

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRIESE: Good afternoon. We'll get started here. 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 hearings. We're here today for the purpose of conducting three bill hearings. 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 the 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 proponents, opponents and neutral testimony. We ask that you listen very carefully to try not to be repetitive. We do use the light system in the General Affairs Committee. Each testifier will be afforded three minutes to testify. 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 has expired and we will open up the committee to any questions that 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 General Affairs 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 ju-- assure you they are just researching the matters before us. If you have a prepared statement, an exhibit, or anything you would 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 clerk. With that, we'll re-- we will proceed to the introduction of members, beginning with Senator Jacobson on the right hand.

JACOBSON: Hello, everyone. I'm Senator Mike Jacobson from North Platte. I represent Logan, Thomas, Hooker, McPherson, Lincoln, and the northern half of Perkins County.

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

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

BREWER: Tom Brewer, District 43, 11 counties of central and western Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

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

BRIESE: Thank you. And to my right is legal counsel Laurie Holman; on the far end is committee clerk Alex DeGarmo. And, Senator Lowe, would you like to introduce yourself?

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

BRIESE: Thank you. And, pages, I'd like to introduce you, if you want to stand up. We have Payton Larson. Payton is a junior political science major in English-- excuse me, at UNL. We have Joseph Schafer, who is a history major at UNL. Thank you, guys. And with that, we will begin the hearing on our first bill, LB1268. Good afternoon, Senator Bostar.

BOSTAR: Good afternoon. This is my first time in front of this committee.

BRIESE: Welcome.

BOSTAR: Pleasure to be here with all of you. Chairman Briese and members of the General Affairs Committee, I'm Eliot Bostar, E-l-i-o-t B-o-s-t-a-r, representing Legislative District 29. I'm here today to present LB1268, which makes a simple change to language in the State Lottery Act. If passed, it would allow Nebraska lottery tickets to be sold by vending machines. I was approached by the Nebraska Retail Federation to introduce this bill to bring to the attention of the committee and the Legislature the national trend of self-checkout and to point out how the Nebraska Lottery is lagging behind other states. Of the 45 states with lotteries, Nebraska is one of only three that does not offer lottery ticket sales by vending machine. All states that border Nebraska either offer or plan to offer vending. South Dakota, Iowa, Missouri, Kansas, and Colorado currently offer vending. Wyoming is piloting keno vending later this year and hopes to add lottery vending after that. Unlike other vending machines, lottery vending machines are standalone and secure. They are age controlled and require a valid driver's license with a barcode to be scanned to verify the purchaser's age. Nebraska law does not allow lottery tickets to be sold at locations where alcohol can be consumed. LB1268 does not change that. It is worth noting that keno, pickle cards, horse racing, and soon-to-be casino gambling do not have that alcohol restriction. The Nebraska Lottery has distributed over \$855 million in quarterly transfers since it began operation in 1993. At the direction of Nebraska voters, these funds are going to education, as

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

directed by the Legislature, the Nebraska Environmental Trust Fund, the Nebraska State Fair, and the Compulsive Gamblers Assistance Fund. As you are no doubt aware, self-checkout has been gathering momentum for years. Retailer after retailer, even many who positions themselves as service oriented, are now offering a self-checkout option. The pandemic has accelerated this dramatic growth even faster, as it has instilled a strong desire in shoppers to avoid as much interaction with others as possible. That trend is expected to continue to grow. This change is important to help retailers who are dealing with staffing issues and working to respond to customers' demand for increasingly convenient means of transacting business. LB1268 would allow self-checkout through age-restricted vending machines in locations where alcohol cannot be consumed, which I believe is a modest update to our state statute. With that, I thank you for your time and be happy to answer any questions.

BRIESE: Thank you, Senator. Any questions for the senator? Seeing none, thank you. I assume you'll remain here to close?

BOSTAR: Absolutely.

BRIESE: Perfect, thank you. First proponent testifier. Good afternoon.

RICH OTTO: Good afternoon. Chairman Briese, members of the committee, my name is Rich Otto, R-i-c-h O-t-t-o. I appear before you today in support of LB1268 on behalf of the Nebraska Retail Federation and the Nebraska Grocery Industry Association. Thank you to Senator Bostar for introducing this legislation. LB1268 makes one change. It allows Nebraska lottery tickets to be sold by vending machines. First and foremost, this is a staffing concern for us. We're trying to free up our staff in convenience stores to grocery stores, allowing customers to purchase lottery tickets in vending machines just so they have the option of skipping the line and getting what they want in a self, self-checkout fashion. Not only does this save them time, but it also saves times of other non-lottery shoppers as well. Forty-five states with lotteries, Nebraska is one of three that does not offer lottery ticket sales by vending machine. All states that border Nebraska either offer or plan to offer vending. As Senator Bostar said, Wyoming is the one bordering state that currently does not offer lottery in vending machines. Lottery vending machines are standalone and secure. They require a valid driver's license with barcode to be scanned to verify age of purchaser. Currently, Nebraska allows pickle cards to be sold in vending machines and no age verification is required. The change helps retailers who are dealing with staffing

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

issues and working to respond to customer, customers' demand for convenient ways of doing business. LB1268 would allow self-checkout through age-restricted vending machines, and retailers just want to continue selling Nebraska lottery tickets. However, we don't want to be-- to put a burden on our employees. Freeing up our employees to do other things at the customer service counter and giving the retailer the option of adding the vending machine seems logical on all fronts. We think this is a win-win for the retailer, the consumer, and the Nebraska Lottery. I'm glad to answer any questions you may have.

BRIESE: Thank you. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese, and thank you, Mr. Otto, for being here and testifying. So Senator Bostar said that it would be age-limited vending machines. Is the-- do you have to swipe your ID or how does that work?

RICH OTTO: Correct. You enter your driver's license. There is a standard, standardized format now among all 50 states where there's a barcode on the back that can read the barcode and detect the age of purchaser.

