, verify, and audit.

GROENE: So the pallet guy ordered a bunch and-- a distributor and he goes through and he says, I got to calculate how much tax I owe on this, how much tax on this and he sends you in.

HOBERT RUPE: Yes.

GROENE: And then you go and audit and you say, well, you didn't pay the right tax on this pallet.

HOBERT RUPE: Yes.

GROENE: Is that what happens now?

HOBERT RUPE: That, that happens now when we catch it, but we don't do that many audits, either. So there's probably untapped, you know--

GROENE: Maybe I'm simple--

HOBERT RUPE: [INAUDIBLE]

GROENE: --but it's a barcode type of deal that's on each bottle or--

HOBERT RUPE: Some do.

GROENE: --it's a COLA?

HOBERT RUPE: You'd have to ask maybe one of the wholesalers how they do it internally to do it. They would link it. I can tell you recently, you know, sometimes those aren't foolproof either. We had a product which was a spirit, which when it was entered into at the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

wholesale tier, one number was transposed and for a year and a half, they were paying the tax on it as a wine. They were paying 95 cents instead of \$3.75 and so that came up in an audit. So sometimes you'll still find error areas linked to audit. No system is any proof. We're just trying to, to reduce the amount of irregularities. And the-- also the advantage here from a wholesaler who would make that error is because for every late payment then, they're also paying a statutory penalty on top of that, you know, that's by statute. So if you can catch those-- any errors or issues when-- right at the beginning, it's going to save them money as well.

GROENE: Thank you.

LOWE: Thank you, Senator Groene. Any other questions? Seeing none, thank you, Mr. Rupe.

HOBERT RUPE: Thank you.

LOWE: Are there any other proponents? Seeing no movement, are there any opponents? Please come. Thank you.

TYLER RUDD: Hi.

LOWE: Begin whenever you're ready.

TYLER RUDD: OK. Thank you, Mr. Chairman and members of the committee. I am Tyler Rudd. That's T-y-l-e-r R-u-d-d. I am the central states counsel for the Wine Institute, which is a trade association made up of about 1,000 California wineries. And I am here in opposition, but reluctantly, simply because of the way that the law is written or the bill is written, it's somewhat confusing and I think it has some problem areas. I don't want to get into it specifically unless you want me to, but it's all written in the handout there, as long-- as well as some suggested language. But I talked to Hobie before this. He understands our concern and, and we'll probably be able to work together and find something that works. We're supportive of primary source legislation. It's in most of the states and iss-- the only issue that we really have with this is it could be overly cumbersome for wineries to submit yet another report, which we already do, whether it be through wholesalers or direct shipment. And obviously, every wine has a COLA, just like every other alcoholic beverage, and we understand completely what he wants to do and don't have-- really have any problem with that. So simply, the language as it's written is just problematic for us and I look forward to working with the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

Chairman and Hobie and the committee to find something that works for everybody.

LOWE: Thank you very much, Mr. Rudd. Any questions? Seeing none--

TYLER RUDD: Thank you, Mr. Chairman.

LOWE: --thank you very much. Are there any more in opposition? Are there any in the neutral?

JUSTIN BRADY: Senator Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I'm appearing before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in a neutral capacity, which similar to what a testifier before me said, we are not-- our wholesalers are not at all opposed to product registration and moving forward with the commission. We-- in all honesty, we've supported the commission, supported the commission getting its appropriation to be able to update its computer system to do that. Similar to a previous testifier, just some of the openness-- and I'll just point out one. You know, like on page 2, line 26, when it says we have to fill out the forms along with any fees, applicable fees. Well, you know, as you can imagine, being on the industry side, you necessarily don't like to be open to whatever fees somebody else is going to charge. If there needs to be fees, let's talk about them. Let's put them in the law. Unless you all are willing to put Mr. Rupe and the commissioners that are currently there, who I don't think would want to raise our fees beyond what they need to be, then we, we have to protect ourselves from any future directors or what they might do and so that's some of that. Some of the other-- one of the other questions that was brought up was when we do product registration, take an example of Jack Daniel's, do we register it as a 175, a one liter, a 750, a 375? I mean-- or is it, or is it that we are registered as carrying Jack Daniel's? So some of those, I think, undoubtedly would be worked out with rules and regs, but since there wasn't that clarity in the bill, we at least wanted to come in neutrally and say we'll work with this committee and Senator Briese and Hobie and whoever, so.

LOWE: All right. Thank you, Mr. Brady. Are there any questions? Seeing none, thanks for working with the committee and Mr. Rupe and--

JUSTIN BRADY: Thank you.

LOWE: --appreciate it. Are there any others in the neutral? Seeing none, Senator Briese would you like to close?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Very briefly, I don't have anything to add other than to say that we're more than willing to work with the stakeholders. Thank you.

LOWE: Thank you.

BRIESE: OK, Senator Lowe. With that, we'll begin the hearing on LB898. Good afternoon and welcome, Senator Lowe.

LOWE: Thank you, Chairman Briese. My name is John Lowe. That's J-o-h-n L-o-w-e and I represent District 37, which includes Kearney, Gibbon, and Shelton. I appear before you today for the first time in introduction and support of LB898. LB898 is a bill that is designed to conform legislation we passed last year as part of the committee's omnibus alcohol bill. As the committee will recall, I enacted the ready-to-drink cocktail legislation to encourage the development of a canned craft cocktail business in Nebraska. All of us supported that bill. It moved forward with the support of segments of the Nebraska alcohol industry. However, the bill moved towards Final Reading. Some who read the bill very closely and had not been involved in previous discussions of the various drafts of that bill realized that we missed that nowhere in the bill does the bill limit the product to a can or even a maximum size. Each of us referred to the bill as the canned cocktail bill, but nowhere did it say that. LB898 addresses this by simply stating that a canned cocktail does not exceed 32 ounces. There are federal fill standards that make the maximum of 1.75 liters for this type of product. If the product is larger than 32 ounces, it would be taxed at \$3.75. This does not change any other provisions of the act. I want to be clear that while I do believe that a clear definition is needed, I am more than willing to listen to interested parties on what that limit should be set at. I look forward to hearing the discussion on this bill and will be happy to answer any questions you may have. Thank you.

BRIESE: Thank you. Thank you for that, Senator Lowe. Any questions for the senator? Seeing none, thank you again. First proponent testifier. Good afternoon and welcome.

JOE KOHOUT: Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Joe Kohout, K-o-h-o-u-t, and I appear before you today on behalf of our client, the Associated Beverage Distributors of Nebraska, in support of LB898. The Associated Beverage Distributors of Nebraska is a trade association comprised of 17 members that are locally owned/operated independent family businesses. They serve the nearly 4,000 retailers in Nebraska, which are licensed to sell alcohol beverages. ABDN members have considerable impact on

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

the state's economy through the purchase and operation of warehouses, trucks, technology systems, as well as the payment of-- payment for vehicles and license fees, fuel costs, taxes, the wage and benefit programs for nearly 500 employees. In addition, beer distributors invest considerably in their local communities or territories they service through charitable contributions and the remittance of business, personal property, and sales taxes. As Senator Lowe mentioned in his opening, LB898 is a bill that is designed to conform to legislation passed last year as part of the committee's omnibus alcohol bill. The bill moved forward with the support of almost all segments of Nebraska's alcohol industry. When the bill moved to Final Reading, one of our members not involved in the discussions realized that nowhere in the bill does the bill limit the product size to a can or even a maximum size. The committee, as well as our many members, grew used to the bill's moniker, "the canned cocktail bill," but nowhere did it say canned. I would note that during the committee hearing on this bill, a reference to canned cocktail was made over 20 times during the floor debate and statements regarding cans and size of cans were made on both General and Select File. I think it is pretty clear what the legislative intent was. The bill provides an additional requirement that ready-to-drink cocktails be canned to a size of 32 ounces or less. This-- there is a federal guidance that makes the maximum size 1.75 liters for this type of product. If the product is less than 32 ounces or the size of a crowler, it will be taxed at the 95 cents per gallon. If greater than 32, taxed at \$3.75. This does not change any other provisions of the act. In a quick review of Iowa's standard at their alcohol services division, their definition states that a canned cocktail is a mixed drink or cocktail that is pre-mixed and packaged in a metal can and contains more than 6.25 alcohol by volume, but not more than 15 percent ABV. Further, this issue of whether or not the product is canned seems to be the primary differentiator in state laws. Vermont introduced a bill that states that a product is considered a full spirit if it's not in a metal can. Michigan has also required cans in its definition. I know that there will be those who follow me and testimony that will suggest that beers isn't taxed differently based on whether or not it's in a keg or a six pack and we are aware of that. However, we want to be clear. The purpose of this bill, in our estimation, is to make clear in statute what we believe the Legislature intended to pass; a bill to expand the market of small, Nebraska-based microbreweries and distilleries. I'm happy to try to answer any questions.

BRIESE: Thank you for your testimony. Any questions? Senator Groene.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: So you want the word "canned" put in the law? It's not in there?

JOE KOHOUT: The product said-- the way the bill reads, as it says, doesn't have any sort of limitation on the size. So if we say canned, that would limit obviously to a specific kind of vessel and that was something we tried to avoid by just saying the amount of size, you know, the, the--

GROENE: But you kept quoting everybody from other states uses canned.

JOE KOHOUT: Right and we're, and we're comfortable if we want to say canned as well, Senator.

GROENE: You weren't advocating that. You just were quoting.

JOE KOHOUT: Well, we were supportive of the size, of the size limitation and how, how this committee decides to put that language in place is, is up to you.

GROENE: The-- you said the federal law is 1.75 liters.

JOE KOHOUT: Um-hum.

GROENE: So this-- our memo has-- there's an error. It says 1.8 fluid ounces, but that's not correct.

JOE KOHOUT: Right.

GROENE: All right. Thank you.

JOE KOHOUT: Um-hum.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thanks for your testimony.

JOE KOHOUT: Thank you.

BRIESE: Next proponent testifier. Any other proponents? How about opponent testifiers? Good afternoon and welcome.

VANESSA SILKE: Good afternoon, Senator-- Chairman Briese and members of the General Affairs Committee. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and registered lobbyist for Kinkaidler Brewing Company doing business as Sideshow Spirits. They are one of about a dozen licensed distilleries in the state of Nebraska and certainly have benefited from the ready-to-drink cocktails bill

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

that you all supported last session and was passed. So onto Mr. Kohout point, I personally worked with him and with Senator-- or with Hobie Rupe-- Mr. Rupe to develop the language of that bill. And part of the reason why we didn't get into package size or vessels was because we use the term "original package," which is actually defined in Nebraska law within the Liquor Control Act and further in-- you know, after Mr. Kohout's member identified this concern with the, the plain language of the bill that was passed last session-- Mr. Rupe can explain this from his perspective as well-- both of us met with him and pointed out that under federal law, which every single one of the producers of these products have a federal license and that has primacy over state law, under 27 CFR Section 547 Part A, for noncanned distillery-- distilled spirits-based products, it's a 1.8 liter max and a 355 milliliter max four 12 ounce or-- which is the equivalent of a 12-ounce can. So any producer of these cocktail products, whether it's in-state or out-of-state, already has to comply with the federal limits as a portion of-- as a part of maintaining their federal license and the right to distribute these products in interstate commerce. So I'm here not to, not to back off from what the general idea of these products were. And in fact, most of my clients are dealing with canned cocktails, as Mr. Kohout noted, but my clients and me personally, we don't support legislation that increases regulations on businesses throughout Nebraska that simply isn't necessary or that could create confusion in our marketplace. Mr. Rupe testified on the commission's difficulty in clarifying and tracking the applicable tax rates for some of these products and having an additional state law that has a different limit in it than what we see in federal law will only increase that confusion in the marketplace. So for that reason, I respectfully oppose LB898. I did work with Senator Lowe and Patrick. As always, I'm very, very thankful for their willingness to sit and listen and to understand as much as they can how they can be a partner with the industry. So with that, I'm happy to take any questions you have.

BRIESE: Thank you for your testimony. Any questions? Senator Groene.

GROENE: So 30-- thank you. So 32 ounces is less than the federal limit.

VANESSA SILKE: Yes

GROENE: Because 1.8 would be--

VANESSA SILKE: 1.8 is if it's not in a metal. If the original package, which when we look in statute, that could mean a lot of different

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

packages, it means in effect that they're sealed. So this would not be the way to-go drinks you get in a Styrofoam cup at a bar. That's different. But 1.8 liters most often ends up being a 1.75 in a plastic jug.

GROENE: What is that-- like, I mean, what, what is it? I mean, is it a margarita or what--

VANESSA SILKE: Yeah, Cuervo usually. That would be the most ready example I've seen recently at a Target. There's Cuervo in the mix of a margarita. It's not what I buy, but that's something on the shelf that has alcohol in it, distilled spirits in it.

GROENE: How big of a container are those?

VANESSA SILKE: Those are 1.75 typically. Anything above that would not qualify as-- would not comply with federal statutes governing distilled spirits packaging.

GROENE: So it just makes it harder for the manufacturer to manufacture if he's going to have one at 32 ounces and one container that matches the federal guidelines.

VANESSA SILKE: Yeah, under federal law, they know if it's metal cans, it's 12 ounces, which is the equivalent of 355 milliliters. And if it's not a metal can, it can be up to 1.8 liters, which in effect, usually is 1.75.

GROENE: Maybe simple, you're saying the way the law is written, everybody just knows it's the federal standards.

VANESSA SILKE: Yes and that's why you see such similar package sizes on the shelves wherever you go. I mean, there are some different state laws and products that, that are allowed, but that really facilitates interstate commerce. It facilitates a lot of what Mr. Rupe talked about on one of his other bills, which is regulatory enforcement and tax collection.

GROENE: So this just adds cost. This bill would add cost to the small manufacturers.

VANESSA SILKE: Cost and confusion. And yeah, to be clear, I don't disagree with Mr. Kohout in saying, you know, the original impetus was-- you know, the idea was canned cocktails and that's typically where this market has gone. But we already have federal regulations

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

that cap this size and provide that, that sounding board or that, that threshold for the commission to know what tax needs to be collected.

GROENE: What is the, what is the most acceptable consumer size right now that people are-- if they're looking for one drink?

VANESSA SILKE: Yeah. Just anecdotally, I would say singles or six packs of those 12-ounce cans are, are most often what you see in the market. But this new tax rate, as long as it's below the ABV in the ready-to-drink cocktails bill, the percent of alcohol in the product, then that lower tax rate from the straight distilled spirits tax rate would apply.

GROENE: So the beer and this mixed drinks are in the same size cans?

VANESSA SILKE: Yes, most often--

GROENE: All right, thank you.

VANESSA SILKE: --at least at this point.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thanks for your testimony.

VANESSA SILKE: Thank you.

BRIESE: Next opponent testifier. Good afternoon and welcome.

JUSTIN BRADY: Chairman Briese and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in opposition to LB898. Jumping to the end of this, what this is is it's a tax increase. It is an increase on products over 36 ounces. So currently, if you have 1.75 liter that fits the definition, you pay a lower tax. If you put in this 36-ounce deal, you will pay a higher tax on everything between 36 ounces and 59.6 ounces, whatever equals the 1.75. That's the effect of what this bill does. As Ms. Silke testified, there is already the cap at the 1.8. I think it's actually 1.8, but most people make their bottles at 1.75 to ensure that they're under that 1.8 federal level. Another question we had was this talks about in its original packaging. Well, if you take a six pack that's in a box, is that its original packaging, which therefore then you would go over the 36 ounces? But do you have to, as-- you know, we don't represent the retail. Do my wholesalers then have to advise retailers they have to break those six packs up so they can then sell them as 12-ounce cans? Again, this is a-- I understand it from the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

beer wholesalers who support this. These are products that typically aren't run through their warehouses and therefore, if there's an increase in one market-- we have finite market for the most part so if there's an increase in one market, there's a decrease somewhere else. And in this case, right now, these seem to be increasing. And so one of the reasons probably is the price point. So if you can increase the tax on part of it, you can help change that competition. And that's actually what I'd say you guys are being asked to do, to pick winners and losers out there to say, well, if you tax this, then you'll help here. The one thing I would add to Ms. Silke's comments, I understand from her standpoint with, with the client she represents. She talked about a lot of them are in 12-ounce cans. From the wholesaler standpoint, the number one sellers that we see are in the 1.75 bottles to go because in essence, if you're going to go to your-- have a party or have somebody come over to your house, you're going to bring one of those and do that. You still have the 12.5 percent alcohol by volume. So if you get into-- some of those are above that and they would be at the higher tax because they don't fit this definition, but those that do, this would be a tax increase on those.

BRIESE: OK, thank you for your testimony. Any questions? Senator Groene.

GROENE: We tax on alcohol content, don't we, not on volume of the container?

JUSTIN BRADY: Well, that was the-- the intent-- no-- was that you're looking at originally-- let's go back-- if I did, if I took Jose Cuervo margarita to go deal, it was looked at as though that's 3.7 or going to be taxed at \$3.75 per gallon because of the alcohol in it, even though 90 percent of it is sugar water at that point, the rest of the margarita, went to a lower tax for those products, recognizing that they aren't all alcohol as opposed to if I got a 1.75 of tequila that is all alc-- so is, is an attempt to recognize that everything in that bottle is not alcohol.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thank you for your testimony.

JUSTIN BRADY: Thank you.

BRIESE: Next opponent testifier. Good afternoon and welcome.

ANSLEY FELLERS: Thank you. Good afternoon and thank you, Chairman Briese and members of the General Affairs Committee. My name is Ansley

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

Fellers, A-n-s-l-e-y F-e-l-l-e-r-s, and I'm here on behalf of the Nebraska Grocery Industry Association, testifying rather briefly in opposition to LB898. First, I want to acknowledge that my members have folks on both sides of this issue and we appreciate Senator Lowe's willingness to work with and talk to all stakeholders. We're opposed to LB898 for the simple reason that it's unnecessary and could result in a tax increase on some of the most popular ready-to-drink cocktail products. Such a change could result in a choices in-- in choices to limit distribution of those products in Nebraska, which is a hit to retailers and ultimately hurts consumers. And I just really briefly want to say to Senator Groene's point, yes, the ABV-- we're taxing based on ABV, not on volume. So you're correct in saying that and I, I just wanted to acknowledge that that's kind of the point that the testifier, the proponent testifier mentioned was there is no difference in a keg of beer versus this. We don't tax the keg of beer differently than we tax a six pack of beer and that was exactly what you just asked. Again, as written, I don't believe and the Nebraska Grocery Industry doesn't believe that this should advance, but we appreciate Senator Lowe's willingness to work with us and I'd be happy to answer any questions.

BRIESE: Thank you for that. Any questions? Seeing none, thank you again.

ANSLEY FELLERS: Thank you.

BRIESE: Next opponent testifier. Seeing none, any neutral testifiers? Welcome and good afternoon.

HOBERT RUPE: Welcome again. Thank you very much. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, Executive Director of Nebraska Liquor Control Commission, and this is one where we actually are in neutral testimony, Senator Wayne. You know, when this issue that there was not a size limit was brought to our attention last year, right around time of Final Reading, you know, everybody was worried, oh my gosh, we're going to see these things in kegs and anything else. And we're like, no, we're not. It's 1.75 is the largest you're going to see. And in fact, I sort of use that-- people had thought our fiscal note was a little bit off last year and it ended up being almost right on because we knew there were categories that would be qualified under this. So from a proponent standpoint, I would at least put in, you know, this is one of the-- another reason why we need LB1231 because this is going to make it even more complex if this bill passes. But other than that, I'd be happy to answer any questions. And just to clarify, traditionally, we've always taxed on the source of the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

alcohol. You're absolutely right, Senator Groene. This was the one time when the decision was made to tack-- to put ABV in because as these were a growing market share, we actually had some in-state manufacturers who weren't distrib-- who were making it in Nebraska and then they weren't selling it in Nebraska because of our tax rate. They were selling in Iowa and other states because it was taxed at a more reasonable rate. When this bill came up last year, it went up to 12.5 or lower and more importantly, it wasn't lowered all the way down to the beer tax. It was lowered down similar to the wine tax, so-- at 95 cents. So beer is still cheap. It's still taxed at a lower rate than these products, so just for education/clarification. I'd be happy to answer any questions.

BRIESE: Thank, thanks for your testimony. Any questions? Senator Groene.

GROENE: So 32 ounces or 1.75 liters, whatever that is, you know, 70 or so ounces of whatever, it's going to get taxed the same rate, right?

HOBERT RUPE: No.

GROENE: Isn't that the same amount of alcohol in it?

HOBERT RUPE: No, you would have-- hypothetically, you would have the same exact product-- let's just use a pre-made Moscow mule. And if you were to sell that same product-- and oftentimes you'll see them in 12-ounce cans. I've also seen a lot of them as 16- or 20-ounce bottles, the glass bottles. That's one reason why those are in glass and not cans. Those would still be taxed at the rate here because they would be under 32 ounces. If you were to take that same exact product and put it into a 1.75 so I could take it to parties, you're, you're mixer in it, that alcohol-- that product, under-- if this were to pass, would be taxed at \$3.75 a gallon, not 95 cents a gallon. So the same exact product could be taxed at two different rates, simply based upon what size of package it's in.

GROENE: And we passed the law to make sure it matched the federal?

HOBERT RUPE: Well--

GROENE: Originally. Right now, the way it is, there wouldn't be that confusion, right?

HOBERT RUPE: Originally, we-- there is no specific statute to follow the federal law. We just default to the federal law. If this were to be-- to amend to follow the federal law, I think that would be

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

clearer. Traditionally, there's actually is a statute in the Liquor Control Act that when practicable, the commission should be consistent with federal laws, primarily to avoid these type of interstate commerce problems.

GROENE: So you testifying pro or--

HOBERT RUPE: I'm testifying neutral. How-- I can do it however you guys want to do it. I'm just giving you the history on that. You asked me a question and if this bill were to pass, how would we implement it? And we would have to have two separate tax rates for the exact same product, depending upon what package it was in.

GROENE: Thank you.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thank you again for your testimony. Any other neutral testifiers? Seeing none, Senator Lowe, do you care to close? Welcome again.

LOWE: Thank you and I'm just here to say we'll-- we're listening and we're willing to work to get this so it's a little more clear for everybody so everybody kind of understands it. And Senator Groene, it was last year's bill that was, was called the canned cocktail bill and, and so everybody just kind of assumed it was going to be canned. So that's, that's where that came from and so now we're just asking for more clarity and that's, that's why I brought LB898. With that, I close.

BRIESE: Thank you, Senator Lowe. Any questions? Seeing none, thank you again, Senator Lowe. And LB898, we have letters for the record, one opposition letter from Mr. Barry Fox, and that will close the hearing on LB899. We'll open the hear-- excuse me, LB898. We will open the hearing on LB899. Senator Lowe.

LOWE: Chairman Briese and members of the General Affairs Committee, my name is John Lowe. That's J-o-h-n L-o-w-e and I represent District 30, which-- 37, which is still Kearney, Gibbon, and Shelton. Today I'm bringing LB899, which once again deals with the issue of special designated liquor licenses, or SDLs. This is the fourth and I believe the final bill that I will be bringing to address some issues I have found with the current special designated liquor license process. LB899 deals with SDLs for the entities who do not have liquor licenses. The primary benefactors of this legislation will be municipal corporations, fine art museums, political organizations, religious organizations, and other nonprofit organizations whose

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

purpose is fraternal and charitable or public service. All of these entities are currently allowed to receive an SDL, but they must apply for a new SDL each-- for each and every event that they hold. This bill simply will allow any of these entities to submit one application in order to have up to six SDLs in a calendar year as long as the entity is having an event at the same physical location. This approach is very similar to what we have approved last year for farm wineries, breweries, and microdistilleries at farmer's markets. LB899 does not grant any new permissions or responsibilities to an SDL applicant. LB899 simply removes the redundant steps and red tape in order to streamline the process for the applicant and reduce the burden on the Liquor Control Commission. With that, I'd be happy to answer any questions.

BRIESE: Thank you, Senator Lowe. Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Senator Lowe, for bringing this bill. Today, these entities can get six SDLs, but they have to submit six times, is that correct?

LOWE: That's correct.

BRANDT: And so the bill simply says that a improvement association or art society or somebody could just send in one permit with all six dates on it?

LOWE: As long as it is in the same location.

BRANDT: So-- but they would have to know all six of those dates with the first permit, would that be correct?

LOWE: Yes.

BRANDT: OK, thank you.

BRIESE: Thank you, Senator Brandt. Senator Brewer, did I see you have a question?

BREWER: Well, let's just go back a second and clarify. So give me an example of, of, say in Kearney, where this might be used.

LOWE: Let's do MONA, the Museum of Nebraska Art.

BREWER: Right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

LOWE: They have functions there on occasion. They have SPIRIT, which is a big occasion, which is their big fundraiser. They also hold other events there and so at the beginning of the year, they can say, OK, on February 5, we're doing this event, on July 12, we're doing this event, and on August 14, we're doing this event. Make one application for those three days instead of applying each and every time to the Liquor Control Commission and-- because SDLs occupy quite a bit of time at the Liquor Control Commission. So by then narrowing it down to just one time instead of those three times, it, it helps them.

BREWER: Good job. Thank you.

BRIESE: Senator Groene.

GROENE: So this is only if they charge for alcohol? I mean, if it's just a function where it's wine and cheese, which art museums have, if they have wine there--

LOWE: If it--

GROENE: --they would have to--

LOWE: If it's open to the public, they have to apply for a liquor license.