J. CAVANAUGH: Thank you.

BRIESE: Thank you, Senator Cavanaugh. Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Mr. Otto, for your testimony. Can we use a credit card or a debit card to purchase these or is this a cash-only track-- cash-only transaction?

RICH OTTO: Typically, they do allow cards to be accepted. Now, that is something that the Legislature could control. Currently, retailers are allowed to sell by debit or credit card. Many retailers choose to only accept debit cards based on the fees they pay and they find it to be financially a better transaction if it's only debit. It would allow both, to my understanding, but again, the Legislature could put limits on that if they chose.

BRANDT: And then the second question: does the retailer restock the machine or does the lottery come around and restock the machine with tickets?

RICH OTTO: That's a good question. I believe somebody from lottery will be here. I'd ask you to--

BRANDT: All right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

RICH OTTO: --ask that question of them.

BRANDT: Thank you.

BRIESE: Thank you, Senator Brandt. Senator Jacobson.

JACOBSON: Senator Briese, thank you. Mr. Otto, I, I, I guess my question would be, you talk about these are secure machines, they'll be outdoors, indoors?

RICH OTTO: Typically, these will be indoors in a licensed retailer. So they, they do need to take place in somebody that already sells lottery. What it would be is, oh, you know, maybe a space up front next to a service counter or convenient to consumers. They'd be located there. Now, the lottery does occasionally allow outdoor sales. Like at the Nebraska State Fair, you'll see lottery tickets being sold at a booth, so I could imagine them having a vending machine there as well. But it won't be just on the street. It will need to be coordinated with a retailer or with someone that that lottery was allowed to sell.

JACOBSON: Well, if you find the absolute secure machine, I'd like to see you share that with the bankers because we have a little problem with ATMs, so--

RICH OTTO: OK.

JACOBSON: --I would-- I could imagine the same thing filled with cash and a bunch of lottery tickets, so-- so that would be one thing, I guess, I would want you to really focus on if this, if this should move forward, which seems logical.

RICH OTTO: Understood.

JACOBSON: Thank you.

BRIESE: Thank you, Senator Jacobson. Senator Arch.

ARCH: Thank you. Question: so unlike, unlike sale of alcohol that requires an ID, this, this would be an automatic scan. There wouldn't be a human being verifying the ID, correct?

RICH OTTO: That is correct. That's at the point you purchase. Again, to redeem the winner, you do have to go up to a person at the store. Currently, I believe \$500 is the largest threshold that a individual or a store can cash out. So anything above \$500 would go to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

lottery and they would have to do the age verification of the purchasing person or the person redeeming the winner. Pickle cards, I know, can go up to \$1,000 and those are sold in convenience stores.

ARCH: OK, thank you.

BRIESE: Thank you, Senator Arch. Senator Lowe.

LOWE: Thank you and thank you, Mr. Otto, for being here and explaining everything. What-- I think I asked this the last time this bill was up. What's to stop a minor from grabbing grandma's driver's license-- she doesn't drive every week, she would never know it's missing-- and from going into the store and using that ID to put it through the machine, where at a liquor store the clerk kind of looks at you and go, you're not grandma, you're Johnny?

RICH OTTO: Right. You do-- you bring up a valid point. First of all, I'd say I don't think this is the number-one thing that minors are looking to buy. I think there's a list of 20 other things that I could think of that they'd rather buy with a fake credit card-- well, fake ID. I know it's grandma's. I believe there is a stop switch if somebody saw from afar that it was a, you know, 10-, 12-year-old, somebody that's clearly under 19, that the retailer could shut the machine off. Again, I don't think it's going to be a concern and we've never seen minors being prosecuted or anything to this point trying to buy lottery tickets from a person like we see with other items. The other thing is, if they hit a winner, they have to find somebody else to redeem it.

LOWE: All right. And that might be easy to do for a percentage?

RICH OTTO: Sure.

LOWE: All right, thank you very much.

BRIESE: Thank you, Senator Lowe. Anyone else? Seeing no other questions, thanks for your testimony. Next proponent testifier. Welcome.

MIKE BAUMGARTNER: Thank you. Good afternoon, Chairman Briese, members of the committee. My name is Mike Baumgartner, M-i-k-e B-a-u-m-g-a-r-t-n-e-r. I'm the director-- executive director of the Coordinating Commission for Postsecondary Education and I am here today to support LB1268 as a beneficiary agency. Lottery revenues make up the majority of funds appropriated for the Nebraska Opportunity Grant and all of the funds appropriated for the Community

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

College Gap Assistance Program. These two programs are fundamental for making postsecondary education affordable to Nebraska students. The NOG is the state's only need-based financial aid program for Nebraska undergraduates. The program serves students at all public and independent colleges and universities located in Nebraska that meet statutory requirements. In recent years, it received between \$11 million and \$13 million annually, annually from the lottery and \$6.6 million to \$7.6 million from the General Fund. The NOG program is chronically unable to fund all eligible low-income students. In FY '21, only 13,109 of 30,682 eligible students received a grant averaging \$1,609. It's important to note that only slightly more than half of low-income Nebraska high school seniors continue on to college, compared to over three-fourths of non low-income seniors and the NOG program is very important to addressing that and building our skilled workforce. Community College Gap Assistance Program pays for program costs, including tuition, fees, training costs, books, and equipment for students enrolled in noncredit programs and very short-term credit programs that are eligible-- that are not eligible for the Pell program at Nebraska's community and tribal colleges. It's oriented to unemployed and underemployed adults. There are currently 326 approved programs in high-demand occupations and we have served over 1,200 participants since 2017. That program receives \$1.8 (million) annually from the lottery. On behalf of the commission, and I believe it's safe to say the state's higher ed institutions and students, the lottery funds are very important to addressing college affordability in Nebraska and we'd like to increase or at least maintain the amount of money the lottery generates for student aid. Nebraska Lottery anticipates locations with vending would produce approximately half the average sales of standard retailers. I'll skip some of the calculations, but that would yield about \$220,000 more for NOG each year and \$30,000 for the Gap program. Finally, with the imminent arrival of casino gambling at Nebraska racetracks and a different use for the proceeds of casino gaming, I believe that lottery vending could help maintain the amount that lottery beneficiaries receive, like the NOG program and the Community College Gap Assistance Program. Given our existing inability to provide grants to all eligible students, it's very important to the commission that we do whatever we can to at least maintain the program in the face of coming casino gaming. Thank you, Mr. Chairman.