GROENE: Even though it's part of the function, the fundraiser?

LOWE: Yeah.

GROENE: Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Seeing none, thank you for that--

LOWE: Thank you.

BRIESE: --Senator Lowe. First proponent testifier. Seeing no proponents, first opponent testifier. Good afternoon and welcome.

CHRIS WAGNER: Good afternoon, Chairman Briese and members of the committee. My name is Chris Wagner and I'm here representing Project Extra Mile, a network of community partnerships working in Nebraska to prevent and reduce alcohol-related harms. I just want to make sure to be clear that we're not in opposition to the ability of these organizations to put multiple days on their applications. We are in opposition to the fact that those daily fees after the initial

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

application would be reduced from \$40 to \$10. And really the, the bill in itself, especially that purpose, that, that provision, it really goes against the scientific recommendations to reduce availability of alcohol to prevent alcohol-related harms in communities and I've included an attachment with my testimony. By reducing the fees for tax-exempt organizations, the bill would encourage the proliferation of these events, thereby increasing the availability of alcohol in communities across the state. And while I don't have a specific example with regard to these temporary licenses to, to point out, what we know from alcohol, you know, in our field is the cheaper you make something, the more likely people are to consume it, at least in terms of alcohol. And so I would argue also with the number of liquor license applications that the commission gets, the lower the application fee, the more, the more applications you're going to receive. Second, these events are oftentimes focused on using alcohol as a fundraising tool, which was already mentioned, and that can lead to illegal sales, both to minors and intoxicated individuals. Third, tax-exempt organizations often use volunteers to run their events. These individuals have little or no training on the Liquor Control Act and those volunteers are often drinking as they work. As a result, these, these events can carry a higher risk of these illegal sales. There was a 2008 study done in the Omaha area and found that the average length of an SDL event run by a tax-exempt organization was seven and a half hours. And it's really hard to imagine that, that this or-- these organizations wouldn't be able to cover that extra \$30 in terms of the daily fee with over seven hours of alcohol sales on the horizon. The commission has long recognized the importance of responsible beverage server training and has frequently asked the Legislature to require license holders to complete a mandatory training program to protect public health and safety. And at a minimum, we would ask that the committee require the applicant to complete a certified training course before they're eligible for the reduced rate.

WAYNE: Thank you.

CHRIS WAGNER: Thank you.

WAYNE: Any questions from the committee? Senator Groene, followed by Senator Brewer.

GROENE: I'm still trying to clarify this. This is retail-- they sell this or they-- it's complimentary alcohol to whoever shows up?

CHRIS WAGNER: These-- many of these events are sales.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Sales.

CHRIS WAGNER: It's used as a fundraising tool.

GROENE: So I don't know if you're the right person to ask. So we get lobbies around here that have a party every night.

CHRIS WAGNER: Sure, sure.

GROENE: There's a bar. Are they getting one of these permits every time they have this wet bar?

CHRIS WAGNER: That you would need to ask Mr. Rupe with the Liquor Control Commission.

GROENE: I mean, I'm trying to figure out the difference between somebody having a wedding reception or somebody doing this or-- somebody needs to explain this to me. Thank you.

CHRIS WAGNER: Sure.

WAYNE: Senator Brewer.

BREWER: All right, I agree with you on the \$40. I think that's probably not unreasonable if you're going to have an event. My concern would come in where this could possibly be twisted to be something that might not be so good. Example being if you wanted to say I'm going to have an art powwow in downtown Whiteclay, I could see how this might spool into a mess real quick. But ultimately the Liquor Commission blesses off on whether this happens or not, right?

CHRIS WAGNER: Correct. The Liquor Control Commission largely follows the recommendations of the local governing body.

BREWER: OK. All right, thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here today.

CHRIS WAGNER: Thank you.

WAYNE: Are we on opponents?

_____ : Yeah.

WAYNE: Any other opponents? Any other opponents?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Go ahead and finish it out.

WAYNE: Anybody testifying in a neutral capacity? First question will be Senator Groene.

HOBERT RUPE: Yeah. Thank you, Senator Wayne. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, Executive Director of the Nebraska Liquor Control Commission. And because they're as clear as mud, I'll give you the brief synopsis of how an SDL works. OK an SDL can be, can be acquired by two general large categories; either an existing licensee who has a retail license or farm winery/craft brewery/craft distillery or certain nonprofits. In this case, nonprofits could be churches, museums, political committees, and those are the ones that this bill would, would, would go for. OK. The thousand-dollar question is when is an SDL required? It's pretty easy for me to tell you if you tell me exactly what's going on whether you need one or not, but generally is if there's ever any sale of alcohol. If-- you know, that can also be if it's a one-time fee you're buying in to, to go there. So if they're actually selling your alcohol, an SDL is required. The other time a special designated license is required is if the locate-- if the event is open to the public. So for instance, if I'm doing a private party and inviting people over to my own home or to even a rental hall which I rent and it just only my invited guests, a liquor license would not be required unless I'm selling it, in which case even a private party and if I'm selling it would be required. So wedding receptions are the 800-pound problem for us. When is an open-- when is it open to the public? When is it not? When is it required? We always defer that if in doubt, you should probably get an SDL because most places which are going to be doing wedding receptions, especially if their caterer involve-- actually most of the halls actually have licenses themselves or they're using licensed caterers who will get the SDL because oftentimes their liability insurance is going to be predicated upon them doing business with the SDL, which is, which is the ability for that. So one of the big users that I would see in this case here we're getting ready to come up on would be the Catholic churches. Catholic churches pull SDLs every year for the fish fries. Instead of doing six different applications for every Friday, in this case here, they would do one application to cover all of it. So that's-- and so the-- this bill is targeted at one of the lowest number of users for SDLs. Most of them come through licensees, but they're also one of the ones we normally have more problems with because they're not, they're not used to filing or making reports. We've got to walk them through the application process a lot more than we do somebody who, say, is a catering business who files hundreds of these over a year, over a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

year. So with that, I'd be happy answering questions regarding how the SDL process works and how this proposed bill would affect it.

WAYNE: Senator Brewer.

BREWER: Thank you, Mr. Vice Chair, standing-- all right, so-- well, I'm a little troubled by this. If we kind of go back to the conversation previously I had, so I have "Tom's Church of God and Guns" and I decide to--

HOBERT RUPE: I'd probably be a member of that, by the way.

BREWER: --all right-- and I decide to have an event-- OK, so I'm not, I'm not a bar. I'm not a-- I'm in a-- I'm a church in my own mind and I want to have an event. If I want to have an SDL, I could do that.

HOBERT RUPE: No.

BREWER: OK.

HOBERT RUPE: Because given your description, you would not meet the requirements of a nonprofit. And one of the things you would have to apply is your, your-- the showing that you were excluded from paying federal taxes from the federal government because you got to remember these are only applicable to nonprofits doing it, so not businesses. So given the fact that you're declaring your own religion, if you don't have the appropriate forms from the Feds to show that you're-- that you don't have to pay federal taxes, you wouldn't be able to get one of these.

BREWER: So if I'm a 501(c)(3)--

HOBERT RUPE: Yes.

BREWER: --and it's "Tom's Guns and God"--

HOBERT RUPE: Yes.

BREWER: --then I could have an event.

HOBERT RUPE: You could have an event. You could-- you would file an event and you file an event on our website. We have a line there. The key thing that people forget about SDLs, SDLs have got to be approved by both the local governing body and by the commission.

BREWER: Bingo. That's where I'm going with this.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

HOBERT RUPE: They don't make a recommendation. If the city decides to say no, you're done. We don't even deal with it.

BREWER: OK. What if you have an unincorporated community like Whiteclay?

HOBERT RUPE: The county.

BREWER: County goes?

HOBERT RUPE: County goes.

BREWER: I know what the county is going to say. All right, thank you.

HOBERT RUPE: Yep.

WAYNE: Any other-- Senator Groene.

GROENE: So next year the University of Nebraska decides to have alcohol at the games. Seven home games times 40-- \$40 plus 60-- \$100, they're in the business?

HOBERT RUPE: I would recommend-- I would probably say, given what they're going to be doing, they could do it through an SDL. They did utilize an SDL this year for the Garth Brooks concert, for example. Most of the places which they would be going to allow alcohol are already permanently licensed. For instance, both Haymarket Park and Pinnacle Bank have permanent liquor licenses held by the vendors. They're just not used whenever the tenant is the Nebraska-- University of Nebraska. I would anticipate-- I mean, I'm not, I'm not even going to even anticipate. I mean, there's a way to do it, but I would anticipate, given the past history, they would probably receive a permanent liquor license, a retail license.

GROENE: Thank you.

WAYNE: Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Wayne. Thank you for being here, Mr. Rupe. So you said-- so they-- this is attempting to address kind of a logistical question for the commission. That's what it sounds like.

HOBERT RUPE: You know, this is-- I think this is probably going to be-- benefit the actual nonprofits more than us. You know, I have two staff members who primarily their job duty is to process SDLs. Will this probably take some, some of, some of them off of them? Yes. And

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

more importantly, we only have to talk it through once instead of six times to do it right, so.

J. CAVANAUGH: That was going to be my next question. So these people need a little bit more hand-holding--

HOBERT RUPE: Yeah.

J. CAVANAUGH: --and, you know, you said fish fries, which I always think about fish fries so-- Our Lady of Lourdes is in my district and I frequent that fish fry. They would apply, call, get advice, and then still screw up the second one?

HOBERT RUPE: No. What they would do is when they're doing an application, if something flags up on their application, my staff would reach out to them and clarify the issue. For instance, it might be as simple as they're-- they, they don't have the tax documentation attached. So we would contact them, say, hey, you need to upload your, you know, the form, whatever the Feds give you for the 501(c)(3) or church. So what they would do is, in this case here, they would have to identify the dates where they're going to be talking about, which is one reason I used the fish fry as an example. Those are going to be specific dates. They know about them. It's not somebody coming in at the last minute and wanting to do an event, which case then so long as they haven't gone over their allot per year, they could just do a normal application. This is just going to sort of allow them-- say a place which does a quarterly fundraiser. They could apply for that quarterly fundraiser in January and cover the whole year instead of having to do four applications. That made a difference from us, in which case, then, you know, we're only really processing one application instead of four.

J. CAVANAUGH: And well, because it's more cumbersome, would you say that the commission will save, save resources by doing this then?

HOBERT RUPE: It's hypothetical. You know, the problem when we looked at the fiscal note on this one here is-- and I hate to use this, because everybody uses it as an excuse with us-- with COVID, it threw off our numbers on SDLs completely. You know, the numbers for 2020 were just, you know, you know, minor. And so they, then they, they started coming back. They came back in waves that we hadn't seen before as more people were trying to go out there. Would it be easier for my staff to process them? Yes. Are we going to realize a large amount of savings? No, but in this case here, it's going to be

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

nonprofits and it's going to be-- and still the application would have to be approved by the local governing body.

J. CAVANAUGH: That was going to be my next question. Is there-- so their process through going through the Omaha City Council, is that going to be different? Is the city council going to have to change their process?

HOBERT RUPE: They might only have to show up once instead of six times.

J. CAVANAUGH: And for these sorts of things, places that have apply-- that get these multiple ones, do you ever see where three of them get approved and one gets denied in a year? Has that happened?

HOBERT RUPE: Generally, the only time-- very rarely. SDLs are very rarely denied. The-- in fact, if you go back almost 15 years were the last time where we had a big bunch of them. That would be the Comstock issues out in central Nebraska where we had a bunch of alcohol violations by a quote nonprofit, in this case, the Windmill Appreciation Society. I think that was their actual name. They were a 501(c)(3) and when they brought that back a couple of years ago, they decided to outsource actual licensees, vendors and the problems went down. So that was a combination of the size. I mean, it was a huge event, rookies-- no offense-- you know, I mean, you know, amateurs instead of professionals involved in the alcohol sales. That was one of the times recently. And this-- and the county never denied it. We denied them because we did some hearings on it. Most times, if there is a, say, sell to a minor, the vast-- remember, the vast majority of SDLs are held by licensees. It's been the policy of the commission for 20-plus years that if you sell to a minor-- if I'm a license-- if I'm a bar and I go to a-- and cater an event and I sell a minor, my license is still on the hook and so that license could still be suspended, canceled, or revoked. We do look a little bit closer at nonprofits because there is not that hammer and so we would look very closely about whether there's been a history of violations or just a one-off or-- that could be handled. I mean, often-- so some of your nonprofits, you know, actually do utilize alcohol server training, for instance, downtown in Lincoln. I mean, it's part of the requirements to get one from Lincoln. You've got to have that your servers have passed a certified course. So they could put those things on it.

J. CAVANAUGH: Thank you.

WAYNE: Senator Brewer. Senator Groene.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BREWER: Did you get us mixed up?

WAYNE: No, I was just thinking about that violation and windmills.

GROENE: So--

WAYNE: Senator Groene.

GROENE: So the local rural fire department throws on a smoker or something. They would have to get one, right?

HOBERT RUPE: If they are selling alcohol or if it's open to the public in the consumption, they would have to. The other issue which comes into play is that if you're a-- if it was a property owned by a government subdivision, city, county, NRD, they have to have-- you have to have the promotion of the-- the authority over that to actually allow consumption.

GROENE: Well, the fire department would have it in their--

HOBERT RUPE: Yeah.

GROENE: So--

HOBERT RUPE: We get a lot of volunteer fire departments who do chili cook-offs, that kind of stuff and they have beer.

GROENE: Is this widely known? Does it happen? Do you ever catch anybody doing it without an-- without the permit?

HOBERT RUPE: Generally, what will happen is we'll get word of beforehand. We will send-- give them a nice little call and get them into compliance.

GROENE: How do you know about it? You got investigators all over the place?

HOBERT RUPE: I do have-- there are Nebraska State Patrols in each trooper area and if they get a complaint or they see it, they will look it up. And if they don't have a license, if there's enough time, we try to get them into compliance.

GROENE: So if they see a flier in a cafe that they're going to have a smoker, a State Patrol will want to check that out.

HOBERT RUPE: Yeah, they will-- often they'll check it out and see if there's, if there's been an SDL for it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Thank you.

WAYNE: Any other questions from the committee? Seeing none, thank you for being here.

HOBERT RUPE: Thank you. Sorry to bore you all with SDLs 101.

WAYNE: Any other neutral testifiers? Senator Lowe, you want to close? And for the letter of support, city of Omaha, Jack Cheloha, and two opponents, Quentin Jones [PHONETIC] and James Boucher, B-o-u-c-h-e-r.

LOWE: Thank you very much for allowing me to bring LB899. The reason why we have \$40 the first time and \$10 for those afterwards, basically, the Liquor Commission isn't-- it's supposed to cover costs and it doesn't cost that much more to add the other time periods on to the original \$40 that was put there. And this does it for my SDL presentations.

WAYNE: Any questions from the committee? Seeing none, that will close the hearing on LB899. I'll turn it back over to Chairman.

BRIESE: OK. Thank you, Chairman Wayne, for that. Next up, we'll open on, we'll open the hearing on LB900. Senator Lowe, welcome again.

LOWE: Thank you, Chairman Briese and members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e and now I am from Gibbon, Shelton, and Kearney. I'm here to open today on LB900. This bill expands the number of tasting rooms a microdistillery can have in Nebraska. The number goes from one to five. The rationale behind this bill is quite simple. We already allow breweries in Nebraska to operate five tasting rooms. This has allowed many breweries to expand and grow our state. I believe it is time for the same opportunities for microdistilleries because we have seen how this expansion has benefited numerous small businesses. Anyone who has worked with me in my time here knows that I like to take an incremental approach. I like to make small change and then sit back and see if that change works or not. Expanding from five-- one location to five locations for breweries has worked and has benefited numerous communities. I now want to take that same approach with microdistilleries. And with that, I will answer any questions.

BRIESE: Thank you for your open, Senator Lowe. Any questions for the senator? Seeing none, thank you. First proponent testifier. Good afternoon and welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

CODY SCHMICK: Thanks. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Cody Schmick, C-o-d-y S-c-h-m-i-c-k. I am here today to show my support of LB900. Thank you for your time and listening today. I'm in a, I'm in a unique situation because I'm one of the managing partners at Kinkaider Brewing. We have locations in Broken Bow, Grand Island, Lincoln and most recently, Omaha. But I'm also a managing partner in a startup and sister company to Kinkaider called Sideshow Spirits. We are Lincoln, Nebraska's, first-ever legal distillery. I didn't say first. I said the first legal distillery, so Sideshow Spirits is a craft distillery in downtown Lincoln and we are in an 11,000-square foot facility that we are mainly focused on bourbon, but also producing whiskey, vodka, rum, cider, and canned cocktails. At this location, we employ approximately 12 to 15 full-time people. Our business model has been to utilize the five-taproom exception that allows my company to move tax-paid beer and cider legally between our locations as an incentive to grow our company to more cities and more locations. It has worked well for us, as we are the first brewery in the state to currently max out that five-license rule. Many other breweries are using this to grow their business and opening taprooms in other locations, bringing jobs and culture to wherever they land. To break it down a bit more, if you're unfamiliar with the law, it basically allows for us to move that tax-paid beer between licenses without a distributor as long as the ownership structure is identical at each license location. We're asking LB900 to catch up the craft distilling industry with the craft beer industry and align that five-taproom law. We currently have created a full-time delivery job in our company, moving beer between our locations in Omaha, Lincoln, Grand Island, and home base in Broken Bow. But even though we are paying for a truck, insurance, upkeep, and labor to get Jared [PHONETIC], our driver, and his truck between our locations to deliver beer and cider, we cannot utilize this already paid transport for our spirits and canned cocktails. In closing, I would ask that you would please consider moving LB900 forward to help the craft distilling industry, as it's much more in its infancy stage than craft brewing. We're taking a big bet on it. Me and my partners have put a ton of money, time, and effort into making craft distilling a bigger thing here in Nebraska and we would love your help and I would be glad to answer any questions that you may have.

BRIESE: Thank you for your testimony. Any questions? Senator Groene.

GROENE: Thank you, Chair. This would be the same five facilities?

CODY SCHMICK: So at first, we would definitely use it as the same five facilities. We would go back to our-- our production facility is

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

separate and we would go back to four of our Kinkaiders locations today. In the future, depending on how the spirits sales go at those locations because those are mostly focused on beer, we may take those license away from that Kinkaiders if, say, the spirits are underperforming and open a Sideshow Spirits location two somewhere else.

GROENE: So now you can transport-- Broken Bow is where your, your--

CODY SCHMICK: Broken Bow is where our production facility for the beer is. Our production facility in Lincoln is where the spirits are and it is one of our Kinkaiders locations.

GROENE: What you're saying is you can transport yourself the beer to the other four locations.

CODY SCHMICK: Yes.

GROENE: But you would have to-- you could sell your product in your other four locations, your hard liquor, but you'd have to do it through a--

CODY SCHMICK: A distributor.

GROENE: --a distributor and then you would buy--

CODY SCHMICK: Currently, that's what we're doing.

GROENE: --it right back from them.

CODY SCHMICK: Yes, sir. Yeah, so I have to put on my Sideshow hat, sell the distributor, put on my Kinkaiders hat and buy it back.

GROENE: And then you sell your brand--

CODY SCHMICK: Yes.

GROENE: --in your own bar.

CODY SCHMICK: Yep.

GROENE: All right, thank you.

BRIESE: Thank you, Senator Groene. Senator Brewer.

BREWER: OK. So you're-- the brewery part of it is headquartered out of Broken Bow.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

CODY SCHMICK: Yes, sir.

BREWER: Who's your senator?

CODY SCHMICK: Who is it? Williams, that's right. I should know that, sorry. Put me on the spot.

BREWER: You're killing us.

CODY SCHMICK: Matt Williams has been given to us, by the way. I just-- a little nervous up here, sorry.

BREWER: Actually, I'm, I'm your senator now.

CODY SCHMICK: Oh, you are.

BREWER: Test question. You failed it, Mr. Schmick.

CODY SCHMICK: OK, so just to be fair, I actually don't live in Broken Bow. I live in Lincoln, so.

BREWER: All right.

CODY SCHMICK: My partners live in Broken Bow and I'm sure they voted for you.

BREWER: Wow. Nice, nice cover. OK. The distillery part of it that's here in Lincoln--

CODY SCHMICK: Yes, sir.

BREWER: --where is it located?

CODY SCHMICK: It's downtown Lincoln--

BREWER: It's downtown.

CODY SCHMICK: --at 16th and P. Yes, sir.

BREWER: And that's, that's where you do all the mashing and, and--

CODY SCHMICK: Yep.

BREWER: --processing and everything.

CODY SCHMICK: Yeah, it's a production facility here, but we also overlaid it. It is our fifth Kinkaidier location, so I know it's a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

little confusing, but we wanted the ability to move that beer into that location as well as we do have a bar there as well, so, yeah.

BREWER: OK. I'll have to come by and check it out. Thank you.

CODY SCHMICK: Yeah, please do.

BRIESE: Thank you, Senator Brewer. Any other questions? Seeing none, thanks for your testimony. Next proponent testifier. Good afternoon and welcome.

LAURA EBKE: Thank you, Chairman Briese and members of the committee. My name is Laura Ebke. That's L-a-u-r-a E-b-k-e. I am the senior fellow at the Platte Institute and I'm here in support of LB900. We thank Senator Lowe for introducing it. At Platte, we've long had the goal of encouraging individuals, entrepreneurs, and small businesses as they work to grow our state's economy. Many of our efforts have been focused on pointing out the barriers that government sometimes erects, which hinders growth and opportunity. We all know that the craft breweries have popped up all over Nebraska in the last decade or so. Many of those businesses built up a loyal following and in 2016, this Legislature passed LB1105, which expanded the number of locations, tasting rooms if you will, that a craft brewery could operate under one liquor license. Today, microdistilleries are growing in number around the state, as you've already heard, entrepreneurial small businesses that are trying to provide products and services that their fellow Nebraskans desire. The bill at-- this bill is parallel to 2016's LB1105 for craft brewers in that it would simply apply the same rules regarding up to five separate locations for the microdistillery. This is a reasonable modification to statute found in Chapter 53, which allows these small businesses to expand their offerings modestly in different locations. We encourage the advancement of LB900 to General File or that it be made part of a larger committee priority bill. Any questions?

BRIESE: Thank you for that. Any questions? Seeing none, thank you again.

LAURA EBKE: Thank you.

BRIESE: Next proponent testifier. Good afternoon and welcome.

VANESSA SILKE: Good afternoon. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm an attorney and the registered lobbyist for Kinkaidier doing business as Sideshow spirits. I work with Mr. Schmick, who did

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

testify earlier. And Senator Brewer, I apologize. That was my bad in shouting out Senator Williams to him, so my bad.

BREWER: That's OK. [INAUDIBLE]

VANESSA SILKE: So I've worked with Kinkaider Brewing Company as a member of the Nebraska Craft Brewers Guild and Ms. Ebke just referred to 2016, LB1105. I was a part of negotiating that bill. It was a massive step forward for the craft beer industry in Nebraska and we're looking for those same opportunities for the distillery industry here in Nebraska as well. And just to clarify a couple of things and then I'll answer any legal questions that you may have, this does not expand any other rights for distilleries beyond what the craft breweries have. So, for example, when Mr. Schmick and Kinkaider went to get those additional locations, they were still subject to a full application process and local zoning authority approval and approval by the commission before they could actually get those satellite locations up and running. So there's still significant regulatory control over those locations. The same would apply here. I also had a couple of background questions of will this-- does this give them ten locations? Well, it's only five for each license. So for their distillery, as Mr. Schmick noted, they're located-- the, the, the main distillery is here in Lincoln. As they add locations, they can overlap with their existing beer locations or add five different ones. But the right of direct distribution under the distillery license is tied to those-- only those five and they've got to notify the commission of that. So it could be five of beer, five of distilleries or they could have five overlap or some other version of a Venn diagram there. But in any event, their direct distribution rights would be tied only to the five locations identified as satellites for that license. I think that covers all the points that I had. Any of the other legal issues that have come up in the past have been resolved and the commission is-- you know, Hobie-- Mr. Rupe is here to speak for himself, but we've had a great relationship with the commission in expanding a number of businesses under the craft brewery law and we anticipate the same success and ask that you pass this bill as well. Last piece is I will thank you all for helping pass the increase in the production cap for microdistilleries in Nebraska. Until last year, 10,000 gallons per year was our limit and that was the lowest limit in the entire country. In fact, we had another distillery that had to stop production because of a statutory cap on production that had been there for 20 years for no reason at all. So now they're at 100,000 gallons per year. We're somewhere towards the middle. And as these businesses grow, as Mr. Schmick noted, having these five locations is

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

going to be a key for economic development throughout Nebraska. So with that, happy to answer any questions.

BRIESE: Very good. Thank, thank you for that. Any questions? Senator Groene.

GROENE: So has there been any consideration for the smaller distilleries that they could have five partnerships? Let's say they're in a small town and they have the bar in town that they could be a, a-- some kind of a partnership that their product could be sold there because you said-- I heard it said you have to own it.

VANESSA SILKE: Yes.

GROENE: They have to own the bar.