BRIESE: Thank you for that. Any questions? In your testimony, I think you said or suggested it would increase the sale of these tickets.

MIKE BAUMGARTNER: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRIESE: And what was your calculation again?

MIKE BAUMGARTNER: Based on what Nebraska Lottery has provided to us, 50 new locations, such as a chain that does not currently sell tickets, estimated sales of that increase would be \$3.4 million, producing \$800,000 for beneficiary funds. And of that \$800,000 beneficiary, the NOG program would get about \$220,000 a year and the gap program would get \$30,000, so we'd get \$250,000 of it.

BRIESE: So the increase you're referring to was attributable to new locations?

MIKE BAUMGARTNER: Yes, right.

BRIESE: OK, very good. Thank you. Seeing no other questions, thank you for your testimony here today. Next proponent testifier, please. Seeing no other proponents, how about the first opponent testifier?

PAT LOONTJER: Good afternoon, Senators.

BRIESE: Good afternoon.

PAT LOONTJER: I am Pat Loontjer. I am-- for the past 26 years, been the executive director of Gambling with the Good Life, and Gambling With the Good Life was formed in, in 1995, when the threat of casinos coming over from Council Bluffs wanting to take over Nebraska. And we drew the line in the sand in 1995 and said, enough is enough, no more expanded gambling for the state of Nebraska. And even though we defeated the casinos for, for 25 years, every year, we would be faced with increases asked for by the keno people or bingo or lotteries or, or the horse racing. And every year we've testified against any form of expanded gambling, and we would like to do the same with that today. When the lottery first came in, in the, in the early '90s, that prohibition was put in there that it not be done by, by vending machines and we would like to see that stay. When they talk about increased revenue, they're talking about money that's going to be lost by families and, and children and all of the people that are affected by the loss and the increase in the, the amount. And any time you have a machine or you have even more locations, you're going to have more gambling and you're going to have more loss to the, to the average citizen. So we would ask you to-- to please keep this prohibition in effect and protect the citizens of Nebraska.

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

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

PAT LOONTJER: Thank you.

BRIESE: Next opponent testifier. Welcome.

NATE GRASZ: Thank you. Good afternoon, Chairman Briese and members of the committee. My name is Nate Grasz, N-a-t-e G-r-a-s-z. I'm testifying in opposition to LB1268 on behalf of the Nebraska Family Alliance. This is a simple bill, so I'll be brief with my comments today and simply ask that, as you consider removing the prohibition on the sale of lottery tickets through vending machines, that you keep a few points in mind. First, the sole focus of state-sanctioned gambling is to maximize profits, not to protect the public interest, and the lottery is no different. It is designed for people to lose. Second, the primary players and losers of the state lottery are the poor. Studies show that the poorest third of Americans buy more than half of all lottery tickets, which is why states advertise so aggressively in poor neighborhoods. We also know, according to our own state Gamblers Assistance Program, that lottery advertising often attracts the people who can afford it the least. And third, a study by Cornell University found that state lotteries get a disproportional amount of sales from the poor and disadvantaged because those stricken with poverty look to the lottery to improve their lives and help them escape poverty, which results in a reduction in player savings and spending on key household items. With these facts in mind, it would be unsurprising if the change that this bill seeks to make results in lottery ticket vending machines being densely and disproportionately populated in our poorest neighborhoods and communities. The lottery loves poverty and, rather than lifting people up, this bill would make it easier than ever for the lottery to keep people down by helping more people lose more money more easily, especially the poor and financially desperate. So thank you for your time and careful consideration.

BRIESE: Thank you. Any questions? And so you are of the opinion that this would increase the sales of lottery tickets, correct?

NATE GRASZ: Yes, that would be our opinion and I believe that was also stated by proponents that this would lead to more--

BRIESE: OK.

NATE GRASZ: --more location and more sales.

BRIESE: OK, very good. Thank you.

NATE GRASZ: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRIESE: Thanks for your testimony.

NATE GRASZ: Thanks.

BRIESE: Next opponent testifier. Seeing none, do we have any neutral testifiers? Welcome.

BRIAN ROCKEY: Thank you. Good afternoon, Chairman Briese and members of the General Affairs Committee. I'm Brian Rockey, B-r-i-a-n R-o-c-k-e-y. I'm the director of the Nebraska Lottery and Charitable Gaming Division of the Department of Revenue. Distributing some information, which-- some of it's already been touched upon, so I'll just hit a few highlights and then I've made some notes. I could potentially address some questions. I'm appearing neutral today. The vending machines are standalone and secure and, as has been indicated. They offer scratch games as well as draw tickets. They are age controlled, requiring a valid driver's license. The lottery terminals that retailers currently use also use the driver's license and, and if the clerk has a question about a player's age, they simply scan it and, and verify. The machines can be configured to accept various payment methods, including cash only. They do not validate tickets, as been mentioned. The tickets would have to be presented to a cashier or a Nebraska lottery claim center for age payment-- age verification and payment. While there are no specific locations planned for vending at this time, there are a number of chain retailers that currently only accommodate lottery machines-- I'm sorry, that only accommodate lottery sales in a vending format. Over time, the number of possible locations with vending machines could reach about 20 percent of the retailer network, or about 250 to 300 locations total. Some of those would be at existing lottery retailers, some would be at, at locations that don't currently sell. Any retail establishment can become a lottery retailer if they submit an application. Vending machines would be placed on criteria, including traffic, security and visibility, retailer staffing resources, and overall, overall appropriateness of the location. The vending machines would be procured through a vendor contract through our current vendor where we buy-- through which we obtain our equipment and, and related services and scratch tickets. The machines would be paid for on a percentage basis based on sales. It's similar to how we pay for our current product and, and equipment. On the point of sales, the 50 locations would be the estimating started-- estimated starting point and estimate between \$3 million and \$4 million a year in sales from those locations. The average retailer sells about \$3,200 a week. We anticipate these locations vending

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

producing half that, so about \$1,600 a week. I would happy to, happy to answer questions at this time.

BRIESE: OK, thank you for your testimony. Senator Arch.

ARCH: Thank you. How is a retailer paid currently?

BRIAN ROCKEY: They receive a commission. It's 5 percent on scratch tickets and 5.5 percent on draw tickets. And then there are some incentives that they receive; there's a merchandising bonus that they receive if they put up signage that the lottery requests and if they allow the lottery to determine their ordering system-- or the orders of tickets that they receive. So the average retailer gets about 6.5 percent commission over the course of a year.

ARCH: And then, of course, if there's a winner, winner, then that's a different payment.

BRIAN ROCKEY: Right, they get a-- if they sell a high-prize winner, they get a 1 percent bonus up to \$50,000. The retailers do receive a cashing bonus. So if they cash a winning ticket anywhere from a \$1 to \$500, they get a 1 percent bonus on that.

ARCH: OK, thank you.

BRIAN ROCKEY: Um-hum.

BRIESE: Thank you, Senator Arch. Any other questions? Senator Jacobson.

JACOBSON: I guess I'd have one. Thank you, Mr. Chairman. I guess my question would be, who owns the machines, who services the machines, maintains the machines, loads the machines?

BRIAN ROCKEY: The, the vendor, which is, in our case, IGT, would own the machines. Because the Nebraska Lottery has a contract with them, we would essentially control the machines just as we determine placement of retailers now. So we wouldn't just walk into a location and put down a machine. They'd have to be a retailer or we'd have to talk, you know, and see if they were interested. The stocking of the devices could be accomplished in a couple of different ways. If a retail location wanted to do it themselves, which most of them do currently with their display units, then they could do that. If they didn't want to be involved in that, then we would have sales personnel in the field or technical support personnel that would do that. When I say we, it's the vendor that has those personnel. The

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

lottery vendor employs 40 people across the state compared to the 21 that actually work for the lottery on the-- within the Department of Revenue.

JACOBSON: And just to follow up to-- maybe to Senator Lowe's earlier question, I guess I'm just thinking in terms of some-- the retailer being able to shut off the machine remotely--

BRIAN ROCKEY: Yes, sir.

JACOBSON: --that, that's-- that actually works?

BRIAN ROCKEY: There is a kill switch that's part of the, part of the system.

JACOBSON: Great, thank you.

BRIAN ROCKEY: One other-- and I-- if I can clarify, I think you asked about the security of vending machines. Lottery tickets are basically issued from the warehouse as pretty paper. And once the retailer actually activates the pack for sale, then they go live. Retailers typically keep track of their inventory and when they have a loss, theft or burglary, whatever, they report that to our security operation and those tickets are disabled. The same thing would basically be the case with a vending machine. Because the devices would be connected 24 hours a day to the central system, operations would know if something was going on with the machine and the tickets could instantly be tracked and, and/or deactivated in the event of a loss.

JACOBSON: And I think part of that would be the cash in the machines. What, what do you expect, expect for cash build before that cash is removed?

BRIAN ROCKEY: The retailer accounts are swept weekly. So every Sunday or Monday, a retailer is able to get a statement that says you, you have this many tickets coming due for payment and you've paid out this much this week and then the, the sweep takes place on Wednesday. The system automatically balances. I would imagine the same thing would be the case with the vending machines. As I mentioned, tickets are shipped from the warehouse as nothing more than paper. When the retailer activates them, they go on the retailer's account and they have up to 45 days to pay-- to settle-- to sell a pack before it settles and goes on their account; or if they are a location that sells fairly quickly or it's a small pack because it's a, say, a \$10 game with 30 tickets versus a \$1 game with 300, once the pack has

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

sold or validated 70 percent, then it goes on the statement. Again, the system manages that in real time and the retailer can actually see it in time what their, what their status is.

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

BRIAN ROCKEY: Thank you very much.

BRIESE: Any other neutral testifiers? Seeing none, Senator Bostar, welcome again.

BOSTAR: Thank you, Chairman Briese and members of the committee. You know, I know that there's a lot of opinions about gambling that exist and, and I think they're all valid. I would say that, you know, the way I think about this bill, to provide some context, is, one, we see time and time again from the people of Nebraska that they support gambling; and two, this bill specifically I see as really-- the main focus is to alleviate workforce pressure on retailers. I think that's the actual-- that's the main impact that we're talking about here. You know, as everyone here knows, we are in a, we are in an employment crunch. We have, you know, the lowest unemployment rate in the country, the lowest that we've ever experienced here as a state or, I guess, anyone's experienced in the United States, and it is very, very difficult for retailers right now to maintain that workforce. So this, this would provide a little bit of help to do that. You know, and I saw on the fiscal note that the, the estimated growth from this bill within sales was less than 2 percent, so, you know, I suppose that with the modeling on the machines, that there is expected to be some additional sales, but, you know, that being said, it doesn't seem to me like it's really-- like there's going to be a, a bonanza of, of lottery sales, you know, especially considering the kinds of gambling options that are going to be coming around the corner for us. With that, I really appreciate your time. I'd be happy to answer any questions.

BRIESE: Any questions for the senator? Seeing none, thank you for introducing this.

BOSTAR: Thank you, Chairman Briese.