VANESSA SILKE: Yep. So that's been a long-time condition of being able to call these additional locations satellite locations. They have to have common ownership. And in that way, we're distinguishing between, you know, just as you're noting, you know, grouping up with local bars and grocery stores and everything else in, in the area. To be clear, we do have other bills where we want the right-- affirmative right of self-distribution, which is a different concept from having satellite locations. When you have a satellite location approved by the commission on those conditions that it be held identically as your other locations, you're in effect expanding your licensed premises that you are solely responsible for under the Liquor Control Act. And so that is, and Mr. Rupe can expand on these, one of those policy reasons why we do require that unified ownership among the satellite locations.

GROENE: If I remember right, was it with the hard liquor that you can only, you can only sell locally or use locally a certain percentage of your production? The rest has to be--

VANESSA SILKE: That's for farm wineries. There's a statutory requirement of a certain percentage of their product that must come from Nebraska-grown inputs. That actually does not apply to the distilleries.

GROENE: But it's not production so Kinkaidler could sell 100 percent of their production through their five units if they wanted to.

VANESSA SILKE: On the beer side and the distillery side, yes, if they chose.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Both sides.

VANESSA SILKE: Yes, but they do distribute in a number of grocery stores and bars throughout the state on their beer side.

GROENE: To a distributor.

VANESSA SILKE: Yeah.

GROENE: Thank you.

BRANDT: Thank you, Senator Groene. Any other questions? Seeing none, thanks for your testimony.

VANESSA SILKE: Thank you.

BRIESE: Any other proponent testifiers? Seeing none, any opponent testifiers? Seeing none, any neutral testifiers? Welcome again.

HOBERT RUPE: Thank you, Chairman Briese, members of the General Affairs Committee. My name-- once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, Executive Director of the Nebraska Liquor Control Commission. I guess I'd be happy to answer any questions. The, the main issue and I think it was brought up when we did it for the craft breweries was it didn't seem to a lot of sense that you had to sell your product to someone else and buy it back from you, so-- but there were some limitations on that and so that's why they went there. The key thing to remember is that when we originally drafted the Class Z, which is the license type which is the craft distillery, that law was copied from-- almost exactly from the craft brewery law as existed at the time. The craft brewery law has now changed and evolved primarily through the changes discussed here. And so in a lot of ways, this is just catching it back up for a regulatory scheme. Just so everybody knows, we currently have 13 licensed distilleries in Nebraska and although Sideshow sort of threw in at the last, it looks like he's our number one person on ready-to-drink cocktails, by, by volume. The other ones are-- you know, some are small or some are bigger, but we have 13 currently, as opposed to 70 craft breweries that either are fully licensed or are currently in development. So I'd be happy to answer any questions on just mechanics of how the beer taxation works.

BRIESE: OK. Thank you. Any questions? Seeing none, thank you again for your testimony. Any other neutral testifiers on LB900? Seeing none, Senator Lowe, would you care to close? On LB900, we have one proponent or one letter in support from Barry Fox. Welcome again. I think I see Senator Lowe waive closing. At this point, well, we're going to close

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

the hearing on LB900. We're going to open the hearing on LB1235, LB1236. We're going to have essentially a joint hearing. Senator Lowe, you'll open on both at the same time, correct?

LOWE: At the same time, yes.

BRIESE: And then you can choose to testify, I guess, whenever you want, but indicate for the record what you support, what you oppose when you do testify so we can make sure that's included in our committee statement and included in the record; what you, what you are testifying in support of, what you're testifying in opposition to, or none of the above if you're neutral, but we'll try to make that clear anyway for our record. And with that, Senator Lowe, please feel free to open on LB1235 and LB1236.

LOWE: Thank you, Chairman Briese and the General Affairs Committee. My name is still John Lowe. That J-o-h-n L-o-w-e and I represent District 37, which is now Shelton, Gibbon, and Kearney. Today, I'm happy to introduce two pieces of legislation, LB1235 and LB1236. I know that opening on two bills in the same hearing is not the normal procedure, but given the concept of these two bills, it makes a lot of sense and I want to thank Chairman Briese and the committee staff for helping me make this possible today. I will get into the details of these two bills in a moment, but before I do, I want to give you some background. First, I want to talk about why supporting craft breweries in Nebraska is so important. Craft breweries are everywhere in Nebraska. I believe each member of this committee has at least one brewery in their district. I would not be surprised if all 49 state senators have a brewery in or very near their district. Senator Brewer, I'm glad you have a brewery now in your district since redistricting and-- no, I guess you had one before too, didn't you? Yeah. And I don't think the--

BREWER: Bootlegger.

LOWE: Yeah, Bootlegger. And I don't think that they-- that, that Kinkaiders probably voted for you the last time--

BREWER: That's OK.

LOWE: --because they probably voted for Williams because we moved you. These are small businesses that create jobs for people throughout our state. Many of them also serve as foundations for these communities. They help create vibrant areas where other business open up and they serve as a tourism hotspot, bringing in visitors that help benefit

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

those communities and the state as a whole. Craft breweries are an important part of our state's economy and I believe it is important to work with these businesses to help them grow and thrive. Last year was an interim study produced by this committee to take a look at alcohol-related issues. There was no official hearing for that interim study, but there were ample conversations held. One of the areas of concern that came up was a nanobrewery license of some kind. This was brought up because smaller and often newer breweries were running into some challenges with getting access to the, to the distribution tier. This is a major problem for these breweries so the Liquor Control, Control Commission asked that the Legislature look into these nanobrewery license of some kind. In recent weeks, I've had ample conversations with concerned businesses because of the challenges created by the COVID panic-- pandemic. These conversations and the comments from the Liquor Control Commission are why I'm bringing both LB1235 and LB1236. Both of these bills look at addressing the challenges I just described, but each bill looks at fixing these problems in a slightly different way. LB1235 is very narrowly drafted piece of legislation to help new nanobreweries grow. LB1235 will allow the brewery making less than 500 barrels of beer to have limited self-distribution rights to entities with a retail license. This would be done by granting the brewery a Nebraska beer wholesale license. There are, however, restrictions on this. The brewery must not have entered into a distribution agreement with a licensed Nebraska wholesaler and they must agree to only sell products that the brewery themselves produce. Only employees of the brewery may distribute the beer and they must use a vehicle solely owned by the brewery. It limits their ability to produce, self-distribute, and be a retailer. This would place craft breweries in the same place as Nebraska fire-- farm wineries, meaning the brewer could self-distribute so long as they don't have retail rights. The brewery cannot produce more than 500 barrels of beer. If they do so, they will be allowed to finish the calendar year, but going forward, they would lose their self-distribution rights and must distribute through a wholesaler. They've grown to be of some size and that just makes sense. This limited self-distribution would be beneficial to new breweries by removing barriers to entry for a new business and creating a pathway for fast growth for these small breweries that already exist. Wholesalers will benefit from this because it has potential to bring more breweries into Nebraska and thus over a short period of time, creating new clients for them. Now, LB1236 looks at these same problems, but addresses it differently. This idea would allow craft breweries in Nebraska to have the option to limit self-distribution. Right now, the bill does not specify how much beer a brewery would be

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

allowed to self-distribute. The concept here is that, quite simply, there are instances where it makes sense for a craft brewery to have some kind of limited self-distribution. There are numerous letters that have been submitted that explain why these businesses are seeing-- what these businesses are seeing and when they may advantage-- advantage of these-- this, this new right. If the committee decides to move forward with this bill, we would have come up with a number that made sense to all interested parties. LB1235 and LB1236 look at addressing the challenges, challenges that currently exist in the market. I have had many conversations with these limited self-distribution options for breweries. These conversations have been held with breweries and the wholesale tier. Both sides agree that a problem exists and I know both sides have negotiated in good faith. Unfortunately, we simply ran out of time to finish these negotiations. This left me with three options. The first option was to bring no legislation. I did not want to do this because it would hurt small businesses throughout Nebraska. My second option was to bring a bill one side would like and the other side would be opposed to it. I did not want to do this because in my opinion, that would have made negotiations more difficult. My third option was to bring two bills, one that was preferred more by the wholesale tier and one that was preferred more by the brewery tier, with hope that this would allow for more time for all sides to talk and reach some sort of consensus. This is the approach I took and decided to take. My, my hope is that the hearing today will do a few things. First and foremost, I hope we will have good conversation so the committee can receive a clearer picture of all the challenges and concerns these business owners have. Second, I hope these conversations will help create room for further negotiations between all interested parties as well as the committee. And lastly, I hope the hearing done this way will allow the committee to come up with a solution that works for all. In an ideal world, we will come up with a compromise that moves both LB1235 and LB1236 forward in some way. So with that, I close my longest introduction of the day.

BRIESE: Thank you, Senator Lowe. Any questions? Senator Arch.

ARCH: Maybe you, maybe somebody behind you, could you, could you give us an idea as to what 500 barrels looks like as far-- like compared to a six pack or-- I mean, how much, how much beer is that?

LOWE: There are two kegs in a barrel.

_____ : Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

LOWE: So that would be-- 500 barrels would be 1,000 kegs.

ARCH: OK.

BRIESE: Thank you, Senator Arch.

LOWE: And I think there are about 200 beers in the keg.

BRIESE: Thank you, Senator Arch. Senator Brewer.

_____ : 67,000 cases.

LOWE: OK. Somebody behind me knows that answer.

ARCH: OK.

_____ : Almost knew that answer--

BRIESE: Senator Brewer.

BREWER: Well, maybe I should hold this question. Just to get a reference on who in, in the brewing world does 500? Do you know how many, say, Kinkaider, since we're talking about them, how many they do in a year?

LOWE: I don't know exactly. I did have that figure. I don't have it before me right now.

BREWER: I'll bet there's somebody coming up--

LOWE: I'm sure they will tell you.

BREWER: --after you that will know that.

LOWE: Yes.

BREWER: Thank you.

BRIESE: Thank you, Senator Brewer. Any other questions? Senator Brandt.

BRANDT: Thank you. Chairman Briese. On LB1236, it would be just distribution by the craft brewer. They couldn't have distribution with a regular wholesaler and also do it themselves, could they?

LOWE: It would be limited just to the amount that we would designate.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRANDT: So I guess the point I'm getting at is could a craft brewer self-distribute the amount we designate and the amount over that could go to a regular distributor?

LOWE: Yes.

BRANDT: But underneath LB1235, that could not happen.

LOWE: That would be a nanobrewery, yes.

BRANDT: All right. Thank you.

BRIESE: Thank you, Senator Brandt. Any other questions? Seeing none, thank you for your opening, Senator Lowe. So we'll have the first proponent testifier, but I will-- we're doing this-- in the interest of saving some time, to maintain some efficiency, we will have opponent-- excuse me, proponent testimony, opponent testimony, and neutral testimony. Take your pick on which area there you want to testify in just once total, but indicate to us for the record sometime during your testimony if you're testifying as a proponent on either bill or opponent on either bill or neutral on either bill, just so we have that clear for the record. So take, take your pick on which one you want to testify, specify to us which one you are opposing or supporting or testifying in neutral. So with that, we'll start out proponent testimony. Good afternoon and welcome.

DAVE TIMS: Chairman Briese, members of the General Affairs Committee, my name is Dave Tims. That is spelled D-a-v-e T-i-m-s and I'm the president/general manager of Premier Midwest Beverage Company located in Omaha, Nebraska. Premier Midwest has been a beer and beverage distributor in Nebraska since 1976. Premier represents 50 suppliers, services approximately 3,000 retail accounts across 19 counties in eastern Nebraska. We're currently the proud employer of over 165 Nebraskans. We've been a proud supporter of many local communities and charitable organizations within our territory. Distributors are approached by suppliers who desire to have us distribute their products. In order to adequately service those brands and meet the needs of our retail customers, we invest millions of dollars in warehouses, refrigeration units, forklifts and other warehouse equipment, delivery vehicles, a sales force, a delivery force, and marketing, advertising and promotion. ABDN is of the firm belief that a three-tier system is in the best interest of Nebraska and of Nebraska consumers. That system prevents an industry member from integrating and monopolizing the industry. That is largely the reason why Nebraska consumers enjoy precedent-- unprecedented choice and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

variety. As an example, visit your local liquor store. There are literally thousands of different products available to consumers. In contrast, visit the soda aisle of your local grocery store. Those shelves are dominated by just three suppliers: Coke, Pepsi and Dr. Pepper in an industry that does not prohibit vertical integration or slotting fees. ABDN supports LB1235, which encompasses the following regulatory framework for those brewers producing less than 500 barrels per calendar year in order to nurture new or existing craft suppliers that are not part of the distribution network. Brewers should be limited to self-distributing only their own products. This exemption was sought after to help them grow and incubate their brands, not pursue a new business model. Brewers should only be able to self-distribute in areas where they have not already assigned distribution rights, rights. Every state, including Nebraska, have exclusive territories by contract and/or statutes. Self-distribution should also recognize territories. The brewer wishing to engage in distribution should be subject to all the same trade market practice rules as traditional distributors. This includes prohibitions on slotting fees, prohibitions on consignment sales, not being able to provide items of value. It even includes T-shirts and swag gifts unless the brewer representative is on site. The brewer should be required to abide by the state price and our quantity discount laws and regulations. Deliveries at retail should be made by employees of the self-determining brewery and vehicles owned and operated by the brewery. LB1235 includes the appropriate safeguards and protects the three-tier system while maintaining an orderly market. Nebraska brewers have already been permitted by state law to operate the two tiers, brewing and retailing, through their taprooms. Now, as they seek to enter the third tier of the system, it creates questions on vertical integration and tax compliance.

BRIESE: Thank you, thank you very much. Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Mr. Tims, for your testimony today. Help me understand how this three-tier system works for a craft brewer in Nebraska. It, it appears to me under the three-tier system, you are obligated to use a distributor to get it to a retailer outside of that exception for their, for their taproom so would that be a correct statement?

DAVE TIMS: That is correct.

BRANDT: So the distributors-- if you're a craft brewer, how-- are you as a distributor obligated to take on all comers?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

DAVE TIMS: I am not obligated to take on all.

BRANDT: So--

DAVE TIMS: In fact, out of the gazillion brewers across the country, we don't-- the state of Nebraska doesn't have every brewer so no.

BRANDT: But if we have 76 craft brewers and-- and obviously you're a businessman and you don't want to take something that you don't think it's not going to sell, but if I'm a craft brewer out here and I can't find a distributor to pick up my beer, what solutions do those, those businessmen have?

DAVE TIMS: Right now, they currently have none and that's why we've introduced LB1235. That way, they can have self-distribution access up to that 500 barrels for the year. Now, that doesn't stop them at 500 barrels for the year. That would allow them to continue to produce and self-distribution through the end of the year. They then would have to find a distribution partner in the following year. So even though it says 500 barrels, it doesn't limit them for the year to stop.

BRANDT: And I know you're on the beer side, but does this same problem apply to the distillery side?

DAVE TIMS: I'm not quite as familiar with the distilleries. And we dabble a little bit in that, but I, I'm sure Hobie can enlighten us on some of those--

BRANDT: All right.

DAVE TIMS: --regulations.

BRANDT: Thank you for your testimony.

BRIESE: Thank you, Senator Brandt. Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese, and thank you for being here, Mr. Tims. So one of the things you said struck me about-- I think it was LB1235 was the one you're in favor of, right?

DAVE TIMS: Correct.

J. CAVANAUGH: The numbers are too similar, hard to keep them straight. So the part about that someone could distribute in a place where they haven't relinquished their rights to an authorized brewer-- I'm sorry

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

to not enter into a distribution agreement with another wholesaler. So that would be you service the county, as you said, right?

DAVE TIMS: Correct.

J. CAVANAUGH: And so this would allow somebody to enter into contract with you for that territory and still self-distribute outside of your territory?

DAVE TIMS: Correct, as long as that other territory isn't already in a contractual agreement.

J. CAVANAUGH: That they haven't entered into a contractual agreement--

DAVE TIMS: Right.

J. CAVANAUGH: --with somebody else. So I guess my question is why does that need to be in statute? Couldn't that be part of the contract? I mean, I wouldn't want to contract with somebody to compete with me. So is there a reason that we need--

DAVE TIMS: Well, I think if we create a statute, it would be conflicting anyways around, around the territory piece because we all have-- most of us have independent written contracts with, with brewers already.

J. CAVANAUGH: So I-- can you clarify what you mean by the contracts?

DAVE TIMS: If we would say that they, they didn't have to, right, we already have something in place.

J. CAVANAUGH: In your, in your contract, you would have a noncompete.

DAVE TIMS: Well, it's just defining our territory as a franchise business.

J. CAVANAUGH: And is your territory defined in statute or anything or how's-- where is it defined?

DAVE TIMS: No, there's statutes about the franchise law.

J. CAVANAUGH: OK. This is well beyond me at this point.

DAVE TIMS: Right.

J. CAVANAUGH: But I guess my question is just if I were in a position that I was going to contract just to provide somebody a service, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

would include in there that they couldn't compete with my service that I'm providing them, I guess.

DAVE TIMS: Correct.

J. CAVANAUGH: And so I guess I-- that jumped out of me. I was-- wondered why we need to put it in statute because it seemed to me just anybody, if they're going to take somebody on as a client, would say and you can't compete with me.

DAVE TIMS: Well, I think it's just to help clarify that if you're already in that, right, that, that you're not-- I mean, there's going to be some issues if you violate that--

J. CAVANAUGH: Yeah.

DAVE TIMS: --because we have those independent agreements, so.

J. CAVANAUGH: Right, it would violation of--

DAVE TIMS: It's, it's just to understand that with those defined areas-- territories, if, if it was allowed to come in and distribute over the top of that somehow in statute, it would be complicated, that they would be violating that. But then once again, who's responsible for the freshness of the product? If we're both servicing the same account in that territory, who's responsible? Who's responsible if a product goes bad? Who's responsible if there's glass shards in a bottle? Is it the distributor then or is it the brewer?

J. CAVANAUGH: And unrelated question kind of to the numbers question because we have one bill that says 500 and the other one is kind of a blank number there. Can you just give me an idea of-- you, you service some microbrews now or craft brews now. What is, like, a size of a craft brew account that you carry?

DAVE TIMS: I mean, we're distributing-- craft brewers are in the 15,000 to 20,000 case area.

J. CAVANAUGH: And we heard this is 7,000 cases?

DAVE TIMS: Yes.

J. CAVANAUGH: And the 7,000 would be 500 barrels?

DAVE TIMS: Correct.

J. CAVANAUGH: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

DAVE TIMS: But--

J. CAVANAUGH: A lot of shouting of numbers--

DAVE TIMS: Right and that-- I mean, they could produce up to 2,000 barrels that, that calendar year. They don't have to stop. Just by the end of the year, they would then have to find a distributor partner.

J. CAVANAUGH: Would there be a repercussion other than that where they just couldn't self-distribute the next year? Like, are they-- then they have to get a--

DAVE TIMS: They, they would have to pick a distributor partner.

J. CAVANAUGH: But would a-- would if no distributor agrees to carry them that next year, then?

DAVE TIMS: I would probably find it hard to believe that someone wouldn't want to pick them up. I think they've proved that they can be successful, but it could happen.

J. CAVANAUGH: Well, you might find it hard to believe--

DAVE TIMS: Yeah.

J. CAVANAUGH: --but we're being asked to write a statute that maybe would penalize somebody if something gets out of their control, I guess--

DAVE TIMS: Right.

J. CAVANAUGH: --is my question. So that I-- is there-- I mean, I guess what is the penalty if they didn't pick up a distributor?

DAVE TIMS: At that point, I guess they would be limited to their, their brewery or taprooms.

J. CAVANAUGH: Gotcha. That was a concern. All right. Thank you.

BRIESE: Thank you, Senator Cavanaugh. Anyone else? You indicated support for LB535 [SIC]. It has the 500 barrels. Is there a number beyond 500 that you could support ? Is that your--

DAVE TIMS: I mean, I think if we came down to it, it's we're trying to do what's going to be best. We think 500 is a fair number. At this point, like I said, they wanted to stop producing at the 500 so we think it gives them that limit or the ability to go beyond that and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

have a very successful year. You know, we're here to try and work out an avenue.

BRIESE: OK.

DAVE TIMS: We understand the need.

BRIESE: Very good. Support for LB1235 or are you testifying in opposition to LB1236 or--

DAVE TIMS: Correct.

BRIESE: OK, thank you. Well, thanks for your testimony.

DAVE TIMS: Absolutely. Thank you.

BRIESE: Next proponent testifier. And again, we'll do proponents, opponents, neutral and feel free to testify at any one of those, regardless of your position. Good afternoon and welcome.

MARY KATE SCHEINOST: Good afternoon. I am testifying in support of LB1235 and because I prepared two testimonies, you're getting a copy of my opposition to LB1236. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Mary Kate Scheinost, M-a-r-y K-a-t-e, last name, S-c-h-e-i-n-o-s-t. I thank the General Affairs Committee for the opportunity to appear before you and share my support of LB1235. I'm the president and general manager of High Plains Beverages in Scottsbluff, Nebraska. I'm proud to say that we are a second-generation, family-owned, small, independent distribution. For the last 31 years, my parents and I have been wholesalers serving the western Nebraska Panhandle. In 1990, we started with just six employees and we now proudly employ 26 Nebraskans. I grew up in the business and just recently took over as president of our company from my father to be the only female president in the state. High Plains distributes for 17 supplier partners and over 250 accounts, covering approximately 14,000 square miles of what, what I like to call God's country. I traveled over 400 miles to testify before you today because I'm deeply concerned about craft brewer self-distribution. This is not my first trip to Lincoln to discuss this matter. I was one of two distributors that represented the second tier at the meetings hosted by the Nebraska Liquor Control Commission to study and in good faith, discuss the perceived need for nanobrewers to self-distribute their products to market. It was at length that some of the smallest of Nebraska's craft brewers desired the opportunity to self-distribute their beer to test their products and develop their brand and that self-distribution would pave the way

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

for their success. In response to these meetings, the distributors continued to work in good faith to draft legislation that would address the perceived problem that arrived in a fair and equitable solution to permit Nebraska's smallest craft brewers a method to develop their brand while safeguarding the three-tier system and the regulatory framework that has worked for years. That framework was identified in Dave Tims's testimony and I offer strong support for LB1235 for the same reasons. Brewing beer is an expensive enterprise and so is distributing beverages, particularly in the rural territory where some days which travel over 200 miles to deliver beer. Once a nanobrewery has produced and distributed 500 barrels, or exactly 6,889 cases of beer in a year, that brewer will no doubt conclude that their finances and efforts are best served by piggybacking on the infrastructure built by my family-owned business and leave the distribution to us. Their limited capital is best expand-- best invested in expanding their brewing capacity. At that point, they will have no problem securing distributor who will invest in the brand and grow its market. If each of us in the beer business does what we are each best at, community craft brewers developing and brewing beer, wholesalers distributing the beer, then we all benefit, including the consumers. So I thank you for your time today.

BRIESE: Thank you for your testimony. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese, and thank you for being here. I'm sorry, what was your last name?

MARY KATE SCHEINOST: Scheinost.

J. CAVANAUGH: Scheinost. Thank you for being here, Ms. Scheinost, and traveling so far. So I appreciate the precise number too. I was looking at the two different bills and you were going to testify against the other one so LB1236.

MARY KATE SCHEINOST: Correct.

J. CAVANAUGH: And LB1235 has 500-barrel production and LB1236 has an unspecified amount of direct sale. So I guess it's kind of a two-part question. You're here to-- in, in favor. Is there any amount of direct sale that would be an acceptable number or--

MARY KATE SCHEINOST: You know, that's something that we would need to continue to discuss. I think our, our main concern is as long as the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

direct sale does not overlap a current agreement that's in place for distribution within a territory.

J. CAVANAUGH: That's the biggest concern is the potentiality for overlap with--

MARY KATE SCHEINOST: Yes.

J. CAVANAUGH: --another-- a distributor. So the-- you wouldn't-- I mean, there's a big difference being somebody who self-distributes 500 barrels. So if they've produced and distributed everything and somebody who produces 500 barrels and self-distributes 20 or something like that, right? I mean, in terms of what they have in the market-- I guess I'm just trying, I'm just trying to get my own thoughts straight, I guess. But you don't have a-- would you have a problem with amending LB1235 in some way that would change it to distribution level as opposed to production level? Go ahead-- you don't have to answer that if you're not ready to--

MARY KATE SCHEINOST: I will say I guess that's why we're in support of LB1235--

J. CAVANAUGH: OK.

MARY KATE SCHEINOST: --so.

J. CAVANAUGH: Thank you.

BRIESE: Thank you, Senator Cavanaugh. Any other questions? Senator Brewer.

BREWER: All right. I think before the day is over, we're going to better understand exactly how this is all woven together here. But if we take your circumstances-- let's see, so High Plains Beverages, you distribute. Do you produce any?

MARY KATE SCHEINOST: No.

BREWER: So all you do is you take it from--

MARY KATE SCHEINOST: All we do is distribute.

BREWER: --the different breweries or distilleries and you, you move it across the--

MARY KATE SCHEINOST: The Panhandle.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BREWER: Primarily western Nebraska?

MARY KATE SCHEINOST: Yep.

BREWER: OK. That, that was my question. Thank you.

BRIESE: Thank you, Senator. Senator Brandt.

BRANDT: Thank you, Chairman Briese. I'm still trying to grasp how the distribution network works. So there's a craft brewer out there, you're going to distribute for him. Do you purchase the beer from him or you distribute it from him and it goes through the process?