BRIESE: Have a good day. We have no letters for the record relative to that bill. With that, we'll close the hearing on LB1268. With that, we will open the hearing on LB1109. Welcome, Senator Murman.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

MURMAN: Thank you. Good afternoon, Chairman Briese and members of the General Affairs Committee. For the record, my name is Dave Murman, D-a-v-e M-u-r-m-a-n. I represent District 38, which includes the counties of Clay, Nuckolls, Webster, Franklin, Harlan, Furnas, Red Willow and part of Phelps County, and I'm here today to introduce LB1109. The idea behind this simple bill was brought to me by a constituent who will testify after me today. Her daughter has an event-planning and rental business, and she is planning to open a hospitality event venue for weddings and other events. The ability to have a liquor license is key to the success of the business. The problem is that her daughter's husband is a police officer and, under current law, she cannot hold a liquor license unless her husband signs a spousal affidavit of nonparticipation with the Liquor Commission in which he states that he will not only not have any interest directly or indirectly in the operation of the business, but also not in any way participate in the day-to-day operations of this business in any capacity. Because this is a small family business, her husband would like to help with setting up and tearing down for events and help if they are short-staffed. An opportunity came up to acquire a building in Kearney, and because of the current restriction, my constituent, rather than her daughter, had to start the business. Their de-- desire is to sell it to their daughter and husband if this issue gets resolved. According to the current provision-- provisions of the Nebraska Liquor Control Act, no license shall be issued to a law enforcement officer, and if a person's spouse is ineligible for a license, then that person is also ineligible. Section 2 of LB1109 simply says that a li-- a liquor license to sell alcoholic liquor at a retail for consumption on the premises may be issued to the spouse of a law enforcement officer, and that such law enforcement officer may participate in the day-to-day operations of the business. This specific restriction regarding law enforcement officers was added nearly 40 years ago. Kansas had a similar restriction, but that statute was changed in 2021, and Kansas law now allows the approval of a liquor license to an applicant whose spouse is a law enforcement officer. Wyoming also had a provision like Nebraska's that their Legislature removed in 2017. Both Iowa and Missouri don't appear to have a similar prohibition for law enforcement officers or their spouses to acquire a liquor license. Other states, like Colorado, have restrictions on law enforcement officers, but not on their spouses. The restriction that we're asking to remove appears to be outdated and one that neighboring states do not impose. It does not expand the use of alcohol. It does not undermine law enforcement. All the current laws regarding regulation and enforcement are still in place. We are

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

simply asking that an individual whose spouse happens to be a law enforcement-- enforcement officer be allowed to obtain a liq-- liquor license to obt-- to operate her small business. Chairman Briese and committee members, thank you for your consideration. I'd be happy to answer any questions that you might have.

BRIESE: Thank you, Senator Murman. Any questions for the senator? Seeing none, thank you. First proponent testifier.

BARBARA PETERSEN: Good afternoon, Senator Briese and committee.

BRIESE: Welcome.

BARBARA PETERSEN: Thank you for the opportunity to listen to this. Basically, I'm here to just confirm what Senator Murman just said. My daughter has been a paramedic, was on the front lines during COVID. She, when she had her first baby, decided paramedic hours were not conducive to childcare because they would need evening or overnight because they have 48-hour shifts. She started a rental business out of her home for tables and chairs, wedding decor, and it has just exploded, so she wanted to go further and-- and open a venue. So we found-- my husband and I, we found a building, we purchased the building, all of us together, worked at gutting it, turning it into something beautiful. It's something different than what Kearney has. Kearney has some venues that will ser-- that will seat like up to 200, and there are very large venues. This venue will seat 400 to 450. She will offer a full-service operation where we will have a wedding planner available, a caterer, DJ, photographer, videographer, any of the things that they may need. They don't have to use their-- their services, but they are available to make it more of a one-stop-shopping place for them. So that being said, then we found out about this law that a police officer's spouse cannot own a liquor license. So by default, I get to own the business with my husband right now. I'm already a realtor and an interior designer and quite busy, so this adds-- gives added pressure to me. It also states that my daughter could not even manage the business under these current laws. She can be an employee, but she cannot manage the business. So anyway, I would just ask you to please consider the change. A liquor license is key to the success of her business. It's not a bar, but if the client wants alcohol at their event, obviously, there has to be a liquor license. So thank you.

BRIESE: You bet. Very good. Could you state and spell your name for the record?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BARBARA PETERSEN: Oh, I'm sorry.

BRIESE: It's no problem.

BARBARA PETERSEN: Barbara Petersen, B-a-r-b-a-r-a P-e-t-e-r-s-e-n.

BRIESE: OK, thank you for that. Any questions? Seeing none, thank you for your testimony.

BARBARA PETERSEN: Thank you.

BRIESE: Any other proponent testifiers? Welcome.

BRIAN PETERSEN: Welcome. Thank you, Sen-- Senator Briese, members of the committee. I am Brian Petersen, B-r-i-a-n P-e-t-e-r-s-e-n. I won't bore you with the history lesson my wife just gave you, but I'm hoping you'll change this or amend this law. I think it's borderline discriminatory, anybody, any entrepreneur who wants to get into this. I have five children, and all my kids so far have tried a-- to be an entrepreneurial business. My youngest graduates from UNL this spring. I just hope you'll take an opportunity here to update a law that seems to be outdated. Thank you.

BRIESE: Well, thank you. Any questions?

BRIAN PETERSEN: Go ahead.

BRIESE: Senator Lowe.

LOWE: Thank you, Brian, for being here, and Barb. Where's this location?

BRIAN PETERSEN: It's just off Central Avenue, 1610 West 21st.

LOWE: OK. Thank you.

BRIAN PETERSEN: It's the old Sears building, if--

LOWE: Yeah.

BRIESE: Thank you, Senator Lowe. Any other questions? Seeing none--

BRIAN PETERSEN: Thank you, sir.

BRIESE: --thank you for being here today. Next proponent testifier. Seeing none, any opponent testifiers? Welcome.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

HOBERT RUPE: Welcome, Chairman Briese, members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I have the privilege of serving as the executive director of the Nebraska Liquor Control Commission. First off, 53-125 is generally called the laundry list internally. It's the one that's got the, you know, felons, certain Class I misdemeanors. It was part of the original act passed in the mid-1930s. It's been amended since then to allow things like LLCs and corporations, of course, to hold liquor licenses. However, one of the things which has been there was a clear demarcation between those who are charged with enforcing Liquor Control Act and those who are-- who are able to operate under the Liquor Control Act. In this case here, I will have to correct a couple things that were said earlier. A spouse is-- who-- a spouse whose spouse is ineligible is ineligible, there are two ways around that. They can file what's called a spousal affidavit, which means, I'm not going to have anything to do with this, it's-- it's all the rights of my spouse, I'm out of it. Fine. The other way is, is if they want to have some limited contacts, if you read the rest of the statute, is it can be approved if the commission finds that-- that it would be allowed, it would not be a viol-- that the license would be operated, you know, according to the law and that it was primarily-- you know, and that any contact is minimal. Generally, that would happen is if somebody who wants to have. in this case, as stated, if he wanted to set up and take down the tables and stuff beforehand, if we go to a hearing, we probably would issue a license with that with a-- with a restriction that's his limitation of his role. We've done that before. In this case here, they came right to you, the Legislature, without ever applying an application in regard to this. The issue here, though, is what you heard, is that person wants to be involved with the operations. They want to sell alcohol and that, of course, puts that person now into a very interesting position because, also in the Liquor Control Act, is another provision that if a law enforcement officer observes a violation of the Liquor Control Act, even if he doesn't choose not to cite them criminally, he is required by law to submit a report to the Liquor Control Commission unless it's under certain undercover, UC-type things in that. If he fails to do that, he is now guilty of a Class IV misdemeanor. So in this case, the propo-- the proposed law enforcement officer could be sitting there, observe one of his employees serve a minor, and then what does he do? Does he send a report into the commission, resulting in a suspension, which usually would be a pretty hefty fine from the commission?, or does he go ahead and just ignore it and then violate his oath of office and violate and be-- and-- and potentially be guilty of a Class IV misdemeanor? I think this is putting law

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

enforcement into a very untenable position. This system has worked pretty well for the last 80-plus years. We would recommend that this bill not be advanced. I'd be happy answering questions as I see the red light's on.

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

BRANDT: Thank you, Chairman Briese. Thank you, Mr. Rupe, for your testimony. Can a law enforcement officer work part-time as a bartender?

HOBERT RUPE: We have that they can work part-time as a bartender. There's not a prohibition that they not have an employment by it. However, the other provisions of law still applies if a law enforcement were to ve-- do that. This has been a very sticky subject as to-- because people like to hire, normally, law enforcement officer as weekend security. And so most cities, other than Omaha, have specific provisions that they're not in their uniform of office, that-- you know, Omaha's-- we won't go down that road. I'm not-- that-- that one causes some issues-- because they don't want the idea, because what happens? When are you a law en-- when are you a cop, when are you not a cop, I mean, and it-- it causes an issue. Our recommendation very much is that, you know, law enforcement officers, if you are hiring them, they're clearly there in a capacity other than their law enforcement officer capacity-- capacity as officer. Generally, they work security, but there is nothing pro-- a prohibition. Please know that nothing stops a felon from being an employee, either, which is also one of the people who under 53-125 is ineligible to hold a liquor license--

BRANDT: OK.

HOBERT RUPE: --is having the operation, management, and control of the business.

BRANDT: But given your example of a bouncer--

HOBERT RUPE: Yeah.

BRANDT: --or a security officer, which is probably the more logical, if-- if I am an off-duty police officer and I see this happening, I have an obligation still to enforce the law. Is that true?

HOBERT RUPE: That's correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRANDT: So I guess I don't see what the current statute is protecting because, if I'm an owner and I see a violation, I have an obligation to enforce that, and you seem to believe that because I am an owner I'm going to let that slide, and do you have any factual evidence of that?

HOBERT RUPE: No. I would also say, the other problem would be from enforcement from other law enforcement officers. If--

BRANDT: How so?

HOBERT RUPE: How so? If I am a law enforcement officer and I am doing a compliance check or I am called to your liquor license location and I'm dealing with a number-- another member of law enforcement there, it-- it causes, I believe, a conflict.

BRANDT: All right. Thank you.

BRIESE: Thank you, Senator Brandt. Senator Wayne.

WAYNE: But if we-- if we change this provision, from your perspective, nothing in your office changes though.

HOBERT RUPE: We would have more-- we would have-- there would probably be some more applications regarding-- it's not a workload issue. This here is an the integrity-of-the-act provision. That's where our opposition is.

WAYNE: So who else are-- are not allowed to have licenses? What section was that of law?

HOBERT RUPE: So 53-125.

WAYNE: OK. Who-- and who else?

HOBERT RUPE: Any person who has been convicted of a felony, any person who has been convicted of certain Class I misdemeanors, not--

WAYNE: So that's a lifetime ban [INAUDIBLE] telling--

HOBERT RUPE: Yeah, you're not a-- no license shall be issued, is the way the statute reads.

WAYNE: And would you testify also in the negative or in the-- in the opponents if there was a bill to allow felons after a certain number of years or felons in general to be able to have--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

HOBERT RUPE: I would have to look at the-- the bill that come-- would come forward, Senator. I mean, I'm sure there-- you know, a timeframe might be the way to do it. In this case here, the bill before us would allow an act of law duty, enforcement officer to basically hold a liquor license.

WAYNE: Do you know when this section of law regarding the officer was put in? Was it the 1935?

HOBERT RUPE: I believe it was put in back at the original, probably 1936-37.

WAYNE: So don't you think back then there were still issues about Prohibition and underground and all that stuff?