MARY KATE SCHEINOST: We purchase the beer from the craft brewer, so-- and then at that point, that's where the taxes are collected is when it comes into our warehouse. And so that's why there's the purchase and then we distribute, we sell it to the retailer.

BRANDT: So at that point, that beer becomes your property?

MARY KATE SCHEINOST: Correct.

BRANDT: And then you take it and retail it to the bars or whatever--

MARY KATE SCHEINOST: Restaurants, grocery stores.

BRANDT: --and you find out that this is really bad beer. Who's-- and you're on the hook for that or how does that-- what-- typically, how does that work?

MARY KATE SCHEINOST: We are on the hook for that. We have freshness policies that allow us to rotate the product out if it goes about in the market.

BRANDT: OK, so then really--

MARY KATE SCHEINOST: So we eat that cost.

BRANDT: --the, the business remedy to that would be you would no longer buy from that brewer if it looks like he has a product that doesn't move?

MARY KATE SCHEINOST: Right.

BRANDT: All right. Thank you.

BRIESE: Thank you, Senator Brandt. Senator Groene.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Missed your testimony, but you're a distributor--

MARY KATE SCHEINOST: Yes.

GROENE: --in the Scottsbluff area.

MARY KATE SCHEINOST: Um-hum.

GROENE: So how many microbreweries do you have around you, do you now?

MARY KATE SCHEINOST: I believe we have four and--

GROENE: Do you distribute for all four of those?

MARY KATE SCHEINOST: We do not. I know one of them is distributed by another distributor.

GROENE: How many do you distribute for?

MARY KATE SCHEINOST: In the state of Nebraska, we have three.

GROENE: How many from your local area?

MARY KATE SCHEINOST: None.

GROENE: None. So what opportunity do those folks have if you turn them down?

MARY KATE SCHEINOST: We didn't turn them down. We were never approached.

GROENE: Oh, you were never approached.

MARY KATE SCHEINOST: Um-hum.

GROENE: Have you turned anybody down?

MARY KATE SCHEINOST: No, not to my knowledge.

GROENE: So what is your main brand? Everybody has a main brand.

MARY KATE SCHEINOST: We're Anheuser-Busch.

GROENE: Anheuser-Busch. Now you market, don't you, for all-- you market for-- everybody who you distribute for, you do the marketing, correct?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

MARY KATE SCHEINOST: Correct. So yeah, we have a small shop where we print all of our signs and custom in some cases so yes.

GROENE: And you cooperate with the manufacturer?

MARY KATE SCHEINOST: Correct.

GROENE: What do you want? What's your, what's your logo, what do you want on the sign?

MARY KATE SCHEINOST: Correct and make sure they're not--

GROENE: They do the artwork and everything?

MARY KATE SCHEINOST: --violating copyright and all that.

GROENE: And do you, do you get to pick-- do you charge that advertising back to the manufacturer?

MARY KATE SCHEINOST: No.

GROENE: You handle it?

MARY KATE SCHEINOST: We handle it. That's part of the cost of doing business and the cost of marketing the brands.

GROENE: So as a business, you-- it would, it would be easier just to pick one microbrewery and stick with it, right?

MARY KATE SCHEINOST: It is, but the three-tier system also exists to provide choice to the consumers. Not every consumer is going to like every product so it's best to have a variety of products, a variety of types of beer from a variety of craft brewers.

GROENE: So the statutes say, on the distributing statutes, that you have to take all comers or can you just, can you just blacklist somebody and say we're not going to distribute for that person?

MARY KATE SCHEINOST: We don't have to take everyone, but being in the Panhandle, it's in our best interest to take on who approaches us.

GROENE: Maybe there's somebody else who will testify-- the eastern part of Nebraska and see what they do. So thank you for being-- having the answers, appreciate that.

MARY KATE SCHEINOST: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thank you for coming here--

MARY KATE SCHEINOST: Thank you.

BRIESE: --today thanks for your testimony. Next testifier.

NATHAN HOEFT: Hello.

BRIESE: Good afternoon and welcome.

NATHAN HOEFT: Thank you, sir, and Senator-- or thank you, Chairman and members of the committee. My name is Nathan Hoeft, N-a-t-h-a-n H-o-e-f-t. I am the owner and brewer at First Street Brewing Company and the current president of the Nebraska Craft Brewers Guild and I am here today to speak in support of LB1236. First, I would like to thank Senator Lowe for introducing these bills and also to the Liquor Control Commission for taking the time to do their interim study that led to all of this for us. I am currently one of the bright, shining examples of how the system has not worked for us. I am currently cut out from the markets in Lincoln and Omaha since the shutdown occurred in 2020. At the end of the shutdown, my distributor in this area, we discussed what it would be like to move forward and it was a fairly amicable agreement to split and try something different. At the time, I started reaching out to other distributors to see if I could work with one of them and of those who returned my calls, I was repeatedly told we're not taking any new suppliers at this time. I don't blame anyone for this and I completely understand because they were looking at the business just as we were. Nobody knew where things were going to go or how things were going to end so they were looking out to protect their businesses. Unfortunately, this left me in a position with no access to the two largest beer markets in Nebraska. We have tried repeatedly to work with distributors and again, the conversations have just not moved forward and that is what led to us asking for the ability to distribute in these areas. We are looking to self-distribute up to 1,000 barrels and that is because I believe that's what will make it possible for us to hire somebody to do sales, to do deliveries and then to also prove ourselves in these markets and build to a point to where a distributor will see our business and want to take us on once again. If you have any questions, I'd be happy to answer them.

BRIESE: Thank you. Any questions? Senator Groene.

GROENE: So you-- thank you, Chair. So you want to go statewide?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

NATHAN HOEFT: I don't want to go statewide. I actually already have agreements with distributors in other areas and I'm more than happy to continue to work with them.

GROENE: So you do have the distributors?

NATHAN HOEFT: I do, just not in the Lincoln and Omaha markets.

GROENE: And you split the company because they wouldn't order enough product from you?

NATHAN HOEFT: No, it was actually their decision. They decided to drop us.

GROENE: And they do another craft beer?

NATHAN HOEFT: They, they do service other craft beers. They just said we know we haven't done a great job for you in the past and we'd be willing to let you go without any fees so you can try a different distributor. I saw that as an opportunity and was like, OK, let's see if we can build a better relationship with someone. And unfortunately, we just haven't been able to find that partner.

GROENE: So you look at this as an either/or-- self-distribute, or are you going to have a distributor or both?

NATHAN HOEFT: Absolutely not. I would love to maintain the relationships I have with my distributors. I just need a way to get my product into a market where I have clients asking for it when I don't have anybody to do it for me.

GROENE: And the distributors have boundaries so your distributor can't come across a certain boundary and, and--

NATHAN HOEFT: Nope, it's part of their territory agreements.

GROENE: On everything, not just their main brand.

NATHAN HOEFT: Yes.

GROENE: So what you'd say is if, if, if you could do it, it maybe-- I'm kind of favorable if this was just in a certain circumference of your area.

NATHAN HOEFT: I-- that would not help me in this situation. I have a distributor who works with me in the Hastings and Tri-Cities area.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: That's what I mean, in your area. Where-- oh, your area is--

NATHAN HOEFT: I'm in Hastings. I apologize.

GROENE: Oh, so you want to move into another area.

NATHAN HOEFT: We were distributing before the, the shutdown in Lincoln and Omaha. We basically covered the entire eastern half of the, of the state all the way out to North Platte. And we have distributors who service North Platte and the Tri-Cities area and basically the surrounding areas of Lincoln and Omaha.

GROENE: But I'm asking a lot of questions, if you think I'm going too far.

BRIESE: Go ahead.

GROENE: So you have bars or whatever, facilities that like your product?

NATHAN HOEFT: Yes.

GROENE: And they have no access to it now?

NATHAN HOEFT: Yes.

GROENE: Absolutely none?

NATHAN HOEFT: Yep.

GROENE: So you want a, a loophole if you're not-- if you don't have a distributor in an area you're allowed to distribute?

NATHAN HOEFT: I would just like the ability to service customers who are asking for my product.

GROENE: So I'm just thinking how you'd phrase this. In law that if a distributor would take you on, then you would lose that ability.

NATHAN HOEFT: I, I would hope not to, just because it gives us better access to markets that we don't reach into currently. I think it would be beneficial for us to again prove ourselves in a market so that the distributors would then see us as a viable option.

GROENE: But the distributor isn't going to take you on if they're competing with you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

NATHAN HOEFT: They do if they see it as a, a, a viable reason to pick us up. I mean, if I'm taking handles and they see that we're out there in the market and people want our product, that then becomes something where they want to carry that product.

GROENE: That's what I mean.

NATHAN HOEFT: Yeah, absolutely.

GROENE: But they don't want to compete with you in the same bar.

NATHAN HOEFT: Yeah.

GROENE: Anyway.

NATHAN HOEFT: I agree.

GROENE: Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Senator Brandt.

BRANDT: Thank you, Chairman Briese. How many-- you're in Hastings. To cover the entire state, how many distributors would you have to partner with?

NATHAN HOEFT: It depends on the territories. They vary a little bit. Before the shutdown occurred, I was partnered with three different distributors because my distributor here covered both Lincoln and Omaha.

BRANDT: OK.

NATHAN HOEFT: Sometimes those territories are split, so it can, it can vary a little bit.

BRANDT: OK. Can you sell beer out of state?

NATHAN HOEFT: Yes, we can if we sign up with a distributor in another state.

BRANDT: So Kansas is close to Hastings--

NATHAN HOEFT: About 70 miles and a quarter.

BRANDT: --probably got a Kansas distributor.

NATHAN HOEFT: We don't yet, but we're working on it.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRANDT: And, and this is a general question, I guess, and it goes to what Senator Groene said. So if I'm the Anheuser-Busch distributor, how-- why would I even promote your beer if, if I'm a distributor for Coors or, you know, one of the big, big beer companies? What's-- I guess, how does, how does the system work that you guys will be treated fairly?

NATHAN HOEFT: I can't speak to their incentives. I will tell you that currently craft beer produced in Nebraska makes up less than 4 percent of the total beer market. So it does-- it is a little strange to me that a distributor would want to take on an untested brand and then take it out to the market. And like I said, if we were able to have a level of self-distribution, that would allow us to prove ourselves in the market, prove that there is a demand for our product.

BRANDT: All right. Thank you.

BRIESE: Thank you, Senator Brandt. Senator Brewer.

BREWER: Well, this is kind of a, I guess, awakening to some of the challenges because I personally didn't realize it was that difficult or could be that difficult to get your product to market. I had it in my thought process that you had distributors, but as a backup, if you didn't have a distributor who was able to take your product where it needed to be, you just loaded up your panel-side van and showed up at the door and say, look what I got, and you make the deal and the day goes on. So obviously I'm, I'm a little out of touch with reality. We're trying to figure out a solution. Is this bill the answer or is there something that we've overlooked here?

NATHAN HOEFT: I think LB1236 is an excellent step forward. I, I see a path forward for us, us personally, First Street Brewing Company.

BREWER: Well, 4 percent isn't much of the market.

NATHAN HOEFT: I agree.

BREWER: And if you look at-- if you go into a bar-- and maybe it's only because I, I love beer, but normally I figure out what's on tap. And usually, if it's something I haven't heard of, then you try it. Well, the problem with the Bud or Coors or whatever is I know what it tastes like. It's been there forever. I want to try the new stuff, the different stuff. And, and so if there is a disconnect so you can't get that to where people can try it, then, you know, maybe, maybe we need to figure out how to fix that. So thank you for your testimony.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

NATHAN HOEFT: Thank you, sir.

BRIESE: Thank you, Senator Brewer. Anyone else? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman, and thank you for being here. So you're basically in this scenario that we're talking about where you have distribution someplace and no distribution in another place. And I was asking, I think, Mr. Tims about this portion where-- in LB1235 where there's a requirement that you can't compete. That provision is not in LB1236, I don't think.

NATHAN HOEFT: It is in our contracts with our distributors, though.

J. CAVANAUGH: OK. But, but what I heard you say is you have no interest in, in competing with--

NATHAN HOEFT: Nope.

J. CAVANAUGH: --somebody that you're-- you contracted with.

NATHAN HOEFT: I am perfectly willing to work with distributors that I have. I'm perfectly willing to build other distributor relationships as well. So far, I have been unable to do so.

J. CAVANAUGH: Well, I guess, just as a matter of drafting the statute and talking about, you know, I guess, as Senator Lowe said, we're kind of here to have a conversation about--

NATHAN HOEFT: Yeah.

J. CAVANAUGH: --I don't know, maybe picking and choosing parts of these two bills. And that seems like one that, that is important to the distributors that it sounds like you don't have a problem with, I guess.

NATHAN HOEFT: I, I don't see an issue with it. I, I would have to refer back to our legal counsel on it. I will say that before the shutdown occurred, I was on the cusp of passing 500 barrels of production. Obviously, things have stepped back since then, but I'm very interested in growing beyond that.

J. CAVANAUGH: And I know you're not advocating for LB1235, but in your particular situation, if we were to adopt the LB1235 structure, would the barrels you're going through a distributor count against your 500 barrels? I mean, it seems like it would because it's a total production and not a distribution.

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General Affairs Committee January 31, 2022

NATHAN HOEFT: Exactly, because that's based on production.

J. CAVANAUGH: OK. Maybe I'll get a chance to ask somebody who is proponent for LB1235 about that. But you-- and then you said you're looking for 1,000 barrels of distribution?

NATHAN HOEFT: Yes.

J. CAVANAUGH: And would that, in your scenario, be-- that would just be in that footprint that you're talking about and still distribute through somebody else?

NATHAN HOEFT: Yes.

J. CAVANAUGH: And would you be looking for 1,000-- so that would be-- just to clarify, 1,000 barrels of self-distribution would not-- and, and distribution with someone else wouldn't count against it?

NATHAN HOEFT: So if, if I was allowed 1,000 barrels of self-distribution, I would be looking to bring that beer into the Lincoln and Omaha market and any other market where I do not have a distributor agreement already in place.

J. CAVANAUGH: But as-- I'm, I'm asking as a matter of if we were to write the statute in a way that would comply with that situation, you would still self-distribute more than a-- or you would still distribute more than 1,000 barrels, but you would do it through a, a distributor.

NATHAN HOEFT: A distributor as well, yes.

J. CAVANAUGH: OK, that's, that's what I was trying to get. Thank you.

NATHAN HOEFT: Yeah.

BRIESE: Thank you, Senator Cavanaugh. Anyone else? Senator Groene.

GROENE: Thank you. So do you market your own beer? I mean, go out, taste--

NATHAN HOEFT: Yes.

GROENE: Can't you do-- guys do tastings?

NATHAN HOEFT: In areas where our beer is sold, yes. We go out and do samplings and tastings like at grocery stores. We do pint nights. We do events.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: In bars?

NATHAN HOEFT: Absolutely, yeah, if, if, if it's available and, again, usually that's through partnerships with our distributors.

GROENE: And then that's a good-- well, what about in Lincoln and Omaha? Can you do a tasting there?

NATHAN HOEFT: I cannot do that here, no.

GROENE: You cannot?

NATHAN HOEFT: Nope, unless it's a special event with a special designated license.

GROENE: So the tasting has to be in cooperation with a, with a distributor?

NATHAN HOEFT: If it's at a bar or restaurant or if it's a special event, like we can do beer-tasting events. We do those as well. It, it requires a special designation on the, the license for them to be able to buy directly from us. A lot of those events, they'll buy the beer through our distributors.

GROENE: Who-- change of topics-- 4 percent, how much of that is through the local location at the bar, at the brewery, and how much of it is sold through the distributor?

NATHAN HOEFT: I would say for us, I can only speak to our numbers. The, the-- in the last two years, the larger portion of our beer sales has occurred on-site. Back before that, we were actually growing to the point where we were about to kind of balance out.

GROENE: So most of the beer is just still purchased and bought at Kinkaider's five places and the breweries and for breweries everywhere?

NATHAN HOEFT: Currently for us. I would say there, there are some other brewers who are, are able to distribute much further.

GROENE: So at present, how many breweries are there now?

NATHAN HOEFT: There are currently 64 active breweries with 70 total in application. Some of them are in planning still.

GROENE: And most of those are just the local brewery selling local, right, through their--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

NATHAN HOEFT: I, I can't speak to that. I know each, each brewery has a, a different model. Some of us go for a brewpub, some of us go for a hybrid approach like us, and others are looking to be that next regional brand. So it, it varies quite a bit. If there's one thing I can say about craft brewers, it's they're independent.

GROENE: Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Seeing no other questions, do you wish to be recognized as testifying in any one direction on LB1235?

NATHAN HOEFT: I would be opposed.

BRIESE: OK, very good. Thank you for coming here today--

NATHAN HOEFT: Thank you.

BRIESE: --and for your testimony. Next testifier. Good afternoon.

LAURA EBKE: Chairman Briese, members of the General Affairs Committee, my name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm the senior fellow at the Platte Institute and I'm here to testify in support of LB1236. I will note that I also sent a letter in the neutral capacity regarding LB1235. You know, we've talked a lot in the last decade about growing Nebraska, and we've claimed to be good for small businesses and entrepreneurs. But sometimes the policies we have in place don't really speak well of those claims. LB1236 is a small step in the right direction of giving entrepreneurial craft brewers the opportunity to build their business without additional licensing or entering into agreements that might not be beneficial given their circumstances. This bill would allow craft brewers to self-distribute a limited amount of their product in the retail market under their existing license without respect to their total annual production, including the serve-- that, that's served in tasting rooms. We know that there is a workforce shortage in Nebraska and at a time when the major distributors may not have the personnel to focus on the so-called little guy, LB1236 offers a win for small producers who want to distribute to the retail market, retailers who would like to offer more Nebraska-based products, and consumers who would like easier access to the product of small craft breweries in our state. We encourage the advancement and prioritization of LB1236 or connecting it with another committee bill.

BRIESE: OK, thank you for your testimony. Any questions? Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

J. CAVANAUGH: Thank you, Chairman Brieese, and thank you for being here, Ms. Ebke. It's nice to meet you. I've never actually met you before.

LAURA EBKE: Nice to meet you.

J. CAVANAUGH: You're a celebrity to me.

LAURA EBKE: Thanks.

J. CAVANAUGH: So it sounds like your position here-- I mean, I know the Platte Institute generally is in favor of less kind of licensing requirements and things like that. Is that really the difference here, that LB1235 requires a new license and LB1236 gets it into the current--

LAURA EBKE: No. Well, I mean, the, the license is a part of it here. But really our, our focus is on the small business and the opportunity. You know, we try to remove barriers to access and to success. You know, what we're really talking about here, and I'll put in a little plug for a bill that Senator Wishart has before the Banking Committee, I think next week, two weeks from now, maybe, her, her sandbox bill. And in some ways, what we're talking about with craft brewers here is even something akin to a, a sandbox. You let them, you know, under certain circumstances, license and so forth, they get to go out and they get to self-distribute and see whether or not their model makes sense. When they reach a certain level of success, I think, at that point, then the distributors will be more interested in distributing for them, and it will make more sense for them to, to, to, to succeed, you know, by, by having, having somebody else distribute. The real concern I have here is, you know, and you know, there's a lot of small breweries out there. LB1235 says 500 barrels, and I'll let somebody else speak to how many ounces in a barrel and that sort of thing. But you know, there's a lot of these small, these small tasting rooms or taprooms that probably produce a lot and sell a lot in-house. And if you're limiting their product-- their, their distribution amount, you know, to, to, to 500 barrels of total production, I think that you really limit their ability to expand beyond the-- beyond their little narrow focus.

J. CAVANAUGH: In terms of the sandbox idea, proof of concept idea, wouldn't the argument then be a limit on the amount of self-distribution but making it a relatively small limit to--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

LAURA EBKE: Yeah, I mean, it would-- a, a sandbox notion can be set up however you want. You say that-- you say, for instance, that you have to be licensed and you have a limited amount that, that can be sort of outside of the, the three-tier system, for instance, that, that, that you can self-distribute outside of that and you've got two years to show. And then, and then, you know, you get to a certain point and we pick the point-- you know, as policymakers pick the point that, that they have to then move into the regular system. And I think that's, that's, that's, that's the general notion behind a sandbox is that you're still, you're still supervised, but you're sort of outside of the traditional rules as you're, as you're innovating and, and, you know, being an entrepreneur.

J. CAVANAUGH: Yeah. Thank you.

BRIESE: Thank you, Senator Cavanaugh. Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, the part I'm kind of struggling with is say you are a brewery out in the middle of nowhere, Bootlegger, and you're, you're out in Loup County. There's not much out there. If you're depending on a distributor to take that product and, and get it to where it needs to be because you can't load up your panel-side van and drive there, the, the burden is on you to prove your product out. You're going to have to have a pretty robust, I don't know how you would say it, advertising and, and your just ability to, to share with others your product. And, and I guess I'm, I'm trying to figure out how they're getting it done right now. I mean, they must have a good product and word spreads pretty fast or else I don't know how you would ever get a brewery going very easy.

LAURA EBKE: Yeah. Well, and I think that, I think that many places in Nebraska, many breweries in Nebraska have found that they become sort of destination locations, that, you know, they get a reputation and it becomes a place for, for, for folks to stop. You know, it has its own little niche, if you will. But I can tell you, as one who has frequented a number of craft breweries around the state, that there are a number of there-- the beers there that I would love to be able to go into the local grocery store and purchase or at my local liquor store and purchase or wherever, and they're just not available. And if, if, if, if Lazy Horse in, in Ohio decides that they want to be able to-- I don't, I don't know what their current situation is in terms of, in terms of distribution. But if they decide that they want to be able to distribute down by Fairbury or Beatrice and nobody will, you know, distribute for them there, they ought-- you know, if it's close enough, they ought to be able to take their own product and, and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

distribute it. So I'm going to think that-- you know, we're looking at ways for, for local businesses, sometimes small businesses, sometimes-- oftentimes mom-and-pop type of businesses to start, we're looking for ways for them to be able to market themselves and succeed. And, and, and, you know, if they get big enough, the, the distributors will want them.

BREWER: And kind of back to the conversation with Senator Cavanaugh, at the point where you kind of get into more of the big leagues, then that's where you go to the big distribution and--

LAURA EBKE: Certainly that's-- well, I mean, using the sandbox concept, yes, that's what, that's what would happen, I think, that you would, that you would have some-- and that might be an arbitrary number at some point, but that, that, that you would have some sort of an arbitrary number that says that, you know, when you reach X number of barrels distributed for retail sale that then-- you know, sort of like what, what, what LB1235 says with 500 barrels. I'm just not sure if 500 is the magic number.

BREWER: Well, hopefully today we get that one figured out.

LAURA EBKE: Here we go.

BREWER: All right. Thank you.

BRIESE: Thank you, Senator Brewer. Anyone else? Seeing no other questions, thank you for your testimony.

LAURA EBKE: Thank you, Senator.

BRIESE: Next testifier. Good afternoon and welcome.

JIM ENGELBART: Good afternoon. Thank you, Senator Briese, rest of the members of the committee. My name is Jim Engelbart, J-i-m E-n-g-e-l-b-a-r-t. I'm testifying on behalf of LB1236 and against LB1235. I'm the operations manager for Emphyrean Brewing Company here in Lincoln. Emphyrean, if you don't know, is the brewery arm of Lazlo's Brewery and Grill. We're the oldest craft brewery in Nebraska, due in no small part to our owners hanging out in this building for a while back in 1987 and getting the laws changed to allow for us to exist. That original brewery law in Nebraska allowed us to produce 5,000 barrels of beer, and 90 percent of it had to be sold over the bar in our locations. We had no distribution rights at all, originally, with the way beer laws were, were structured in the state. We came back and lobbied again in 1996, this time with a few more brewers and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

successfully raised our production cap from 5,000 to 10,000 barrels and opened up the state's retail markets to us or access to retail markets through signing up wholesale distributors. We were the first craft brewer in the state to sign up with a wholesale partner, partnering with the Knezovich family, K&Z Distributing, and Miller Brands of Omaha in 1998. By 2002, we had executed contracts with five other wholesalers in the state to give us statewide coverage in Nebraska, so we've been distributing statewide in Nebraska since 2002. Lastly, we lobbied again in 2011 [SIC], LB1105 that was mentioned earlier, successfully raising our production cap again, this time to 20,000 barrels and allowing our license class to expand out to satellite locations. So wholly owned locations, up to five of them anyway, we can deliver beer from our main production facility out to those wholly owned locations. Growth again has become challenging and as we bump up against artificial barriers in this industry, that would explain why we're here lobbying again with you folks today. We currently do business with 35 wholesale distributors in 8 different states. We sell 75 to 80 percent of our production, which is averaged around 5,500 barrels of beer a year; 75 to 80 percent of that is sold through wholesale channels. We've done that for 20 years. I point out our time and our experience with the wholesalers mainly to make the point that our company has had many interactions with different wholesalers over the years. Most all of those relationships have been amazing experiences. There have been a few pretty bad experiences. We've dropped wholesalers, but we've more often been dropped. We've also been sold and traded and merged, often with little or no beforehand knowledge other than 30-days notice. To our Nebraska wholesalers credit, almost all of our bad experiences have happened outside of the state. We have had a very positive experience wholesaling beer in Nebraska. Let me clear-- be clear: we value those wholesale partnerships and we work hard to support them in all the ways that we legally can. Our wholesalers succeed when we're able to work with them in all the markets where we sell beer. If we're not there working with them, we are not going to be successful. That's one lesson we've learned doing this as long as we have.