HOBERT RUPE: Absolutely.

WAYNE: But don't you think those issues have changed now?

HOBERT RUPE: I don't think so. I-- I-- there is still-- I mean, you would like to think, but we still deal with illegal importation. We still deal with illegal manufacture. We still leave-- deal with felons attempting to get liquor licenses because it's one of the few cash-heavy businesses left for the laundering of money. So a lot of the things which came out of during Prohibition still exist. I don't believe that there's quite the amount, and I-- and I-- let me rephrase it. There's not the-- quite the amount of institutional corruption that there was back during Prohibition.

WAYNE: But wouldn't you think a-- a law enforcement officer would have the opposite effect of not only could they get charged with a crime, but they could also be punished or lose their job, so wouldn't they have a better incentive not to?

HOBERT RUPE: I-- they might. I'm not saying that's not a reasonable interpretation of this. I'm just thinking that it's-- your crossing the streams a little bit ineffect-- inappropriately. You're going to be putting those law enforcement officers on both sides of this interaction in a difficult position.

WAYNE: Is there any law enforcement here that's going to testify in opposition? OK. I was just wondering. All right. Thank you.

BRIESE: Thank you, Senator Wayne. Any other questions? Senator Lowe.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

LOWE: Thank you, Chairman, and thank you, Commission Director. Is there a resolution to this if this does not go through with-- for-- for the Petersens. Is there something that they can do?

HOBERT RUPE: They-- they could apply for a license if-- if he wished to have and they wish to apply under and put forth, they would, you know, as is-- as said, there is an out under-- after a hearing in front of the commission, to-- you know, to-- he-- they would come in and say, what's his role going to be? If his role is going to be parking cars and tearing down tables, we probably would issue the license with that restriction. You know, the issue comes from our perspective is if he's actually involved in the actual transactions that sell alcohol.

LOWE: All right. Thank you.

BRIESE: Thank you, Senator Lowe. Other questions? Senator Jacobson.

JACOBSON: I guess I just have one. Thank you, Mr. Chairman. You know, as I'm thinking through this, I'm kind of curious as to-- I get concerned when people have to reach out and go through a hearing and pay fees and do all this to do benign things. OK, now you're telling me that the concern is the actual selling of the alcohol, but all these other things would probably be approved, so why is that? Why is there a requirement you have to do that if you're the spouse of a law enforcement officer?

HOBERT RUPE: Well, everyone has to apply, so that's not [INAUDIBLE]

JACOBSON: I understand that, but I'm just saying the prohibition that you're-- you're-- you're flat denied unless you go through this process of a hearing.

HOBERT RUPE: Well, because that's what the statute says.

JACOBSON: Right, and that's why I'm saying it looks like the statute could be cleaned up at a minimum to clean that piece up.

HOBERT RUPE: Well, my-- my-- my position would be that that statute's worked pretty well for the last, you know, 80-plus years, and so I'd be-- I'd be hesitant to [INAUDIBLE] change it.

JACOBSON: Although it's not working for the applicants and we're in a gig economy today where you're going to see more of this going on and-- and I-- I'm-- kind of to tend to agree with Senator Wayne. I'm

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

a little concerned about, you know, are the-- is it time to take another look?

BRIESE: Thank you, Senator Jacobson. Senator Wayne.

WAYNE: So when you apply for a license, is it always you and your spouse? Or, I mean, so if I'm married to a felon, I have to have a--

HOBERT RUPE: If-- if you were married to a felon, you would apply because, you know, you know, both you and your spouse would be-- be fingerprinted and they're both background checked. People-- people forget that. You know, they forget that, yes, we do back-- do run and-- you know, FBI background checks on-- on principal owners. In this case here, as a felon, you would be the same situation. You would say-- your-- your spouse could file a spousal affidavit that says, I have nothing to do with this, this is all my husband's business, I'm not going to be involved. We would issue it with a spousal affidavit. If we then find out there's a violation of that, your license is probably going to be revoked because it was issued under the-- the-- that spousal affidavit.

WAYNE: But I could hire them to work there.

HOBERT RUPE: You could hire them to work there. There's nothing that says they can't work there. They just can't have an in-- an ownership interest. It gets very muddy, very quickly, you're absolutely right, because there's nothing in the statute that says they can't have an owner-- have-- they can't have an ownership stake. The reason why the spouse generally is also disqualifying was the strawman problem, was felons would have their spouse get it and then they were running the bar.

WAYNE: OK. Thank you.

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

HOBERT RUPE: Thank you very much.

BRIESE: Any other opponent testifiers? Seeing none, anyone wishing to testify in a neutral capacity? Seeing none, Senator Murman, would you like to close? On this bill we have one letter in support, two letters in opposition. Welcome again.

MURMAN: Thank you for your consideration of this bill. As I've stated, this is a simple bill to remove an antiquated restriction in

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

the law that our neighboring states have either ne-- either removed or never had. It's not hurting anyone other than small businesses that want to operate a venue for wedding receptions. I ask your support of this bill and that you would give it timely consideration and move it forward out of committee.

BRIESE: Thank you, Senator Murman. Any questions? Seeing none, thank-- thank you again.

MURMAN: Thank you.

BRIESE: And that will end the hearing on LB1109 and we'll open the hearing on LB1239. Welcome, Senator Vargas.