BRIESE: OK.

JIM ENGELBART: So we--

BRIESE: In the interest of consistency, I'm going to have to cut you off here.

JIM ENGELBART: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Maybe, maybe there'll be a question, though.

JIM ENGELBART: Sure.

BRIESE: Any questions? Senator Brewer.

BREWER: Finish, finish your little bit there, if it isn't very long.

JIM ENGELBART: So I was just going to finish up with the point that when we started this business, there was at least a choice of three wholesale distributors in every market in the state; typically, a Bud house, a Miller house, and a Coors house. And what's happened in the last 28 years in this industry is that Miller and Coors folks have all merged. So outside of the Lincoln and Omaha metro, you only have two choices of wholesalers in all of our markets outside Lincoln and Omaha. It's not saying there isn't other distribution options out there, but if you want a distributor that's going to service your retailers more than once a month, you need someone that's in the same territory as where the beer is being sold. So having a distributor in Omaha if your brewery is in Ord doesn't necessarily work great. There's, there's challenges in the business like that. There's 37 other states. Every state that touches us except Kansas allows some form of self-distribution. There's seven wholesalers in our state that own wholesaler operations in states that allow self-distribution, so they're already used to working in markets where brewers can self-distribute. I haven't heard a whole lot of opposition from them at all today, and I kind of prepared my speech thinking I would. So I'm very stoked about that and very appreciative of, of Mr. Rupe and, and NLCC, and our wholesale partners for continuing this conversation about how we, how we sell beer. It's all about selling beer either way at the end of the day. How we get there and how we get there in, in a way that's fair to us smaller suppliers is, is kind of why we're having this conversation.

BREWER: We're holding back the really hard questions for him, but. So in the craft brewery world, what you guys have done is kind of the, the largest of, of anybody in Nebraska. Is that fair to say?

JIM ENGELBART: It's fair to say.

BREWER: And right now, are you capped at 20,000 or where are you at as far as the amount?

JIM ENGELBART: We still have that 20,000-barrel production cap out there and no one in the state has brushed up against that. That means we, we did a good job when we did that legislation. We shouldn't have

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

to come back I hope for at least five more years, maybe longer, maybe never. And of course, those caps are set for, for a reason, obviously. When we start getting bigger than that, we shouldn't have all these other license rights, maybe because we're focused on being a producer solely. So there's some, there's some good logic in those caps. In Nebraska, 20,000 works because our population density is what it is. I mean, if we had a big metro area with 3 million-plus people in it right outside our back door, it's a-- it'd be a different story versus having to traverse like Mary Kate all across the state through empty fields to get to where the people are.

BREWER: So we, we have a situation where we've got a number of these craft breweries that are popping up. They seem to be doing pretty good, provided we can get their product distributed. And that's kind of where the rub is to a degree here, but that's 4 percent of the market. That's kind of the number we've been working with, roughly?

JIM ENGELBART: We keep increasing the, the number slowly but surely. And I can remember when I didn't think we'd ever break 1 percent of the beer market in the state and I threw a little party in my own house when we broke 2 percent. So, yeah--

BREWER: But--

JIM ENGELBART: --4 percent has taken 30 years to get there.

BREWER: --I think part of the reason for that is the craft breweries have the unique ability to add that unique flavor to beer that isn't the cookie-cutter, stamped out, same, same-- some--

JIM ENGELBART: We're not necessarily all making products for everybody now. We're, we're, we're trying to stand out in, in a crowded field for sure.

BREWER: Right. And, and so the, the, the thing I-- that we just keep coming back to is, is how do we make sure that you don't put them in a position where they will fail because if you can't distribute your product, you, you will fail. Is that a fair assessment?

JIM ENGELBART: There's, there's an old German saying I love to say that's, whoever, whoever makes bad beer shall be shown to the dungheap, essentially is what the translation is. And the, the truth is, is that, yeah, if you're not making good quality beer, you're not going to have customers at your door. And if you don't have customers at your door, you're not going to have other retailers asking for you

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

or any wholesalers interested in, in picking up your product to distribute it.

BREWER: But what a heartbreaker if you do make good beer, but you just can't get it distributed.

JIM ENGELBART: Absolutely.

BREWER: All right. Thank you.

BRIESE: Thank you, Senator Brewer. Any other questions? Senator Groene.

GROENE: Thank you. So if you were distributing your own product, what would be your target?

JIM ENGELBART: So I, I guess one thing I, I do--

GROENE: Retail places in there?

JIM ENGELBART: I want to be clear, my brewery is established enough with our wholesale distributors that I'm not here speaking on behalf of my brewery's need to find more distribution. And, and again, we're very much in support of our local wholesalers and we've, we've worked many years to establish the relationships we have with them. Why would we want to jeopardize that? My concern is more that nothing is certain in this business except change. And so five years from now, we may be an environment where Anheuser-Busch and MillerCoors decide to merge, and suddenly we have a real problem on our hands in that every market has only one wholesale choice. So in our conversations within NLCC and our, our wholesale partners, I said, what would really solve this problem quick, we, we wouldn't have to change the brewery license at all is that we could magically spirit up like, you know, four or five small independent wholesalers. And of course, part of the reason we don't have many more smaller, independent wholesalers is because when a wholesaler gets any success, they get bought out by a bigger wholesaler. Kind of like it happens in the brewery world to a certain, certain degree too. So nothing against them; they're, they're a business like any other. They can be bought and sold. And it just so happens in the last 30 years that the direction for them has been consolidation, while the direction for every supplier in the alcohol world, beer, wine, spirits, has been proliferation of suppliers. So we have an artificial barrier to market to access in the wholesale tier. We need the wholesalers. Don't get me wrong, any small brewer, our first goal is to make beer successfully. And if we can sell it

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

ourselves, that's great. But trying to reach 3,000 retail licenses in the city of Omaha a week, good luck.

BRIESE: Thank you.

JIM ENGELBART: They, they know that we need the luck.

BRIESE: Thank you. Any other questions? Senator Groene.

GROENE: So why, why wouldn't it be that we just let a, a producer within a certain county area or a couple county areas around their facilities where they could get their foot in the door, build a reputation, and then the distributor hears about it, knows it's a viable product and then works with them? I mean--

JIM ENGELBART: It would be a big-- I think it'd be a big remove from the way that models currently works. And again, when we-- it's, it's franchised. So we're, we're, we're partnering up with a wholesaler to represent our brands in a certain territory. We're giving them those territory rights. They don't ask us for those territory rights, they're given by the supplier.

GROENE: But we're talking about a, a producer here, a brewery, you can't just market--

JIM ENGELBART: So if a producer, if a producer is going to distribute in a territory and they already have a wholesaler in that territory, that, that kind of falls on you folks to try and figure out how we want to regulate that if the, if the supplier is going to sell in an area where there's a wholesaler already with a contract. I, I don't know how you want to handle that, to be honest. I don't have an answer to that.

GROENE: What, what are we fixing here? Are we fixing no access at all because--

JIM ENGELBART: We're fixing no access at all. And we're fixing the problem, too, where if my brewery happen to get dropped in the, in the city of Omaha because there was a merger of wholesalers and our only option was to go with one of two wholesale distributors and both of them already have 80-- you know, already have 15 to 30 suppliers in their house and over 800 SKUs. How am I going to get good representation moving into a distributorship where I'm going to be less than a 10 percent of their business?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: So what you're saying is the bar in Omaha is, is-- everybody goes there because that beer of yours. They know about it. They kind of created a little cult there. If you lose your distributor there and then the bar calls you and said, I need beer, you can't do anything about it.

JIM ENGELBART: We can't do anything about it, no.

GROENE: You couldn't deliver?

JIM ENGELBART: We, we, we would have to find another, another wholesaler, and we would have to have that wholesaler work out terms with our old wholesaler or the old wholesaler would have to release us in writing from, from a contract.

GROENE: So I guess I'm asking-- well, I don't think any folks who brought this are worried about they got a distributor in an area. They're worried about an area where they have absolutely no access for the sell, right?

JIM ENGELBART: We're worried about areas where we don't have any access. We're worried about areas even where we do have access or could have a distributor. But we don't want to use either of those distributors. Choice--

GROENE: Because they'll, they'll put your product--

JIM ENGELBART: --choice of who you want to do business with is, is--

GROENE: --they will limit what they sell.

JIM ENGELBART: --is, is-- well, it's just simply lacking. I mean, if you want to distribute beer in Scottsbluff, Nebraska, you have a choice of two wholesalers. Plain and simple. And one of them may not take you or even return a call, neither of them may return a call, in which case you're no longer trying to sell beer in Scottsbluff.

GROENE: But you don't want to work with them because you know they'll just put you on the back burner.

JIM ENGELBART: It could be that yeah, I've really-- you know, it could be from the standpoint of most of us craft breweries, if we're new in the business, chances are really good we're not selling package very good yet. We haven't figured out how to can or bottle or invest in the equipment--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Just barrels.

JIM ENGELBART: --needed for that so we're just selling kegs. And draft, draft sales, especially with the pandemic, have been really, really difficult. But even pre-pandemic, they're pretty difficult. You're going into a retailer that may only have 4 placements, 6 placements, even 12 placements, and you're trying to get one of those away from all the other brands that are offered in the market. So again, if you have a good reputation, the bar may be willing to take you on. We may only find five of those accounts in, in a whole city the size of Hastings. Size of Omaha, we may be lucky and find 20. We may only want to distribute or service those 20 accounts, in which case a small brewer could be very successful, could potentially sell that 500 barrels in a year fast so self-distributing.

GROENE: So you're saying shelf space, they only got so much shelf space and they're going to take five and they're only going to keep it in their fridge so much. So you're saying if you could distribute, you could pamper that guy, you could visit him a lot, become friends, and he's going to push your product. Well, the distributor-- that's what the old-fashion sells. The distributor just says, here's my list, what do you want?

JIM ENGELBART: The way this is-- both of these are written to, to their credit is we, we would have to operate-- if we were given the rights to distribute under either of these bills, we have to operate just like a wholesaler. And that's again one of the pledges we made to our wholesale partners having this conversation about self-distribution in Nebraska is if, is if we're going to act in the market like they do, we have to follow all the same rules that they do.

GROENE: But you're not going to come in with six posters of this beer, this beer, this alcohol. You're going to come in with yours and you're going to talk about one product.

JIM ENGELBART: Correct.

GROENE: So that-- yeah.

JIM ENGELBART: So we may be more effective from, from the sales.

GROENE: That's what I'm saying. You'd be more effective.

JIM ENGELBART: Where we will be challenged is we're only put in one keg and five cases on that truck to go 300 miles down the road, maybe,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

versus filling up a, a whole semi that's going to pay for the labor and the gas and, and all those other things. So there's, there's a lot of challenges to distribution. Our, our wholesalers know. They, they don't need us to tell them how necessary they are in the market and they do a great job with, with what they, they have to do. Like I said, we really value those relationships and those partners. But the biggest difference for us going into the wholesale market to a new wholesaler today is (a) we don't have really much choice at all. It's this guy that already has too many brands or this guy that already has too many brands. From the wholesaler's standpoint, it feels like they're playing the game of I want to take that brand because I don't want the guy across town to have it more so than I want to take that brand because I really want to sell it. There's, there's definitely some horse-trading like that that's happened in the business.

BRIESE: OK. Thank you. Any other questions? Seeing no other questions, thank you for your testimony.

JIM ENGELBART: I hope I didn't make it too confusing. Thank you for your time.

BRIESE: Thank you. Next, next testifier. Good afternoon and welcome.

MILAN KNEZOVICH: Good afternoon. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Milan Knezovich. My name is spelled M-i-l-a-n K-n-e-z-o-v-i-c-h. My company is a family-run business started in 1965 by my father, Babe Knezovich. So been in business all my life pretty much. Again now as time proceeds on, my son, both two sons, Nikolai and Roman, and daughter, who works part time as she's going to college, has joined the family business to, to make things happen. To bring a little perspective in here is K&Z was the first Nebraska distributor to serve the Nebraska Craft Beer Association after taking on Empyrean Ales, as the last testimony stated. So we've been with them for the past 25 years. Although we have distributorship in north Lincoln we probably service over 50 square miles over 16 counties in southern, in southern eastern portions of the state. I appear before you in opposition of LB26 [SIC--LB1236] as it lacks the necessity-- necessary regulated framework found in LB1235. There was a statement brought up by one testimony and, again, I want to make sure that my partners as craft brewers, brewers, we're partners in this. The gentleman that stated that he could not find a distributor in the Lincoln area, I had talked to him and actually had the email correspondence in February of last year, actually coming up to the first year, that I'd be willing to take on his brands. Sat down with him, gave him my territory, gave him

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

all the information. At that point, never heard from him. Again, maybe my, my point not to call back and say, haven't heard from you, what's going on? But at this point, the regulation states that the brewer has to submit the territory agreement to the Liquor Commission for me to be able to sell the product. Again, I don't want to cross this person's stuff. I think, I think we're willing to take on any brands. We've proved it. And actually to bring up some information regarding what we've been talking about state micro-craft sales, me, and I can just talk for myself, my own distributorship, we-- and we look apples to apples. I represent approximately six micro-crafts in the state of Nebraska. Of that, the last testimony from Emyrean Ales is 11 percent of my business. Another business is 24 percent. A gentleman that's far all the way back for Thunderhead, as of last year, he's approximately 5 percent of my business. So I think these guys are valuable. And, and again, what I was told as growing up, every brand's important. That truck's going there, I'm going to make sure that I sell every brand. When we talk about territories, and that's why I said LB1235 will fix, fix the-- to open up a little bit to fix the necessary regulatory framework, it'll follow the guidelines. My concern is-- anything opens up more than that, my concern is other distributors or suppliers from other outside areas can actually challenge the laws and cause more dysfunction than you think we're hearing now with just a local type of environment. So-- and then again, a couple of things that were brought to our attention if we have some territory overlaps as they talk about territorial overlaps where I'm selling some brands and stuff, I guess, I'm pretty well said and done, so.

BRIESE: Thank you. Thank you for that. Any questions? Senator Brewer.

BREWER: OK. How many craft breweries do you distribute for?

MILAN KNEZOVICH: Seven.

BREWER: OK. And how many distributors are there in Nebraska?

MILAN KNEZOVICH: Seventeen, I'm pretty sure at this point. Maybe it'd be more than that.

BREWER: All right. So when you decide to take on one of these craft breweries, how do you determine whether you want them or not?

MILAN KNEZOVICH: I, I, I-- pretty much I take them. I talk to my people and we-- my personal way of doing business, I take, and especially local, I take them. There was something brought up about Beatrice. We have the new craft brewer in Beatrice now. We're starting

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

to, to, to work with them, but we take them. Now there might be a point, like I tell the guys, I say I don't speak for everybody else, but I tell my, my staff we have to give 110 percent by submitting signs and, and doing the job we can. But if there's some kind of issue, if this is going to go south, we better justify why we're not selling you. For point being, may I ask, tell you, too, is one incidence was a brewery out of Minnesota, Summit Brewery does phenomenal work, brought it to Lincoln, supplier calls me up, says Deder, what's going on? He says, you got me, man. But I'm not going to hold you hostage, do what you got to do. Well, again, they took it away from me and gave it to my competitor. Well, low and behold, my competitor came back and said, hey, Deder, do you want it back? It just didn't sell in Nebraska. I don't know what the answer is, but again, that's, that's what I've gone through. But I try to do every brands I can, I can justify. And, and if I'm not doing a good job, I've got my suppliers will say, let's sit down and see some incentives. We do incentives for everybody, make signs for everybody. I have an investment here. My truck goes there, and if the truck is going there, if I can have one added case to that beer truck, it's making me money otherwise it serves no purpose to not-- and if it's selling-- so we give the guidelines of 500 barrels, it if goes over that, if anybody is reluctant to take it, then I got, I got some concerns with my fellow constituents that wouldn't want to take a practice making money.

BREWER: OK. I had envisioned that you had like a couple of beer-tasting experts and they went and tried it and decided whether--

MILAN KNEZOVICH: No.

BREWER: --it was a thumbs up or thumbs down.

MILAN KNEZOVICH: Well, our, our guys would come together and actually we do have-- I, as I took Emyrean Ales on, I do have a specialized manager that handles-- does a very good job, that's through the 20-some years, very good about trying the beers and stuff. And I pretty much tell them, I say, let's give it a try, and, and then they talk to their constituents, they'll go out and do some sampling and stuff and talk. But there's never been a point where I've said no to somebody unless it was somebody from out of state that tried to come in, I, I go, I just can't give you 110 percent of time. Because I'd rather, I guess, field my own constituents in my own state than the others. But again, I will take them if I have to.

BREWER: All right. Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Thank you, Senator Brewer. Anyone else? Senator Groene.

GROENE: Thank you. On another bill, an individual said, well, there's a limited amount of demand. And so if you sell this, you lose this. By taking on the microbreweries has your overall sales increased or stayed-- just moved, moved sales around?

MILAN KNEZOVICH: No, they've increased.

GROENE: A percent-- percentage of what you took?

MILAN KNEZOVICH: Well, percentage, like I say, last-- with the COVID happened, I think I looked at it, my whole sales was up, up 12 percent and even with COVID happening. So there's, there's, there's a niche out there.

GROENE: So you just--

MILAN KNEZOVICH: But it's, it's a nurturing. We have to do some work.

GROENE: What is-- and, and my business, but what is your main line?

MILAN KNEZOVICH: My main line is Molson Coors.

GROENE: Coors.

MILAN KNEZOVICH: Molson-- Miller, Miller-- MillerCoors, excuse me.

GROENE: All right, so you--

MILAN KNEZOVICH: It's both, yeah.

GROENE: --so the microbrewery hasn't cut into that and the major [INAUDIBLE]?

MILAN KNEZOVICH: It's out there, but it, it, it, it fills. But again, if you look at a, a, a margin deal or even a little bit more money, it, it, it, it fits in the portfolio good, it's not like it's, it's a, it's a product that's bringing you down. It helps--

GROENE: So--

MILAN KNEZOVICH: --it helps generate the bottom line.

GROENE: --you owe your existence to the big guy--

MILAN KNEZOVICH: Absolutely.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: --Coors and-- do they put pressure on you when they see--

MILAN KNEZOVICH: No.

GROENE: --market share? Because you said 24 percent of your total sales are micro--

MILAN KNEZOVICH: Micro-craft. I just took apples to apples. I mean, I didn't take all the other, other natural brands. I said, let's look at craft. So this includes Boston beer. This includes Leinenkugels.

GROENE: Oh, of that piece of the pie.

MILAN KNEZOVICH: Of that piece because I'd rather look apples to apples. Yeah, because you can't look at Bud Light and Miller Lite with the craft brewers. It's a whole different, different animal.

GROENE: So your, your total sales of craft beer isn't 2 percent, probably?

MILAN KNEZOVICH: No, I said it was 24 percent.

GROENE: Oh, it is. That's what I meant.

MILAN KNEZOVICH: Yeah, because I heard all the state-- I don't speak for those state, but I just speak for myself that we're at 24 percent and that shocked me a little bit.

GROENE: Yeah--

MILAN KNEZOVICH: So it's 24 percent.

GROENE: --of, of total sales?

MILAN KNEZOVICH: Yes, sir.

GROENE: All right. Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Seeing no other questions, thank you for your testimony.

MILAN KNEZOVICH: Very good, sir. Thank you very much.

BRIESE: Next testifier. Good afternoon and welcome.

CALEB POLLARD: Thank you, Chairman Briese and honorable members of the General Affairs Committee. My name is Caleb Pollard, spelled

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

C-a-l-e-b, last name is P-o-l-l-a-r-d. I am president of Scratchtown Brewing Company in the Sandhills community of Ord, which is about three hours from here. And I am testifying today in support of LB1236 and in opposition to LB1235. I'll be very brief. I want to just point out a couple of very specific items and which haven't been discussed. First and foremost, LB1236 does provide for some options that were not available to the brewers with respect to LB1235, and those items are based off of distribution limits, not production limits. And precisely for the reason why we are in support of that or for some other reasons then what you heard from earlier testifiers is that there is no guarantee that if a craft brewer exceeds that 500-barrel limit on the production side, that they will be picked up by another distributor, which creates significant concern in future outlays with that specific brewer. I am very happy and as are my business partners to be in business with five other, with five other wholesale distributors in the state of Nebraska that provide us access. And so our ultimate goal is not to, is not to compete with them, it's to continue to support them. But we feel strongly in our application of our business and the growth of our business that these options should be afforded to craft brewers in the state of Nebraska because they are being limited to access. You'll hear from another brewer here shortly that that access has been limited in the metropolitan market. They're not able to sell their product there because they haven't been signed. And it's not Nathan that necessarily is the one that I'm speaking of, it would be another one that comes up behind me. But in addition to that, COVID has created some very significant challenges that exacerbate the issues, and I do not blame the distributors. We have workforce shortages. We have both plant shutdowns and warehouse shutdowns because of the Omicron variant that has made it more difficult to operate. In addition to that, because of these challenges, some of the distributors have started to require minimum order requirements for different retailers, which they cannot afford, or all products have to be pre-sold before they're sent out to market. They're not carrying any inventory for those particular brewers. So the reason why we're asking for a different approach and a cap of 1,000 barrels is what you're hearing from the brewers on LB1236 is it addresses those issues and it provides fallback for those that still cannot get signed if they are not afforded that option if they surpass that barrel limit. I am open for questions.

BRIESE: Thank you for that. Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Mr. Pollard, for your testimony. So you've got five distributors in Ord, which is a great

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

place this time of year. So do they come up with five different trucks through the course of a month to pick up beer?

CALEB POLLARD: So we either service their trucks that come to town. I think we have two distributors that do that, that would be Nebraskaland and then Heartland Beverage. And then the other distributors typically are going for a common carrier like Brown Transfer, LTL Carriers that we will contract with. They will pick up product and they will take it to Dietrich, Coors, Dietrich in Scottsbluff or excuse me, Gering, Coors in North Platte, or Quality Brands in Omaha.

BRANDT: So it is permissible for a, a brewer to use a common carrier to deliver to the warehouse of the distributor?

CALEB POLLARD: That's correct.

BRANDT: And then that's your cost or their costs?

CALEB POLLARD: We've negotiated in our contracts for them to cover that cost because that is part of the, part of the-- essentially a price that they assign on top of what our wholesale price to them is to the retailer. So they're recouping that cost and the sales to the retailer.

BRANDT: All right. Thank you. That was enlightening.

BRIESE: Thank you, Senator Brandt. Senator Brewer.

BREWER: Thank you, Mr. Chairman. In that triangle between Taylor, Ord, and Broken Bow, you got Scratchtown, you got Kinkaider, you got Bootlegger. You don't overwhelm the market with too much craft brewery products in there?

CALEB POLLARD: No. Matter of fact, I think we have a tremendous opportunity in which to increase our sales in that market, both on premise and off premise, because we have four area lakes, four area rivers that bring about 300,000 people through the area a year to vacation, specifically in the summertime. And so I think between us three, there's, there's more opportunity there. The challenge not necessarily for us as a business, but within our industry and as we stand in solidarity with our-- with 4 percent of the marketplace, I, I respect the prior testifier with, with his investment in the craft industry, but that's not necessarily typical. And so what we're asking for are other options that are available so that those that don't have access can, can push for that and grow their businesses.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BREWER: Well, we bring a group of Texans up every year to hunt prairie dogs in Nebraska, and they request a stop at your brewery to pick up growlers to take back to Texas, so you must be doing something right, so.

CALEB POLLARD: Thank you.

BREWER: Thank you.

CALEB POLLARD: We try very hard to.

BRIESE: Thank you, Senator Brewer. Anyone else? Senator Groene.

GROENE: Thank you. So during COVID, the brewers really got hit because you sell a lot of it on-site and you got all of the [INAUDIBLE].

CALEB POLLARD: Or in our case, you know, we made the bet. Now you can look back, potentially stupidly, that we were going to sell both on premise and then to bars and restaurants through draft sales through our distributors. And so we were particularly hit hard because of COVID because it shut down about 60 percent of our overall business opportunity, which are bars and restaurants, especially in the Lincoln and Omaha areas. So those craft brewers that made calculated decisions pre-pandemic to go long into the package realm, whether it be cans, bottles, etcetera, I feel like they've, they've, they've had a leg up.

GROENE: Because I was going to say, I think overall, maybe somebody can say, overall, I don't think booze sales have been down.

CALEB POLLARD: No.

GROENE: I thought they were up. Everybody's sitting at home.

CALEB POLLARD: And it caused us to pivot and, and move more towards packaging options so that, that, frankly, we could do off-sale during the three months that we were not allowed to have any customers whatsoever on premise. It was to go only based off of, you know, the, the dictation by the Governor.

GROENE: So you guys got hit harder--

CALEB POLLARD: We, we did.

GROENE: --because--

CALEB POLLARD: Yes, we're probably down 25 to 30 percent in our overall production from, I would say, December of 2019 to today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: The major brands are way up because people don't--

CALEB POLLARD: It's certainly--

GROENE: [INAUDIBLE] the retail liquor-- well, they said overall it was way up.

CALEB POLLARD: Yes.

GROENE: Because they had the distributor that were tied up.

CALEB POLLARD: Way up and they had the package options that my business had unfortunately chosen not to consider a pandemic as part of our--

GROENE: But you do, do a package now.

CALEB POLLARD: We do. Yes, we do.

GROENE: All right. Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Senator Brandt.

BRANDT: Real quick, Senator Briese. So to me, the obvious solution-- and, and I'm a farmer, we've got all sorts of cooperatives. Why don't the craft brewers all go together, form a cooperative to form their own distributor and then you guys can do what you want?

CALEB POLLARD: Well, we've certainly had that conversation, Senator, and one of the challenges that comes into play is then another big issue that will be addressed at another hearing is franchise law rights that distributors have with respect to the contracts that they sign with, with craft brewers. And, and so it is sometimes very challenging to do something like that because not only do you have the startup costs in starting up these, these independent distributorships, but then you also have market pricing that is associated with each brand that that distributor carries. And, and they have an argument that says that they deserve a particular payment per that brand that they carry, whether it's Scratchtown or Budweiser or whatever, and they're expecting financial "renumeration" if they sell that brand to a different distributorship. So that, that new startup distributorship not only has to build the distributorship and service their fleet and their, and their, their employment, etcetera, but then they also have to buy the brands that they want to carry with that, that distributorship. So it would be cost prohibitive under the current statutes for, I think, that option to be available because I--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

you're-- the, the fact of the matter is I think ag production and small-scale brewing are actually very similar. I grew up on a farm and one of my business partners is a farm kid as well, and we talk very, very often about those parallels. And so-- in fact, in my formal testimony that I submitted that I actually didn't read, one of the things that I compared adjustments in the law to are in-- are, are similar to adjustments within the meatpacking industry to allow smaller-scale packers to, to be more flexible with the regulations so that they actually can address the supply chain issues that are affecting the country writ large, the, the globe writ large, because there's a-- there's plenty of beef out there, plenty of pork out there, but the big hang-up is the packaging side and, and the processing side on the meatpacking side. And that's the somewhat similar parallel that we're finding, unfortunately, with respect to the wholesale distribution tier for some suppliers that are, that are in this room today.

BRANDT: All right. Thank you.

CALEB POLLARD: You're welcome.

BRIESE: Thank you, Senator Brandt. Anyone else? Seeing no other questions, thank you for your testimony.

CALEB POLLARD: Thank you, Senator, good to see you.

BRIESE: Yeah, likewise. Next testifier. Good afternoon and welcome.

OWEN NELSON: Thank you. Thank you, Chairman Briese, General Affairs. My name is Owen Nelson, O-w-e-n N-e-l-s-o-n. I come in support of LB1236. First of all, I want to make clear that I have no interest in a craft brewery. I have no interest in the distributorship. I come as a retailer of trying to obtain the product from a distributor and talk about the challenges that I, as a retailer, have had with obtaining that product. When Nathan and Jess first asked me to, to testify here, I was kind of like, well, I've never done this before. I really don't do well at politics. I'm a dumb farm boy that happened to get involved at a restaurant and a bar with my family because of a 24-year-old son that thought it would be cool. And I said, Nathan, I think you're going up against Goliath here, and you might be David because you're going to try to get a distributorship, a distributor that handles Coors, Budweiser, Miller, whatever it may be, Michelob Ultra, and you're going to try to get them to put your product in over and above the big boys, as I would call them, the Goliaths. They got endless dollars to lobby. They got endless dollars to bring people in from out

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

of state. They got endless ways to have every night a dinner meeting or whatever to get involved in stuff. I can tell you that the last year when I went back in my phone records, it was five different times that I called First Street Brewing in Hastings, and I could not get the beer from the distributor. When I asked Nathan, I can't get your beer, what's going on? Are you guys doing all right? He's like, I got beer sitting here. I can't get him to place an order. I can't get him to deliver the beer. We're doing the best we can. He's less than a mile away from me. He couldn't bring me the beer. We had to go through a distributor up to Grand Island and then bring it back down to Hastings if and when they decided to get it at the price they decided to set. They don't have a choice. The craft brewery doesn't have a choice what that beer price is at. The distributor sets that. Well, where you think they're going to set the price at? Are they going to compete against the big boys? Are they going to want to give up that space? I have eight tap panels in my bar. When that tap panel goes empty, and it was empty for over a month twice last year that I sat there, the first thing that salesman comes in and goes, we can put another beer on here. We get another tap. We can get that beer. And when he walks out the door and I called Nathan and say, where's the beer at? He goes, it's right here. I can't get him to get it. I can't get them to place an order. It's not competition. They have control. And if you are a big distributor, you probably want to hang on to your territory. The last thing you want to have is a craft brewery coming in and starting to get pieces of your pie. That wondering, there's only so much out there. I think it was said earlier, there's only so much beer going to be sold. Now as a distributor, do you think they want to support LB1236? Why would you? I want to control it. I want to control it as a big distributor.

BRIESE: OK.

OWEN NELSON: That's just my feeling of where I was at. So I'm glad people don't control my pizza sales because I would be in real trouble, but.

BRIESE: Thank you for your testimony.

OWEN NELSON: Any questions at all?

BRIESE: Yes. Any questions? Seeing none--

OWEN NELSON: Thank you.

BRIESE: --thank you again. And to be clear, you support LB1236, you--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

OWEN NELSON: I'm sorry?

BRIESE: --you going to be put down as opposing LB1235 or--

OWEN NELSON: Yes, yes.

BRIESE: Your choice.

OWEN NELSON: Opposing LB1235 and--

BRIESE: OK, very good.

OWEN NELSON: --proponent for LB1236.

BRIESE: Thank you.

OWEN NELSON: Thanks.

BRIESE: Next testifier. Good afternoon and welcome.

TONY GILLICK: Good afternoon. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Tony Gillick, T-o-n-y G-i-l-l-i-c-k. I'm the president, general manager and owner of Quality Brands Distribution with four locations in Nebraska: Omaha, Lincoln, Nebraska City, and North Platte. Quality Brands has been a beer and beverage distributor in Nebraska since 2002, when my wife and children and I and my sisters and brothers moved to Nebraska after we sold our distributorship in Chicago, Illinois, that we owned since 1989. Since that time, my eldest son, Anthony, has joined the business and oversees our operations in South Dakota and Wyoming, and my daughter, Abigail, oversees our operations in Colorado. Quality Brands probably represents 41 suppliers, 511 brands, and services approximately 3,000 retail customers across 42 counties. And after hearing this testimony, I would, I would shoot somebody if, if they didn't service the accounts that we service. We pride ourselves on service, and that's, that's unacceptable, so. I appear, I appear before you today in opposition of LB1236 for the following reasons. LB1236 grants all Nebraska craft brewers the ability to self-distribute without any regulatory oversight. Any Nebraska craft brewer can self-distribute their products anywhere off the premises as long as they do not exceed some undisclosed barrelage, undisclosed barrelage. On social media, the craft guild cited distributor labor shortages and logistical issues as a justification for the bill. Let me assure you that during the COVID-19 shutdowns in 2020, as well as the DHMs that were, that were instituted when they were lifted, and fast forward to present day, all four of Quality Brands Nebraska

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

distributors have run fully operational routes. We have serviced every single order and run every single truck. And let me, let me tell you, it has not been easy. We've had sales managers, office people who have CDL licenses delivering beer through that, through that major time. In fact, at the time when on-premise accounts were shuttered, Nebraska's distributor sought special permission from the Nebraska Liquor Control Commission to pick up close to code or expired product so as to alleviate some of the hardships felt by the Nebraska retailers. Nebraska distributors picked up the beer, issued credit or cash to all retailers in approximately three weeks during a pandemic, and we did this at our own cost with some support from our suppliers. And as far as labor shortages, Quality Brands Distribution proudly employs 225 full-time employees, all of which are well-compensated with full benefits. Not to mention during our, our peak season, which is summer, we employ an additional 25 employees to round that number up to 250, which is hardly a labor shortage and certainly does not merit the dismantling of the three-tier system. I urge you to indefinitely postpone LB1236. And I-- on a side note here, I was-- Quality Brands in Omaha was the distributor for Nathan from First Street that testified before and we--

BRIESE: I'd like to stop you there, but there be a question for you--

TONY GILLICK: OK.

BRIESE: --I'm sure here. Senator Groene.

TONY GILLICK: OK.

GROENE: Would you go ahead and continue for us?

TONY GILLICK: Well, we, we felt we weren't doing service to his brand, so we offered them back to him and, and to see if he could get somebody who is-- who had-- could put more time behind him and it wasn't out of-- to kick him out the door. We weren't, we weren't doing the job for him. So it was purely a trying to help him out.

BRIESE: Thank you. And Senator Groene.

GROENE: So overall sales were stopped with alcohol in Nebraska, right?

TONY GILLICK: Yes.

GROENE: And it went through the retail [INAUDIBLE]--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

TONY GILLICK: It shifted from on premise to off premise. So all the, all the on-premise business dried up during that COVID time and--

GROENE: So--

TONY GILLICK: --the off--

GROENE: --out of curiosity, the sales is way up--

TONY GILLICK: Not way up. We were up about 2 or 3 percent.

GROENE: So because of COVID, couldn't get toilet paper, couldn't get basic-- could you get alcohol?

TONY GILLICK: Oh, yes.

GROENE: They--

TONY GILLICK: Our shelves were not empty. We had some out of stocks, different packages.

GROENE: Budweisers and the Coors and all of them were able to keep pouring.

TONY GILLICK: And our, and our craft beer suppliers got us beer. So we were basically-- you know, we, we would be out here and there, but as soon as we got it in, we'd get it to the, to the customers.

GROENE: So do you work with Pals, Pals in North Platte?

TONY GILLICK: Out in North Platte, yes.

GROENE: That's worked out well for you?

TONY GILLICK: Yes, very well.

GROENE: Thank you.

BRIESE: Thank you, Senator Groene. Any-- Senator Brewer.

BREWER: Thank you, Mr. Chair. All right. If we take a look at your, your testimony here real quick, 3,000 retail outlets, 42 counties, 511 brands, 41 suppliers. So 41 suppliers, that is craft breweries?

TONY GILLICK: And craft breweries from around the country, local breweries.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BREWER: So the 511, basically you divide the 41 into 511, that turns out to about 13. That's the different types of beer from that particular--

TONY GILLICK: Um-hum. Sure.

BREWER: --supplier?

TONY GILLICK: Yeah, there's-- everybody's getting into the seltzers now. And so there's-- they've got their other beers.

BREWER: Now because you've got North Platte on your, your list of towns here, do you carry Scratchtown, Kinkaider, Bootleg, or any of those?

TONY GILLICK: Yes.

BREWER: OK. Thank you.

TONY GILLICK: And we're very happy to have them.

BRIESE: Thank you, Senator Brewer. Senator Brandt.

BRANDT: Your testimony, you came out against or against LB1236.

TONY GILLICK: LB1236.

BRANDT: What about LB1235?

TONY GILLICK: I'm for LB1235.

BRANDT: All right. Thank you.

TONY GILLICK: It's, it's much needed.

BRIESE: Thank you, Senator Brandt. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese. Thank you for being here and tough follow-- act to follow.

TONY GILLICK: Yeah, that was pretty tough.

J. CAVANAUGH: So in that situation, these sort of situations, you said that you returned the brand to them, so basically you dissolved your relationship.

TONY GILLICK: Right.

J. CAVANAUGH: And--

TONY GILLICK: Because we weren't, we were not doing a good job for them, so.

J. CAVANAUGH: And Senator Brandt asked, I think maybe two gentlemen ago, about getting a co-op and basically, he said that that would be prohibitive because if they started a co-op, they'd have to buy out the brand from the distributor who has the contract currently. So I guess that, that-- they're obviously a heavily regulated industry, but contractual relationships are well-defined is, I guess, my question. Are there buyout clauses in these, termination clauses in these contracts?

TONY GILLICK: There are, there are clauses for cause and things.

J. CAVANAUGH: For cause?

TONY GILLICK: Yeah.

J. CAVANAUGH: And, and I suppose that these contracts have shelf life. So somebody could say if somebody wanted to start a co-op like that or go to a different distributor even-- is currently existing, they could just wait till the end of their contract term and bid out.

TONY GILLICK: Some of them are, are-- there's no term limits on some of them, so. And they're all kind of different on, on-- state law supersedes, you know, some contractual law that you might, you might have with a, with a distributor--

J. CAVANAUGH: OK.

TONY GILLICK: --with a brewer, so.

J. CAVANAUGH: So the state law prescribes the--

TONY GILLICK: Right.

J. CAVANAUGH: --nature of the relationships here?

TONY GILLICK: Right.

J. CAVANAUGH: And so that brings me to my next question that I asked the gentleman earlier about the necessity to put in LB1235 that there would not-- that the self-distribution would not be able to compete. You know, did you hear that conversation I had earlier?

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General Affairs Committee January 31, 2022

TONY GILLICK: Um-hum. Yeah.

J. CAVANAUGH: And for some of the other folks in favor of LB1236--

TONY GILLICK: Six.

J. CAVANAUGH: --saying they have no interest in, in competing with somebody they have a good relationship with. And I guess my question is, do you know then if that is something that is currently in your contracts or is that something that you're relying on in the state statute?

TONY GILLICK: It's in, it's in the contracts.

J. CAVANAUGH: In the contracts?

TONY GILLICK: Most of them.

J. CAVANAUGH: So--

TONY GILLICK: I think most of them.

J. CAVANAUGH: Yeah.

TONY GILLICK: I got 41 of them so it's--

J. CAVANAUGH: I'm going to have to take more of a closer look at the, the statute because I'm uncomfortable with the, the concept of organi-- businesses interacting with each other without spell-- it spelled out in contracts. I mean, that seems-- I don't know, it makes me uncomfortable, I guess is what I'm--

TONY GILLICK: Right.

J. CAVANAUGH: But that's, that's just me. Thank you.

BRIESE: Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you for your testimony.

TONY GILLICK: Thank you.

BRIESE: Next testifier. Good afternoon and welcome.

JESSICA SHELBURN: Good afternoon, Chairman Briese, members of the committee. My name's Jessica Shelburn, J-e-s-s-i-c-a S-h-e-l-b-u-r-n. I'm the state director of Americans for Prosperity here in Nebraska. Our goal is to strive to create an economy that works for all,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

empowering people to earn success and realize their potential. We have seen significant growth in craft breweries over, over the past several years, stretching from Scottsbluff to Omaha and Valentine to Fairfield. They're becoming a vital part of communities, in many cases breathing new life into our smaller communities. Empowering these individuals to continue to create and innovate is good for all of Nebraska. Stifling their ability to get product to the consumer discourages this creativity and innovation. While both LB1235 and LB1236 are addressing the same problem, it is our belief that LB1236 is the better option. LB1236 offers more flexibility without the additional licensing requirements at a time when so many are struggling, especially in our small-- smaller communities that are homes to many of these craft breweries. This is something that we can do to help them thrive and come back to where they were pre-pandemic. LB1236 is a reasonable solution to a long-standing issue that has been amplified by the pandemic. I don't know what the right answer is, 500 barrels, 1,000 barrels. That's up for you guys to decide. But we do think that LB1236 gives you more flexibility in that and helps them to continue to grow their businesses, which grows Nebraska. So with that, we would ask you to advance LB1236.

BRIESE: Thank you for that. Any questions? Do you have a position on LB1235 or wish to--

JESSICA SHELURN: We oppose it.

BRIESE: --have a position known? Oppose it.

JESSICA SHELURN: Oppose LB1235.

BRIESE: OK.

JESSICA SHELURN: Yes.

BRIESE: Very good. Thank you--

JESSICA SHELURN: Thank you.

BRIESE: --for your testimony. Next testifier. Good afternoon and welcome.

CORY SINCLAIR: Good afternoon. My name is Cory Sinclair, C-o-r-y S-i-n-c-l-a-i-r, and I am here today to, to testify for LB1236 and against LB1235. I am one of the owners of Backswing Brewing Company here in Lincoln. We opened about five years ago and we've had-- initially had really great relationships with our, with our

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

distributors. Four months into being open, our Omaha distributor merged with another distributor and the rights to sell our beer were handed over to another distributor who we'd never talked to, who we did not ever have a signed contract with the entirety of our relationship with them. And this was all done without our knowledge or approval. And so four months into being a new business, we were going to have to buy our rights back from another-- from a company that we'd never worked with before unless we just agreed to move forward with them. We worked with them for about four years, sometimes-- at times it was good, times it wasn't. During the pandemic, they unilaterally released us. They just called us one day and said, hey, we're going to release you. Things hadn't been going very well with them at that point so we were-- actually we were very grateful the way it was handled. We didn't have to do-- have any buyout. And we were like, great, we can go get a relationship with another distributor in the Omaha market. This was over a year ago and we have been unable to secure a relationship with a distributor in Omaha. So we've been blocked from the Omaha distributor-- or from the Omaha market for over a year. The grocery stores that we were on the shelf in Omaha, we cannot get our beer to the grocery store shelves. We have bars and restaurants, we have large chains that want to carry our beer, we cannot get beer to them. We are the sponsor of a minor league soccer team in Omaha that plays at Creighton University. If we don't have a distributor or the ability to self-distribute by April, we will not be able to get beer to those games to sell at the concession stands at their games where we're the sponsor. We had Whole Foods contact us last year and wanted us to participate in a national advertising campaign where they were promoting local beers that they were selling at their stores. We were unable to participate in this because we could not get beer to the store in Omaha. Our biggest concern is this discussion of a 500-barrel limit. We-- prior to the pandemic, we were over 500 barrels in production. Our Lincoln distributor, prior to the pandemic, who we've had, always had a wonderful relationship with, was doing about 500 barrels just in Lincoln for us and the-- we've been without a distributor in Omaha now for a year. So I think that the idea that they are all just willing to pick anybody up just because they hit 500 barrels is questionable at best. The-- this is not something that we want to do. I have never wanted to self-distribute. It is not cost effective for us to do it. Even if we are granted these rights, if we have a distributor that wants to work with us in the future, we will immediately stop self-distributing because it is, it is more cost effective to use a distributor. We have no desire to do this.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Very good. Thank you for your testimony. Any questions?
Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, obviously, we're kind of getting two different views of the world here. I'm a little shocked to find that, that they're that far apart because one says it's a wave of the wand, I'll take anybody and everybody, shouldn't be a problem. On the other side, we've got folks who are saying, listen, I'm a real-world situation here and I can't find a distributor. So-- well, I guess if you were in a situation where you had a distributor-- let's go back to kind of where you were before things went south, the 1,000 would be a more realistic number?

CORY SINCLAIR: Yeah, that would be more realistic. I mean, I think if we're-- we would right now just be looking for the Omaha market and if our Lincoln distributor was doing about 500 barrels, then I guess stands to reason that 1,000 barrels in Omaha would be appropriate.

BREWER: And even though you wouldn't want to do self-distribution, if you're in this situation, which I brought up earlier, where your survival depends on your ability to distribute your product and if your product isn't the problem, otherwise you make beer that people like to drink. But people can't get the beer because they can't get it distributed.

CORY SINCLAIR: Yep.

BREWER: The self-distribution is a-- is an option to at least survive until you can find a--

CORY SINCLAIR: Exactly.

BREWER: --distributor that would, would help you.

CORY SINCLAIR: Yep. And that's one of the reasons why we're pushing for this, too. I think that we will-- you know, whether it takes another six months or so, I, I think that we will be able to find a distributor in the Omaha market. However, any-- we need to get this solved so this isn't happening to breweries over and over.

BREWER: Well, and the other part of that is if there is this pattern of a distributor that is fairly successful getting bought out by others--

CORY SINCLAIR: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BREWER: --and then the conglomeration says, I really don't need to deal with these pain in my backside, little breweries. And so they just come up missing because nobody takes care of their needs to, to distribute their product. There's a point where, you know, you have to say what-- we've got to do something. That, that's not fair. That's not right. Because it's not the failure of the microbrewery to do the things he's supposed to do, it's the inability to then distribute the product. So thank you for your testimony.

CORY SINCLAIR: Right.

BRIESE: Thank you, Senator Brewer. Senator Groene.

GROENE: Thank you. I'm trying to figure out-- everybody who's came up here said, I've got a great relationship with a distributor somewhere.

CORY SINCLAIR: Yes.

GROENE: All right? It's this area here that I know. So why is everybody favoring LB1236 where you threaten your existing distributor by distributing the 1,000 barrels statewide?

CORY SINCLAIR: I-- well, I don't think that LB1236 threatens our existing distributor.

GROENE: Well, they're going to think so.

CORY SINCLAIR: Well, I'm not-- I mean, we would not do any--

GROENE: But your--

CORY SINCLAIR: --any distribution in the territory where we have a distributor already.

GROENE: But that's--

CORY SINCLAIR: We have a great relationship with our Lincoln distributor [INAUDIBLE].

GROENE: That's what I was going to say, then why wouldn't you want LB1235 where--

CORY SINCLAIR: Well, LB1235 for-- first of all, for us doesn't work because we're already at that 500-barrel limit.

GROENE: Yeah, I agree with that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

CORY SINCLAIR: So we would also have to get a completely different license where we're a nanobrewery. I mean, it's a, it's-- there's a--

GROENE: What do you mean by nanobrewery?

CORY SINCLAIR: LB1235 requires us to give up our brewing license and get a nanobrewery license that only allows you to produce up to 500 barrels per year.

GROENE: Seems to me, you know, we can do a lot with words and change things, why couldn't we have a law that says if, if you do not have a distributor in a certain area that you can distribute in that area until you do?

CORY SINCLAIR: Well, I think that's what LB1236 does. LB1235 has--

GROENE: [INAUDIBLE]

CORY SINCLAIR: --has limitations on our level of production and because there's a, there's a-- LB1235 is a cap on our production where if you produce up to 500 barrels--

GROENE: Yeah, I agree with that.

CORY SINCLAIR: --you can self-distribute. But LB1236 allows you-- we're asking for 1,000 barrels. It would allow you to self-distribute 1,000 barrels, but I can still use my Lincoln distributor to do the 500 barrels that they're already doing.

GROENE: But I thought LB1236 allows you to do it statewide even in--

CORY SINCLAIR: Oh, they both would allow you to do it statewide.

GROENE: Well, no, the one says: inside and outside, may self-distribute its own beer brewed at the licensed brewery premise to retail license if that brewer has not entered into a distribution agreement--

CORY SINCLAIR: Right, correct.

GROENE: --with a licensed wholesaler for the territory where they such retail.

CORY SINCLAIR: Yeah, well, I mean, you wouldn't--

GROENE: So if you-- Lincoln, you could not distribute because you have a--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

CORY SINCLAIR: OK, I see what you're getting at. So I, I think whatever-- I mean, you wouldn't necessarily, but where, where it might provide some benefit for both sides of the equation is, say, our distributor-- a, a bar calls our distributor on a Saturday and they don't do any distribution on Saturday and says, hey, we need something.

GROENE: Well, that's--

CORY SINCLAIR: He can call us and be like, hey, yeah, you want to run that out. But that would be an agreement between us--

GROENE: Budweiser can't do that either.

CORY SINCLAIR: Right.

GROENE: But so if we were to, to say you can distribute up to 1,000 barrels not in full production and in an area where, where you do not have a distributor, wouldn't that fix your problem?

CORY SINCLAIR: Yes, that would, that would, that would.

GROENE: That wouldn't cause any relationship--

CORY SINCLAIR: If we can do 1,000-- if we can self-distribute 1,000 barrels in an area where we don't have a distributor, that would solve my problem, yes.

GROENE: Yeah, and that's everybody who doesn't--

CORY SINCLAIR: We're, we're only-- for my brewery, we're only concerned about the Omaha market.

GROENE: Wouldn't that put some competition in where the distributor says, well, I better sell that guy's product. He's doing great over here. If I don't sell it in Lincoln, he's going to terminate our agreement and I'm going to-- he's going to go direct. Wouldn't that put some pressure on the distributor?

CORY SINCLAIR: To, to, to give them some incentive, is that--

GROENE: Yeah, to sell your beer.

CORY SINCLAIR: --is that what you're asking, give them some incentive? Yeah, yeah, I would agree with that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Because over here in Omaha, I'm selling-- he's selling a whole bunch of beer.

CORY SINCLAIR: Yeah.

GROENE: And we're doing the job for him and where we have a distributorship so we better get going.

CORY SINCLAIR: Yeah, yeah. And like I said, I mean, it is, it is not financially beneficial to self-distribute. It is more financially beneficial to use a distributor and we choose to do so.

GROENE: But times it wouldn't-- that'd solve the problem--

CORY SINCLAIR: But right now we can't get our products on the market.

GROENE: --consumer has rights, too, where if a distributor cancels you, and that--

CORY SINCLAIR: Right.

GROENE: --that consumer in Omaha wants--

CORY SINCLAIR: Exactly.

GROENE: --your product, this would allow you to do it.

CORY SINCLAIR: Right. Right now, we have multiple breweries in the state where the consumers cannot access their product because it's being blocked from their shelves.

GROENE: Well, that ain't America. Anyway, thank you.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thank you for your testimony.

CORY SINCLAIR: Thank you for your time.

BRIESE: You bet. Next testifier, please. Good afternoon and welcome.

JOE JOHNSON: Good afternoon, Chair Briese and members of the General Affairs Committee. My name is Joe Johnson, J-o-e J-o-h-n-s-o-n, and I'm an owner of McCue's Nebraska Taproom, located in Kearney, Nebraska. At McCue's, we only serve Nebraska-made beer, wine, and spirits. We do not serve any other products produced outside the state. We are all Nebraska all the time. Thank you to Senator Lowe for introducing both of these bills. McCue's is one of the licensed retail

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

establishments testifying on LB1236. For us, this is just not a brewer or distributor matter. McCue's is the third tier in the Nebraska liquor laws. As a licensed retail location that only serves Nebraska products, it's often difficult to get product. The issue for this happening could be the beer was sold in larger markets or the brewery only produced a small batch of a particular beer. There are so many reasons why beer doesn't reach McCue's. I'll leave that-- those specific reasons up to the brewers and the distributor friends behind me. Let's be clear, if LB1236 becomes law, McCue's would still rely on distributors for 90 percent of our products. The other licensed retail establishments may be in the 90 to 95 percent range of products coming from distributors, thus, the reason why many retailers are not here. Also, large-volume beer production by Nebraska breweries will still require a distribution network. For McCue's, LB1235 is critically important because of our business model to only sell Nebraska products, which only make up about 4 percent of the market, and to have access to small-batch products. It was mentioned in our letter that was sent last week to the General Affairs Committee members that distributors may not purchase small-batch products from Nebraska breweries because of the risk of not being able to sell it or not having time to know the product. McCue's will gladly take the risk because our customers desire new, unique styles of Nebraska beer. In some circumstances, a bicycle is more efficient than a tricycle. Yes, I'm speaking of the limited two-tier system as proposed in LB1236 and which is, and which is currently enjoyed by our Nebraska winery friends. The growth of Nebraska craft beer market requires flexibility, convenience, and the ability for Nebraska breweries to sell their small-batch products. The owners of the McCue's Nebraska Taproom believe the solution is not the breweries nor their distributors, it's both. LB1236 provides a win-win for both. Thank you for your time today. I'd be happy to answer any questions.

BRIESE: Thank you for that. Any questions? Senator Brewer.

BREWER: You're the first guy who's uttered the word wine. So a quick question for you.

JOE JOHNSON: Um-hum.

BREWER: Obviously, the beer is being controlled by barrels, whiskey by gallons. Is wine by gallons also?

JOE JOHNSON: I don't know the answer, Senator Brewer, of that. All I know is that Nebraska wineries show up at our taproom and we are able to purchase from them directly. What goes on behind the scenes based

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

on barrels or amounts, that's up to them. If they show up at our door and able to sell us product right then and there, that's, that's what we know from the taproom.

BREWER: Well, I, I can see why you like that. That would be pretty simple and straightforward, show up and you can sell it.

JOE JOHNSON: And they know their product. They show up and sell their product. They know the product like the back of their hand.

BRIESE: Thank you, Senator Brewer. Anybody else? Senator Groene.

GROENE: Can't think of the name of the place. There's a place in Hays, Kansas. It's been there quite a while. I do business in Hays and I go there to eat and it always-- it's a brewery and it always amazes me what you were saying, no matter if it's Christmas, it's like a latte shop, they got a special for that. And they, and they got a new-- apparently, they do it quickly; barley, wheat, whatever. And you made a good point. Through the process now, you can't get that out to your retailer because you just made a batch of that at Christmastime and you want to get it to certain places who like that idea that they can advertise, here's the newest one from your brewery.

JOE JOHNSON: Yep.

GROENE: The system is too slow or too cumbersome, the wholesaling system for that to happen. Is that what I'm hearing from you?

JOE JOHNSON: Yeah. So that's, that's part of the issue. The other issue is that breweries and distributors are a business. So it's been mentioned that unless you can provide a certain number of barrels of a product, distributors will not buy it. So oftentimes we're working directly with the breweries to preorder and prepurchase those barrels, those kegs, those sixtels, whatever it is, and then it goes to the distributor. But sometimes what we have found is that the distributors don't know the product that's coming through their door. And then by the time it reaches them, they own the product. They don't have to sell it to us even though we preordered it and pre-- worked with the, the brewery to have it. They'll sell it to other retail establishments because now they realize they have something and we've just lost out. So it's, it's, it's a matter of risk. It's a matter of not knowing. And how could you? Let, let's be honest, with, with all the breweries in the state and each of them probably make four to five staples of beer and then the rest of the beer production is one-offs, how can anybody be expected to know every single one-off in the market? Now we

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

work directly with our brewery friends and we say, hey, if you got one-offs, let us know and tell us about it, and then we'll call our distributor friends and say, hey, this-- buy this barrel, we'll buy it from you. No questions; you didn't have to sell, do anything, just bring it to our door. And that's how we operate. Because the, the staples are great. The staples can be found anywhere. We want the one-offs. McCue's Nebraska Taproom only sells Nebraska beer. We sell no other beer. If it's produced outside Nebraska, we do not sell it. So we have to be unique.

BRIESE: OK.

JOE JOHNSON: We have to be.

BRIESE: Thank you for that.

JOE JOHNSON: Yeah.

BRIESE: Any other questions? And you would like your testimony to be in support or opposition or neutral?

JOE JOHNSON: Yeah, so LB1236 in support and LB1235 in opposition.

BRIESE: Perfect. OK. Thank you.

JOE JOHNSON: Thank you.

BRIESE: Thank you for your testimony. Next testifier, please. Good afternoon and welcome.

SCOTT HANEBOG: Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Scott Haneborg, S-c-o-t-t H-a-n-e-b-o-r-g. I'm the president and owner of Coors Distributing in North Platte. I appreciate the opportunity here before you today. I am in support of LB1235 and oppose LB1236. Our independent distributorship is a second-generation family business, started in 1977 by my father. Started with one supplier, Coors Brewing Company, now owned by myself since, since 2007. Along with my brother, currently manage the day-to-day operations of the business. We're a proud distributor now of 33 suppliers. And of those 33, 8 are Nebraska craft brewers. As a locally owned beer distributor, we, we continually invest back into our business and, and support our local communities. Our operation services 300 retail accounts and 16 counties in west-central Nebraska, totaling about 15,000 square miles. The reason stated by my fellow distributors, I am a too-- I am, too, opposing LB1236 and, and believe LB1235 is the better bill to enable small

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

craft brewers to self-distribute their products, but to maintain an orderly market. I am, too, concerned that LB1236 is void of some of the requirements that Nebraska craft brewers adhere to the rules and regulations found in the, in the Nebraska Liquor Control Act. I do want to mention that out of eight of those Nebraska craft breweries we are partners with, there's two of them that are inside of our territory. And the, and the other two do have distribution agreements with our-- with the AB distributor. At one time, one of those craft brewers was with our distributorship and I did surrender the rights due to the partnership just didn't work out. We did get distribution for their products and the retail accounts, it just didn't sell through so we, we did surrender those rights and--

BRIESE: OK, well, thank you for that. Any questions? Senator Groene.

GROENE: Thank you for coming down, sir. Your family does a lot for the community.

SCOTT HANEBOURG: Thank you.

GROENE: Is it-- am I reading between the lines or you don't want to make a contract with somebody and then they turn around and you're selling against yourself because they can distribute it in the same area you made a contract with them? That's why LB1236 is not good for the distributors?

SCOTT HANEBOURG: I believe that LB1236, if that scenario would happen, that could possibly happen to us that they could then sell over the top of us.

GROENE: I think that's, that's what the market is now. So you would-- so you don't mind if, if, if one of them that you're distributing for goes off into another area where they can't find a distributor and sells. You wouldn't care because you're not directed-- directly competing. I mean, we're, we're a competitive world.

SCOTT HANEBOURG: Yeah.

GROENE: Is that why the distributors like LB1235 or is it because it's limited to 500 barrels or both?

SCOTT HANEBOURG: I agree with Dave Tims because you asked him directly if-- and he said that he, he thought 500 barrels was a reasonable number. And I agree with that.

GROENE: Well, everybody--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

SCOTT HANEBOURG: And I agree that if a, a craft brewer is not able to, to partner with a distributor in an area that LB30-- LB1235 does give them an option to do it themselves up to 500 barrels.

GROENE: Probably a trade secret, but I'm going to ask it anyway. Of the craft brewers, what kind of, what kind of numbers are you selling? I mean, barrels. The top-- did you say you had two of them that you're doing or eight craft brewers did you say?

SCOTT HANEBOURG: There's eight of them. I believe one of them is a-- is strictly cider, which is a craft-- which is a beer product in Nebraska, so.

GROENE: But what's the top? How many barrels would be the largest that you distribute for, that you move for that has a good market for their product; 100 barrels, 200 barrels, 300, 50, 30?

SCOTT HANEBOURG: Probably around between 1,000 and 1,200 cases a year.

GROENE: You can convert that into barrels. I wouldn't be able to do that, but all right. That's not bad. All right, thank you.

BRIESE: Thank you, Senator Groene. Any other questions? Seeing none, thank you for your testimony.

SCOTT HANEBOURG: You're welcome.

BRIESE: Next testifier, please. Good afternoon and welcome.

MARY JACOBSON: Good afternoon. My name is Mary Jacobson, M-a-r-y J-a-c-o-b-s-o-n, and I'm here today as a registered lobbyist for the Nebraska Licensed Beverage Association in support of LB1236. NLBA is a nonprofit trade association representing liquor retailers across the state. Our members are small businesses who provide jobs in hundreds of communities throughout Nebraska, contribute to the tax rolls, and are good stewards and community leaders. Like many retail businesses, our members strive to meet the demands of their customers. Nebraska is very fortunate to have a thriving craft brewery industry, and our patrons have come to expect an offering of local beers at their favorite retail establishments. Unfortunately, worker shortages, consolidation, and other factors, as you've already heard today, have caused some limited disruption to the typical three-tier supply chain. With a limited distribution cap, LB1236 provides a much-- provides much needed flexibility to Nebraska's craft brewers to ensure businesses like our members can continue to access local products without jeopardizing the three-tier system. At a time when many local

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

bars and restaurants have closed or been strained by the COVID-19 pandemic, LB1236 is an important step in strengthening local supply chains. For these reasons, NLBA supports LB1236 and asks you to advance this measure in support of Nebraska small businesses. Thank you.

BRIESE: Thank you. Any questions? As far as LB1235, do you wish to be recognized as any position on that?

MARY JACOBSON: No.

BRIESE: OK, very good. Thank you. Thank you for your testimony.

MARY JACOBSON: Thank you.

BRIESE: Next testifier.

DON ADAMSON: This is kind of nerve wracking for a guy that don't do this much.

BRIESE: Don't worry about that. Good afternoon and welcome.

DON ADAMSON: Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Don Adamson. My first name is spelled D-o-n and in my last name is spelled A-d-a-m-s-o-n, and I'm the president and general manager of Adamson Distributing out of O'Neill and Heartland Beverage out of Norfolk, Nebraska. Adamson Distributing was founded by my father, J.R., in 1962. My wife, Laurie, and I bought my father out in 1987, and since that time, my daughter Melissa, her husband Brandon, and my son-in-law, Tyson, have joined the family business, which makes our operation a three-generation family-owned business. We expanded my father's initial 7 counties into 11 along the way. In 2016, we purchased our Heartland Beverage portion of our business, adding another 11 counties. Adamson Distributing market is ultra rural, covering 16,000 square miles with roughly 35,000 people. Heartland Beverage covers 6,000 square miles with 120,000 population for people-- for a total population base of 170,000. Adamson Distributing and Heartland Beverage have always welcomed Nebraska craft beer brands. We have never turned one away. Being a small distributor, we understand how hard it is to be successful and are grateful for the relationship we have with the Nebraska craft brewers as suppliers. Our company currently represents 11 Nebraska craft brewers. I appear before you in opposition of LB1236 and I am for LB1235. LB1236 in my mind is a bill that attempts to permit Nebraska, Nebraska craft brewers with the ability to self-distribute despite, despite the partnership or contract with a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

distributor. Nebraska distributors are well-versed in complying with trade practice laws. Here are a few examples that craft brewers electing to self-distribute must be required to follow. No different than the current Nebraska distributors. Things of value. A craft brewer that elects to self-distribute cannot give a thing of value to a retail account, equipment and supplies to retailer, even glassware must be sold, craft brewers cannot give retailers glassware. Shelf plans and schematics. Brewers that self-distribute can't move other distributors' products on display, add an account unless a shelf plan is submitted by an industry member. Dealer loaders. What's a dealer loader? That is a term for product display by an industry member, and it cannot exceed \$300 and must bear conspicuous advertising. [INAUDIBLE]. Craft brewers electing to distribute cannot issue credit. This list encompasses only a few of the core rules and regulations that must be adhered to when distributing a beer, a regulated product in the state of Nebraska. My fellow distributors sitting behind me follow these rules and a craft brewer that elects to self-distribute should be required to follow them as well. LB1236 is silent regarding these requirements and will only create chaos in the market with retailers, customers, and the Liquor Commission. Our initial smaller market, Adamson Distributing, we're a full-line soft drink provider. And you talk about pay-to-play, there's no regulatory framework, severely limits any access for dependable route to market for outside brands, slotting fees, pay-to-play, exclusivity agreements, cooler contracts. Whoever has the deepest pocket wins.

BRIESE: OK. I'm going to have to cut you off there.

DON ADAMSON: OK, that's fine. All right.

BRIESE: Try to be consistent.

DON ADAMSON: I thought I did pretty good, though. [LAUGHTER]

BRIESE: Any, any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese. Thank you for being here, Mr.-- is it Adamson?

DON ADAMSON: Yes, sir.

J. CAVANAUGH: Thank you for being here. Well, I, I really appreciate that written testimony I got here, too, with the list. So what you were saying there is that, that list of stuff are things that you guys are required to do or not do?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

DON ADAMSON: They're, they're state law. We, we follow them to a tee.

J. CAVANAUGH: Is, is there a reason that we couldn't integrate that into them?

DON ADAMSON: I think that would need to be, to be fair and, and keep things under control out in the market. You know, it's just like the guy that calls for a keg on the weekend. I've done that my whole life. We're small. We're all about customer service. But you get there and, gosh, Joe needs a keg, but Bill ain't there with a check. Well, the guy will go, geez, I need that keg, you know, and it's pretty easy, you know, when you can. But to say, yeah, I'll leave that keg. Well, pretty quick like, hey, this guy will do this on a weekend, let's put him on tap, plus we don't have to pay for an extra week. I mean, it gets loose real quick.

J. CAVANAUGH: Yeah.

DON ADAMSON: And I think it's dangerous.

J. CAVANAUGH: Well, we can ask other folks how they would feel about being held to that standard. But I mean, I don't know, when you say it, it makes sense to me, I guess, when we're holding everybody--

DON ADAMSON: We have state laws-- I mean, we got laws, we follow them close because it's our livelihood. If we-- when you, when you fall out of compliance, they can pull our liquor license.

J. CAVANAUGH: And you're saying this is not an exhaustive list, that there's more things?

DON ADAMSON: Oh, geez, yeah. Yeah, tax reporting.

J. CAVANAUGH: Thank you.

BRIESE: Thank you, Senator Cavanaugh. Anyone else? Seeing no other questions, thank you for your testimony.

DON ADAMSON: Thank you, guys.

BRIESE: You bet. Next testifier. Any other testifiers? I said I would go proponent, opponent, then neutral, but we're just having everybody up and, yeah.

VANESSA SILKE: I'm aware of one other testifier who's trying to be polite.

BRIESE: OK.

VANESSA SILKE: Good afternoon-- good evening.

BRIESE: Welcome.

VANESSA SILKE: My goodness. Good evening. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the licensed practicing attorney for the Nebraska Craft Brewers Guild and their registered lobbyist. I have a couple of letters to circulate, but they're not relevant to any questions you may ask for me right now, so I'm going to hold off on that for right now. One letter is from Brush Creek Brewing Company. Rodney Keim is the owner. He was unable to make the trek down to Lincoln today, so I have 12 copies of that letter in support of LB1236 and in opposition to LB1235. In addition, I have a letter from the Nebraska Travel Association, their President David Fudge writing in support of LB1236 are both there. I'm going to "quickly-ish" cover that cleanup on some of the concerns that were raised among LB1236 and LB1235. I'm also happy to answer any questions that you have along the way. I did hear a few key statements from folks testifying about dismantling the system and who's going to pay taxes, and what about vertical integration and contractual rights, which, as we know, the Liquor Control Act does not require that their contracts be in writing because statutory provisions dictate, largely dictate every one of the terms of the agreements between distributors and beer wholesalers. And so for that reason, I helped draft LB1236. I really appreciate Senator Lowe and Patrick participating very patiently in this analysis. And to senators' questions about, you know, what we can do to combine these bills, I've, I've got a few notes on that, that you can certainly ask me about, and I think there's a path forward there. The short of it is, as, as we've heard, Nebraska craft beer, actually craft beer in general, makes up less than 4 percent of the entire beer market. So this threat of vertical integration doesn't make any sense to me at all. We heard the same concerns years ago when we passed LB1105. And the immediate aftermath, oh my gosh, the entire system is going to dismantle. It hasn't happened. LB1236 is simply a way to provide regulatory flexibility so that both producers and distributors can make the best sense of their business cases to get beer to market with their retail partners. And so are we willing to look at, you know, distributor agreements and, and whether they have an agreement in place? Sure. But we've got to have some flexibility for these retailers who have repeatedly asked for product and can't get it. When you have a mandatory minimum, presales, and statutory overrides for anything else that you might negotiate, you're really in a bad spot and so are retailers. And that's why I emphasize LB1236; 1,000 barrels

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

is what we want to be tied to a distribution cap within the state of Nebraska. I think that again provides people flexibility. If all they're looking for is the Omaha market, they can utilize these tools for that. If they need to do that gap filling, filling elsewhere, this would give them, likewise, that license, that ability to do that. The last thing that I want to touch on and I'm happy to take questions is the last testifier talked about whether craft breweries would be subject to the same restrictions that wholesalers are. I don't think there's any opposition to them dealing with those restrictions. They already deal with federal and state licenses. They're already subject to the police power of the state, so I'm happy to answer questions about that issue.

BRIESE: OK, very good. Thank you. Any questions? Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right, so we're less than 4 percent of the market. One of the things that was brought up, and again this may be a bridge too far for the foreseeable future, but when they talked about the ease of those that are producing and distributing wine, help me to understand more what are their left and right limits and, and what do we set up for those that produce wine?

VANESSA SILKE: You know, that's covered by statute and I'm happy to cover more of it offline. I don't represent the wine producers, so I'm not as familiar with their statutes, but we do have controls in place to allow them if they meet a specific in-state production limit with waivers that are available for them, they can self-distribute. Their industry hasn't grown at the same pace and with the same confines and in industry aspects that we see with beer in particular. So I don't often compare winery rights to the craft beer industry for that reason.

BREWER: I didn't mean to throw a curveball at you there.

VANESSA SILKE: No, no, that's fine. It's not a bad question. It actually comes up. It demonstrates that we are capable of having self-distribution and the world doesn't end. In fact, in 37 other states, as we noted from another testifier, we have self-distribution rights for people to reach the retail market and particularly here in Nebraska, for my clients, they're all subject to the police power of the state. And so this concern about commerce clause or out-of-state things, these issues have been raised before with our licenses, and I can provide that analysis to each of you offline. But they're subject to the police power of the state and they are licensed here. There is a, a difference of treatment for businesses where the state has

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

control versus those located outside the state, but they don't have the same measure of control, particularly for a highly regulated product like alcohol.

BREWER: All right. So we have 64 breweries in the state, 70 apps, I guess, so there's another what, six or so that, that are in the process of becoming craft brewers. Do you have all 64 that you have some visibility with or how many of those do you have any type of contact with to understand what their issues and problems are?

VANESSA SILKE: That's a great question. So nearly every member-- or every craft beer licensee in Nebraska is a member of the Craft Brewers Guild. And to your point, it's a fantastic question. I have a list of all members and maps of where they are located within your districts and the city. So those are for you to review. Not every single member, you know, they're not forced to become a member of the Guild. We have an executive director who works with member outreach, so I hear regularly from new breweries, old breweries, those located in Omaha and Lincoln, and those in greater spread-out parts of the state. And I've heard-- they're one of my favorite clients just in, in looking at the different ways that we can craft regulations and laws to facilitate a wide range of businesses to grow and succeed here in Nebraska. That's really what we want.

BREWER: Well, you read my mind a little bit there with those maps and, and lists, but if we take a look at those 64, we had several that spoke here today about their challenges with distribution. If you went to the 64, any idea how many of those have challenges with distribution also?

VANESSA SILKE: I would say, you know, I'd have to look at the numbers specifically to look at, you know, who is new and needing to get a foothold in the market versus those who testified who have distributors in some parts of the state and others who are simply-- they have distributors who say they're going to serve them, but with mandatory minimums and presales, they're actually not servicing their retail accounts. So we've got a wide variety of issues, which is why we oppose LB1235. And if you want, I can identify specifically where there would be a touchpoint that we could merge bills. If not, that's OK.

BREWER: Well, I think, like with everything we do here, there's going to be a merge to make something that, that's palatable enough for everyone and, and gets us at least close to where we want to be. But

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

thank you and I'll look forward to getting my hands on one of those sheets you got.

BRIESE: Thank you, Senator Brewer. Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Miss Silke, for your testimony. So I'm one of these guys out here. I just lost my distributor. What's the process? Do I apply to the Liquor Commission for a permit to distribute or this becomes automatic that I can just put it in the truck and take it down the road?

VANESSA SILKE: You know, we can work with the commission on rulemaking as far as the specific documentation. And as far as improving LB1236, I don't speak for Hobie, Mr. Rupe, but I have offered to him that if we add a line that says the commission can engage in rulemaking to identify the specific forms and notice for someone to take advantage of their self-distribution rights, members are fine with that.

BRANDT: Well, I mean, it seems--

VANESSA SILKE: Yeah.

BRANDT: --we've got a, a strict set of rules for distribution in the state that they would need to become aware of those rules, get a license of some sort and there would probably be some costs to that license--

VANESSA SILKE: So--

BRANDT: --to, to do that.

VANESSA SILKE: --we would actually oppose getting a separate license because the pur-- the primary purpose of the license is the police power of the state and your ability and your duty to remit excise taxes, which my clients already have. As far as the litany of things that distributors are supposed to do, my clients are very much aware of those rules and regulations. In fact, that's why they're here asking for a way out and a way around it, because it simply isn't happening for all the reasons that you've heard. So we definitely understand the prior testifier, you know, identifying a very long list of things that we would be responsible for. We don't have an issue dealing with that. We do have an issue paying for an extra license. We definitely have an issue relinquishing retail license rights, which is on page 2 of LB1235 under section (a). We also have issues with any kind of cap on our production. I don't see how that's relevant to the distributors at all given that a portion of production is sold on

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

premise, they don't touch it at all. And for some, a portion of their production is sold out of state. Again, it doesn't go through the distributor tier, so it doesn't make any functional sense to me as an attorney or to my clients that we would tie these rights to those two things. Some pieces that we could work with, on page 3 of LB1235, lines 1 through 3 using only their-- my members using only their employees and their own vehicles in order to take advantage of these self-distribution rights. Members are fine with that. Lines 8 through 13, except for the having to get a wholesale license, we're fine with complying with all relevant statutes and that they would only get to self-distribute their own beer. They couldn't take anyone else's beer along with them, but they are already subject to the full police power of the state. If they violate any of these things, they're going to have their license taken away.

BRANDT: All right. Thank you.

VANESSA SILKE: OK.

BRIESE: Very good. Thank you. Senator Groene.

GROENE: Thank you, Senator Briese. So I get it now when the guy said nano. The big, the big choke here is where you're going to relinquish your license to sell any other type of--

VANESSA SILKE: Yeah.

GROENE: In other words, you couldn't buy from a, a distributor, Budweiser, or anything and sell any--

VANESSA SILKE: This is death--

GROENE: Yeah.

VANESSA SILKE: --for most of-- this is not a solution, period. And I know that we had a lot of--

GROENE: Well, that, that part right there.

VANESSA SILKE: Yeah, that piece right there. And then 500 tied to production and additional licenses, we're not actually solving the problems we've identified.

GROENE: But something where it said they could distribute 1,000 barrels and not worry about the production that they're going through other distributors and, and their local facilities--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

VANESSA SILKE: Yeah.

GROENE: --only in the areas where they didn't have-- not represented by a distributor--

VANESSA SILKE: Yeah, and we'd have to work out--

GROENE: --would fix a lot of the problem, wouldn't it?

VANESSA SILKE: It would fix a lot of it, but we'd still have to deal with the issue of mandatory minimums and presales.

GROENE: What is the mandatory minimum?

VANESSA SILKE: So that's where you have a distributor covering a territory, but they're only willing to come and pick up from you if you place or if the retailer places a mandatory minimum order, which through the pandemic escalated up to a volume that doesn't track anything, and presales, where you have to show that the, the beer is already sold, the distributor doesn't even necessarily take it to the retailer.

GROENE: So the quandary was-- answers the question with the man who owned a bar and his son owned a brewery, couldn't get enough because of the minimum.

VANESSA SILKE: Yes.

GROENE: And the same with the fellow from Kearney who couldn't get his order because of the minimum even though it was a presale. Both of them were presales--

VANESSA SILKE: Exactly.

GROENE: --but they got caught by the second--

VANESSA SILKE: And the distributors are private business owners. They're not an arm of the state. We don't want to demand that they do anything that, you know, doesn't meet their margins or what it is they want to do with their staff.

GROENE: Is that by statute or their own--

VANESSA SILKE: That's part of what we'll talk about in a different bill session. But the Liquor Control Act, when they carved out the three-tier system many years ago, it was under very different market

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

conditions. So there are a long list of statutorily mandate, very protectionist items for this.

GROENE: So is the mandatory minimum in statute?

VANESSA SILKE: No, that's their choice to do that. And because we don't have a choice, my members do not have a choice of whether they can go through a distributor or not--

GROENE: So if a--

VANESSA SILKE: --they have to deal.

GROENE: --as they talked earlier, there's these specialty beers and they-- these guys will brew something and give it a name. And then it's an event. I'm going to release this beer this night, come in, we're going to have a fun time.

VANESSA SILKE: Yeah.

GROENE: All right. So then a bar calls up and says I want just a keg or a, or a retailer says I want ten cases of that. If it's under the mandatory minimum, it doesn't happen?

VANESSA SILKE: Yeah, and the distributor can say no because they are a private business and we don't want to get in the middle of that, but we do want to get our beer to our retailers and our consumers. So in that case, what I've heard-- to your point about how often do I interact with folks within the Guild, for the bigger distributor-- the bigger distributing breweries that have these good relationships that you've heard about, it would be a very cooperative discussion of, hey, this bar needs my stuff. Are you going to come out? No, great. I'm taking it. That's not extinguishing the existing distributor agreement you have, that's working together to serve retail accounts and reach consumers. So I don't see this as a big of a problem when we have this overlap issue.

GROENE: Could they do that to a distributor where I'm going to take it there, but, you know, we'll--

VANESSA SILKE: Yeah, I mean, they could still--

GROENE: --bill you for it?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

VANESSA SILKE: --they could still use their distributor, but it's where the distributor can't or won't or just for any reason or no reason at all decides not to.

GROENE: Of your 64 breweries, how many are under 500 barrels right now?

VANESSA SILKE: I'd have to look. What I did, I did ask that question. We have some that have peaked above and below, and they've dropped over the last few years. So it's very difficult to say we've got X number of breweries that are in this camp under 500 barrels versus X breweries above this because in part the pandemic and because some of them have simply grown, which is a good thing.

GROENE: So a lot of these are just barrels. A lot of these guys start out by just making barrels--

VANESSA SILKE: Yep.

GROENE: --for consumption in their--

VANESSA SILKE: Yeah.

GROENE: --in their facility. And they really got hit hard because retail sales-- they have the bar--

VANESSA SILKE: Yes.

GROENE: --went away and they weren't bottling.

VANESSA SILKE: Exactly. And this is part of the risk that these businesses take on their own end in investing in their communities much like distributors. They invest, they have finances, they have investors, they have their own money, their own family members. And this equipment and these, these items they need to brew beer aren't cheap either. And the scale may look differently from site to site than what distributors have, but they're just as invested, if not more, in these Nebraska communities.

GROENE: One last question. So for bookkeeping, the big thing would be taxes, but the local manufacturers are already collecting, paying the tax.

VANESSA SILKE: We do. We already--

GROENE: So that's done.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

VANESSA SILKE: --deal with excise tax reporting, and it's the commission's job to enforce the law. So if they've got an issue or a question, we're happy-- they can already show up whenever they want. I have plenty of members who can tell you about that. They can also tell you a few years ago where there was a surprise audit of the entire industry and the delinquent tax they found was, I think, an \$8 difference. So my members do take the law seriously, and we are happy to work with Senator Lowe and the committee to make something work--

GROENE: Thank you.

VANESSA SILKE: --for the session.

BRIESE: Thank you, Senator Groene. Anyone else? Seeing no other questions, thank you for your testimony.

VANESSA SILKE: Thank you.

BRIESE: Next testifier. Good evening and welcome.

JOHN FORDHAM: It was good afternoon, wasn't it?

BRIESE: It was. It was.

JOHN FORDHAM: Well, good afternoon. Chairman Briese and members of the General Affairs Committee, my name is John Fordham, spelled J-o-h-n F-o-r-d-h-a-m, and I'm the president and general manager of State Distributing Company located right here in Lincoln, Nebraska. We were founded and incorporated in Nebraska 45 years ago and we are a Nebraska beer distributor. We represent a number of brands from around the globe, including the state of Nebraska. We operate out of our own 45,000-square-foot warehouse facility located here in town, and we cover seven Nebraska counties and 2,500 miles within southeast, southeast Nebraska. Using state-of-the-art sales and routing software and deploying a dozen sales and delivery vehicles, we service over 650 Nebraska retail license customers. For the reasons stated previously by my fellow distributor-- Nebraska distributors, I oppose LB1236 and favor-- and in favor of LB1235. I'm going to go off script a little bit because I kind of feel like we've exhausted a lot of these points. And I wanted to address a couple of questions I thought that were, that were asked by, by the committee, one by Senator Brandt when he said-- I think he asked one of the guys, he said, why would you carry one of these competing brands? I mean, what-- why would you do that? And as I know you are familiar, we are a for-profit organization, and I can quite simply tell you with one simple example why we do it. It's for diversification. Because when I got into the business in 1990, 60

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

percent of my business was Old Milwaukee Light. Anybody need a case of Old Milwaukee Light? Today it's 4 percent. Had I not diversified taking on competing brands, whether it was Coors or Blue Moon or Boulevard or any other brand that I carry, you would have the good fortune of not having to sit here and look at me because I wouldn't be in business anymore. We would have gone the way I think one of the, the craft brewers mentioned through consolidation, but we survived because we diversified because we had to. And that's gotten us where we are today is through diversification. And I can tell you and, and, and for public record, I'm looking at all and any newcomers from Nebraska. We need more brands. We can handle more brands. We love our Nebraska craft brewing partners. We represent two of them already; one from Omaha and one from Lincoln. They're our partners and our friends, and we love doing business with them. Senator Groene, I think you asked a good question as well.

GROENE: Took all day.

JOHN FORDHAM: Not that you need my affirmation, but you asked--

BRIESE: I think I'll cut you off and let Senator Groene ask that question again.

GROENE: Well, go ahead and answer the question that I asked.

[LAUGHTER]

JOHN FORDHAM: I feel like we're having a duel here. You asked Mr. Knezovich if he had felt any pressure from his major suppliers by taking competing brands and we don't. We're independent operators because the Nebraska franchise law affords us those protections because without them, as they represent the lion's share of our business, we have no independence. We become, we become a branch and for all, for all, you know, purposes because they're going to dictate our business. But the franchise law protects us and gives us our independence so I can do business with Brickway and Backswing and New Belgium and Boulevard. You know, that's our livelihood now, and we wouldn't be here today without them and without that independence.

GROENE: How protected are you on your contract with the majors?

JOHN FORDHAM: Well, through the contract and through the Nebraska franchise law, which supersedes the documents, right, we are protected. Now, I have, I have the ability to, to sell my business. You know, it's commercial. I can trans-- it's transferable, but with their approval. But they don't dictate the brands that I carry and,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

and the ones that I don't. So as an example, if I carry Blue Moon and one of my favorite Nebraska craft brewers comes out with a Belgian witbier, without the Nebraska franchise law, when I meet with my major supplier rep, he's going to look at me, Senator, and say, don't think that's a good idea.

GROENE: But there has been consolidation, has that been forced by the majors?

JOHN FORDHAM: No, purely economic.

GROENE: They said, they said your-- this area is not big enough, we want to consolidate to-- and we want you to sell to him?

JOHN FORDHAM: What they will do is if, for instance, if you and I are distributors in a "consolidatable" market and you say, John, I'd like to buy your business, then we would get approval from our supplier for, for that to happen. And the negotiation is strictly between us, as is-- I think somebody mentioned that there's some magic number that, that we use to figure out what the value of the brand is. It is magic. It's called market price.

GROENE: Do you-- did you buy an existing distributorship or did you create a new one?

JOHN FORDHAM: I bought an existing one.

GROENE: Has there-- do you know when the last time a new distributor was, was licensed? Are they all just [INAUDIBLE]?

JOHN FORDHAM: They're-- I think a new one is-- kind of came from South Dakota and is in Omaha, but I don't have the details. I know there was one. Good Life Provisions is one that's in Lincoln that's probably been here three or four years.

GROENE: Brand new, got a new brand--

JOHN FORDHAM: All, all brand new.

GROENE: --and got brand new major that they're--

JOE JOHNSON: Well, whatever brands they have.

GROENE: One last question.

JOHN FORDHAM: Yes, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: Do you have minimums, mandatory minimums?

JOHN FORDHAM: You know, that is your second best question. I do not have a minimum. I'm not sure what they're referring to. If you need a keg of beer, call me, we'll deliver it. Now, you know, maybe, maybe some of our friends are confused about the delivery vehicle. If we have less than five cases, we take it and put it on a van instead of putting it on a semi-tractor trailer because it doesn't make any sense.

GROENE: Do your drivers drive a route or do you--

JOHN FORDHAM: Oh, yeah.

GROENE: --are you strictly guided by orders?

JOHN FORDHAM: No, no. We have a route where we-- we're in-- we are in our accounts at a minimum every other week and at a maximum seven days a week.

GROENE: So you have routes?

JOHN FORDHAM: We have full-time routes that run every single day and we have merchandisers that stock our products every single day, including Saturday and Sundays, along with cleaning lines. So we're in-- some of our accounts, even though we deliver them to them every other week, we're actually in them every single week, sometimes twice a week. And if they need delivery for product, then we deliver it to them.

GROENE: Thank you.

JOHN FORDHAM: Yes, sir.

BRIESE: Thank you, Senator Groene. Anyone else?

JOHN FORDHAM: I would-- if I could make one more comment?

BRIESE: Would you make one more comment, briefly?

JOHN FORDHAM: Senator Brewer asked-- we were talking about farm wineries and, and, and, and the distinction between those and the craft brewers. The craft brewers are really in all three tiers and wanting to expand that, that piece of that. The farm wineries are only in two tiers. So, you know, that's a big difference. So how far do we get along this slippery slope? No matter what the number is, at what

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

point are they in, in all three tiers and expand that? And think about the irony is that the beer distributor is only allowed to be in one--

BRIESE: OK.

JOHN FORDHAM: --as, as a Nebraska beer distributor.

BRIESE: Thank you for that. Thank you for your testimony.

JOHN FORDHAM: Yep.

BRIESE: Next testifier.

HOBERT RUPE: [INAUDIBLE] be right back to clean up, to answer any questions plus a microphone here. You get in front of me here, that works for me.

BRIESE: Welcome.

JUSTIN BRADY: Since he was going to answer questions.

HOBERT RUPE: Exactly. Senator Brewer threw out a good question, so.

JUSTIN BRADY: Senator Briese and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska liquor wholesalers in support of LB1235 and in opposition to LB1236. The liquor wholesalers, I know you're probably asking, why are they here? They do have a small, very, very small piece of that they get into the craft beer market. They are not opposed to this idea of a nano-distribution. They just look at LB1235 as there needs to be guardrails. And LB1235 seems to provide more guardrails than the openness of LB1236. So with that, I'll be short and sweet and see if there are any questions.

BRIESE: Thank you for that. Any questions? Seeing none, thank you again.

JUSTIN BRADY: Thank you.

BRIESE: You bet. Next testifier. Welcome.

CHRIS WAGNER: Thanks. I thought maybe I could get him behind Hobie for once, but he's insisting I go first. Again, thank you for having me here. My name is Chris Wagner, C-h-r-i-s W-a-g-n-e-r. I'm here on behalf of the Project Extra Mile coalition. And as you can see, my testimony is a little bit different than the one I put together, so I didn't give you the original one. Really, I'm just-- you know, this is

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

slightly different than what you've heard for the last, you know, hour-plus, alcohol is different. It's a drug. And so it is regulated differently than most commodities in the market. If sold illegally or consumed excessively, it is dangerous. And I-- Senator Brewer, I know, brought Whiteclay into discussion earlier, and I would just point out that it's not just individuals making bad decisions, it's a system that's set up. It's when we deregulate, it's when we pass bad policies around alcohol that encourage excessive consumption that we have these problems not only in Whiteclay, in every legislative district in our state. And the three-tier system has been around for a long time and it is not outdated. It really does work. And there are some examples in the documents that I provided. It's also widely supported by the public. Actually, public support for the three-tier system has increased, according to the Center for Alcohol Policy, over the last couple of years, even during COVID when states were moving to deregulate. So it is supported by the public. They see the need. There are examples of how it works, keeps products that have been tainted. There is an example of Samuel Adams bottles that had, that had glass in the product that were able to get recalled quickly because of the three-tier system. There's also examples cited in other countries, the U.K. for example, when they have started to deregulate over many years, that they've had a lot of problems around that. So I'm not here to argue that there isn't an issue in our state. I'm just urging you to find a way within the existing system without allowing the self-distribution, if at all possible. The gentleman from Emyrean Brewing had, had a, had a pretty interesting point in his testimony is that they've been back many times over the years to ask for more. And the goalposts keep moving and it, and it's really incumbent upon this committee and this body to draw the line at some point. It's a slippery slope and we need to balance the realities on the ground in terms of public health and safety. We have over 700 alcohol-related deaths in any given year. Alcohol-attributable deaths increased by 66 percent, most recently, as reported by DHHS, over 2,400 alcohol-related hospitalizations. Just a lot of problems, and I just want you all to keep that in mind as you move forward on these bills that there is the other side to the-- of the coin.

BRIESE: OK, thank you. Any questions? Seeing none, so you oppose both bills?

CHRIS WAGNER: Yes, oppose both.

BRIESE: OK, thank you.

CHRIS WAGNER: Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

BRIESE: Next testifier.

HOBERT RUPE: All right, I seem to be blocking the other way this time, so.

BRIESE: Welcome.

HOBERT RUPE: Hello, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently have the privilege of serving as executive director of the Nebraska Liquor Control Commission. And just for the record, we are in mostly support of LB1235. We think there are some problems with it and we're probably neutral on LB1236. Without there being a number, there's absolutely no way we could take a position. And the reason we're-- just so you know, as part of the requirements of 53-117, we make recommendations. And earlier this year, you would have read our letter that we made a recommendation. There's, as this date of this letter, 66 Class L brewery license holders. By the way, the correct number now is 68. There are 68 and there are two in process. One of the concerns raised with the commission is that small, often newer breweries are having difficulties in accessing distribution tier. It also seems that often these small breweries are not attracted to the wholesale tier. To address this issue, the commission recommends the creation of a nanobrewery license. Said license would be limited to 250 barrels, 3,444 cases of reduction, but would be able to self-distribute at the bar, produced at the manufactory. Over the last year, Commissioner Hoke and myself have met with shareholders on multiple occasions trying to address those issues and really it comes to one of numbers. You've got 17, maybe now an 18th wholesaler recently opening up, spread throughout the state in different territories versus soon-to-be hopefully 70 craft breweries. And we only expect that number to continue to-- that dis-- that disparity to continue to increase. The guys who would call us and complain is a guy who's a small brewery who wants to be able to get a tap handle at the other two bars in town and at the country club. You know, he's not looking to make probably more than 200, 300 barrels tops, if that. In fact, going back to your question, I just happened to have the numbers, 48 of the 68 licensees are at 500 gallon-- barrels or less, currently. If you take it up to the 1,000, I think there are like six who would not be underneath that area so just we know in barrels. Because one of the things that's not known, especially on the bigger producers in our state, is we're only tracking the Nebraska-- the, the production which is distributed in Nebraska. A lot of those are multistate entities now, so they'll have a production limit far over than what they're just selling, either through the local taps or to the distribution chain. So that number, we don't look at that. They

just have to list that as a number that this is, this is the stuff we ship to another wholesaler out of state. So I think part of the devil will be in the details on the numbers, honestly. The issue we were seeing was trying to get the-- I mean, and unfortunately, you know, you're-- you, you do change the goalpost a little bit. But if you're getting to the point where we're seeing more and more complaints about distribution that are usually to the small guys because-- although to their credit, the wholesalers would never give me a number, the magic number of when does a small brewery become financially viable for them to pick up for distribution? You know, common sense says if you're a very small producer, especially in a very rural area, you're not going to be very financially attractive until you can prove yourself. So that was one reason why the commission put forth the idea of the nanobrewery license. We are happy with moving forward with all members, all stakeholders. I think we've shown that by taking the initiative and trying to address this issue beforehand. Unfortunately, we could not herd the cats all into one agreement, which is why then Senator Lowe graciously brought in both these proposals for us to sort of have this discussion here.

BRIESE: OK, very good.

HOBERT RUPE: With that, I see I'm into the red, so I would be very happy to answer any other questions.

BRIESE: Thank you. Any questions? Senator Brewer.

BREWER: Well, since I set up at least one, how is wine, is it, is it by gallons also?

HOBERT RUPE: OK, wine is by gallons. Wine-- all right, without going back into the history, remember you're, you're asking a former history major a question here. The Farm Winery Act actually predates the craft brewery license. The main difference, and it's not really applicable today, but at the time, back in the late '80s, the craft beer license was seen primarily as a retailer because back then, nobody's going to stop drinking Budweiser, Miller, and Coors. They might drink a little bit of this. So they were seen as a guy, as people who are going to make a little bit and so more of what's considered a brewpub where they will be a retailer. And then, oh yeah, well, if they make too much, we'll let them sell that to the wholesale tier. All right. Conversely, the craft or the Farm Winery Act was always seen primarily as a manufacturer with limitations. And they-- just to make sure, the craft brewery has rights, currently has two-- rights for two tiers; the retail tier, the third tier, and the first tier, the manufacturing

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

tier. The Farm Winery Act has-- allows farm wineries to have access at all three tiers, but there's limitations at all three tiers. They have production, but there's a cap. They can wholesale only their own product. And the third one is they can retail at their location with only their own product, which amazing in the what-- now I date myself-- 30, 40 years since those bills originally passed, those markets have almost shifted. Where you've got, you still got the craft brewery license, but you've got a lot of people in the industry right now who are regional manufacturers on the beer guy side. A lot of your craft wineries have turned more into retail destination spots, and they're a big user of SDLs for products not produced at the location. So it's funny the market has sort of gone the other way. The number of farm wineries is somewhat, I wouldn't say stagnant, but stabilized--

BREWER: Yeah.

HOBERT RUPE: --in about, I think last time I checked, 26. I think. I will-- I'll get the exact number to you later on. We've had a couple change. And there's not as much flip-flopping in there as there is in the, in the Ls. So that's sort of the reason why they're treated differently. And, and, and it was based upon, I believe at the time, a, a proposition was made since back in 1986, 1987. I'm not sure if it's still applicable today.

BREWER: Thank you.

BRIESE: Thank you, Senator Brewer. Senator Groene.

GROENE: So why would you stop-- make them relinquish any retail license authorizing the brewer to sell any alcohol not manufactured by the brewer?

HOBERT RUPE: The word I used was tepid support, and that's only the ones we have an issue with. I'm not sure that would be necessary. Our goal would be to--

GROENE: Because that's, that's retail, right, in their, in their establishment--

HOBERT RUPE: Yes. Yes.

GROENE: --right?

HOBERT RUPE: Yeah, our-- well, they would be able till their own. Our, our goal-- our thought would be-- our suggestion was a small

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

production, but they would continue to have all the rights of a craft brewery up, up until they got to that point.

GROENE: A craft brewer can sell Budweiser.

HOBERT RUPE: Yes.

GROENE: A distributor--

HOBERT RUPE: They have to get an additional retail license to do it.

GROENE: And you're going to take that away from them according to--

HOBERT RUPE: That, that's what LB1235 would be. And I'm not sure the commission would be supportive of that part of LB1235.

GROENE: Seems kind of spiteful, really. What-- how quick could you react? Some microbrewery just got canceled or lost a distributor, the restaurant is famous for selling that craft beer, can't get the beer. How quick could you react to some craft brewer saying, I need a distributorship for this area because I can't get my beer?

HOBERT RUPE: I can't react. I have no authority to force a wholesaler to pick up a craft brewery.

GROENE: No, I'm saying, how quick could you react to give them a, a limited distribution?

HOBERT RUPE: Right now, I don't have the ability to do a limited distribution license.

GROENE: If we pass this?

HOBERT RUPE: If you pass this, depending on how it passed, it would look, if this were to be passed, the way I would look at it, we're not giving them-- LB1235 would require them to get a wholesale license. Not sure that is required. It would be clear that they should be subject to the same rules and regulations of a wholesaler when acting in that tier, much like the farm wineries are. A true wholesale license doesn't take as much time as a retail license. Retail licenses usually take 60, 60 days.

GROENE: So the big--

HOBERT RUPE: A wholesaler would take less than a month.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: You're already collecting the tax. That's the big one. That system is already there. You don't track it to the retail end, the retail--

HOBERT RUPE: No, we don't collect the tax on retail. The, the tax is collected from a craft brewery from the craft brewer when the product is moved out of their production facility, their bonding production facility, for distribution in Nebraska either sold to a wholesaler, the craft brewer pays the taxes or sell it out to their own tap, they pay the taxes. The taxes, the tax the wholesale tier pays are for out-of-state beer shipments as they come in. So that would not change the tax issue.

GROENE: Right now, would a distributor have a double-check? Do you have a double-check? The, the, the manufacturer pays his tax and then you have a double-check how much he went through the distributor?

HOBERT RUPE: Yes. Oh, do we do, do we cross-check them? Yes, we do cross-checks.

GROENE: But you-- all right, but you don't know how much they sold over the bar?

HOBERT RUPE: Well, yeah, we do. Yeah, a craft brewery report-- when, when they file the report with us, their monthly report, they have to list products that they sent to the wholesaler and then we can cross-check those with the wholesaler and make sure that's the right amount. We-- they also have to list internal sales, which would be that going through their own taps, including their own taprooms. And then they have to give us how much they shipped out of state in the bill of lading to get it out of the state.

GROENE: So if we pass this, why do you care if it's a-- you don't care about-- you don't care or we don't care if you give a license to an establishment. You don't care if it's really popular and it sells the 100 barrels a week or one sells one barrel a week, do you? They both have a license.

HOBERT RUPE: They both would have a license. Yeah, we would not care-- we don't care about that when they're--

GROENE: So why do you--

HOBERT RUPE: The reason we came in, in support of, of the nanobrewery license was we were seeing a stifling because of the pure numbers. It was really [INAUDIBLE].

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

GROENE: So you're now-- there isn't a harder, more administrative cost for anything if it's-- if it was unlimited that if somebody isn't servicing your product that you could, you could distribute as much as you want. Why put a limit on it?

HOBERT RUPE: The problem that we would have-- I guess one of our concerns with if you have dual distribution in the same territory.

GROENE: No, what LB1235 says--

HOBERT RUPE: Well, I, I know you're--

GROENE: I'm talking about LB1235 says that--

HOBERT RUPE: LB1235.

GROENE: --you cannot distribute if you have an agreement with a distributor.

HOBERT RUPE: That's one, that's one of the issues we like about that because one of the principal things we have to look at is public health, safety, and welfare. And if there's a recall on a product, we want to be able to get the person and get it back out on the market. And if you got cross, cross streams there, it's going to be more problematic. You wouldn't under LB1235.

GROENE: Well, you wouldn't under LB1235.

HOBERT RUPE: Under LB1236, you might have that problem, though.

GROENE: So I'm just looking for a combined bill here. Thank you.

BRIESE: Thank you, Senator Groene. Anyone else? Seeing no other questions, thank you for your testimony.

HOBERT RUPE: Thank you very much.

BRIESE: Any other testifiers? Proponent, opponent, neutral? Seeing none, Senator Lowe, would you like to close?

LOWE: Been there awhile. Thank you, Chairman Briese. A bit dry. It's about time for this to get to an end. Now you see why I brought two bills. The discussion here today is completely different than if I would have brought one bill that would have combined these two. I want to thank everybody. As you see, this is a problem across our state. It's not a metropolitan issue. It's not a, a left issue, it's not a right issue. It's a problem across our state. And we have had many

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 31, 2022

people drive hundreds of miles to get here because it concerns them and very much so. Small businesses wish to grow here in Nebraska, and that's part of it. We have businesses here in Nebraska that don't wish to compete with themselves as far as distribution. They don't want to lose maybe their best clients because the microbreweries decide to distribute their 500 barrels or 1,000 barrels just strictly to those clients. We have a three-tier system here in Nebraska that works pretty well. It's that way because it came about after prohibition when major manufacturers manufactured the beer, distributed the beer, and then owned the bar or restaurant or the town. You might not be able to get a Coors or a Bud in a town because the manufacturer owned all the taps. So we have to think about that. A lot of these people here are my friends from years and years gone by. I was just in Thunderhead this last week and, and they're political in there. They had two bills hanging on the wall. One of them was LB1236, another one was there, and people at the bar were discussing what the Legislature was doing. That's what happens in these craft breweries. They're activists. They know what's happening and they wish to have us work on some things. So I brought the two bills so we can discuss. We got them together in one room and there was not any yelling. There was not screaming and hollering that you're stepping on my toes, but it was a frank discussion and that's what needed to be done. We did-- we ran out of time. Otherwise, we probably would have brought one bill that maybe they would have agreed with. But I don't think so. I still think there would have been, we oppose this and we're for this. So I brought two bills and now it's up to us to see, see what we do with it. With that, I close.

BRIESE: Thank you, Senator Lowe. Any questions? Seeing none, thank you again, Senator Lowe. And relative to LB1235, we have one proponent letter, four opponent letters, one neutral letter. Relative to LB1236, we have 35 proponent letters. With that, I'll close the hearing on LB1235 and LB1236.