VARGAS: I don't know about you, that sounds like a good bill, right? All right. All right. So thank you very much Chairman Briese, members of the General Affairs Committee. My name is Senator Tony Vargas, T-o-n-y V-a-r-g-a-s. I represent District 7, which includes the communities of downtown and south Omaha. This is one of the brightest lights I've been in-- in a hearing room. I will say that. I'm here to introduce LB1239, which I know many of you have been somewhat, somewhat educated on, which is a bill to amend the portion of the Nebraska Liquor Control Act, which deals with franchise agreements between beer producers and beer distributors. I introduced this bill on behalf of Nebraska Craft Brewers Guild. This is not the first time I've introduced bills or worked collaboratively with the committee and the body to pass some reasonable legislation that supports the growth of the craft beer industry in Nebraska. Like most of you, I have craft breweries in my district. I understand the need to adapt to the heavy regulation of this industry to facilitate economic development throughout the state. Now this particular hearing is important because I believe it highlights one part of the Liquor Control Act that is worded and designed in a way to protect 17 private businesses in a way that we don't typically protect other kinds of businesses in Nebraska. And we do that, I believe, to the detriment of dozens of businesses outside of the distribution tier. Now, LB1239's intent is simply to require that beer distributors freely negotiate written franchise agreements with producers and that those agreements be executed by both parties. This simple reality applies to most contacts-- most contracts in the state of Nebraska. However, the Liquor Control Act dictates one-size-fits-all terms by statute, which cannot be waived, even when a beer distributor wishes to do so. Recently, craft beer licenses have been threatened with costly litigation over loosely negotiated, unwritten franchise agreements. I've also been told that others have even been warned by

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

beer distributors to not testify at today's hearing. Both of these issues inspired me to help by introducing the bill so that these issues with franchise agreements in the Liquor Control Act could be heard on the public record and amendments can be enacted into law. Now, I'm happy to answer your questions, but I'd prefer you listen first to the proponents of the bill, their attorney, who will provide examples and analysis to support this bill. Now, as you hear about testimony today, keep in mind that the guild requested a meeting prior to the session to discuss franchise agreement issues and legislation with the Associated Beverage Distributors of Nebraska and-- which includes most of the current 17 beer distributors. It's my understanding that ABDN did not meet with the guild to address this specific matter, hence moving forward with this piece of legislation. I also understand that the guild and ABDN have negotiated options to address this session's alcohol bill since the conclusion of bill introduction. However, as of Friday, at least what I've heard, is the only option ABDN has offered for the guild members is to either not testify at today's hearing and also refrain from bringing any legislation for future franchise agreements for a period of up to five years. I think this is the avenue for us to discuss whether or not there is really something that should be done in law. I remain open, as do the guild members, to the amendments to LB1239, whatever you may choose to do, which accomplish the simple goal of this bill and welcome the opportunity to work with the committee to grow the beer industry in Nebraska. I will say this. I know I say the word "simply." I know it's not that simple, but I do know that we have, at least if you've been in a couple of other committees, we don't typically have laws that are dictated in this way for private business and private entities. And similar to some of the questions that were brought up in this last one, we do things a certain way because they've been done a certain way at a specific point in time. Is this the way we want to continue to do them? I do encourage you to look at the testimony that is in the comments. There is-- there are guild members that put in very specific instances that will highlight this better than whatever I can do in the public comments. And I think those instances are worth your education and worth your time and I know you'll hear some of those instances from some of the, the guild and then the legal counsel representing them. But with that, again, I encourage you to ask questions from proponents and I'll do my best to try to clean up anything that-- answer any questions from there on in.

BRIESE: Thank you, Senator. Any questions for the senator? Senator Arch.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

ARCH: I have one, and this may be for somebody yet to come, but just so-- to clarify, is there always a franchise agreement in place and-- whether it's written, not written or whatever? And so in other words, does this require that a franchise agreement be in place or does this require that if a franchise agreement is in place, then these two conditions are met?

VARGAS: The second. There's-- my understanding is a franchise agreement is all-- it is in place, but this is to make sure that that franchise agreement can be freely negotiated and made a contract between the two different entities. But it's more of a blanket, one-size-fits-all right now in the industry.

ARCH: Thank you.

BRIESE: Thank you, Senator Arch. Any other questions? Seeing none, thank you, Senator--

VARGAS: Thank you.

BRIESE: --for being here. Remain here to close, I assume?

VARGAS: Oh, yeah, I'll stick around.

BRIESE: OK. Thank you. First proponent testifier. Welcome.

LINDSEY CLEMENTS: Thank you. Thank you, Chairman Briese and the committee, for the opportunity to speak today. My name is Lindsey Clements, L-i-n-d-s-e-y C-l-e-m-e-n-t-s. I'm the cofounder of Vis Major brewing located in Omaha, founded in 2017. Prior to opening my business, I worked as a wholesale distributor rep from 2012 to 2015 for a small, independent distributor specializing in craft beer, wine, and spirits. In that position, I gained understanding of what it takes to build a brand in the market. I used that knowledge in the development of my own business plan, and we operate a taproom model attracting customers to our location. We grew our brand through social media, word of mouth, and beer festivals. In order to participate in these festivals, breweries are required to utilize a distributor to transport and sell the products to the event. I was approached by my former employer who had since merged with a larger company to set up a temporary territory agreement. We had agreed that they would only represent my brand for these festivals and I was appreciative of their assistance. There was no conversation about additional representation of our brand in the retail market, but word got back to me that sales reps for the-- for the wholesaler were offering my beers to bars, restaurants, and retailers. I found it

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

concerning that my product was being offered without an agreement or contract, but with the territory established, I was locked into this agreement that I had not intended to make. In 2020, I requested a meeting to discuss options of limited distribution, but ultimately we chose not to expand our production and have since discussed the possibility of removing that territory. My concern for the current state of franchise agreement is the written contracts are not required by the state when registering a territory. Contracts between breweries and wholesalers common-- are commonly established but are difficult and costly to get out of when contract term ends. There are two ways to move your business from a wholesaler to another. One is the right-- rights to be bought out by a new wholesaler partner in the brewery. The second is to leave the market for a year. When negotiating these terms and contracts, the buyout option is not determined. The buyout is based off of established value of the brand to the wholesaler. The current state of our franchise agreement disproportionately, disproportionately favors wholesalers, offering them greater protection than any other business in the state. What we're asking for is franchise reform that will balance the terms of negotiations with our wholesale partners, placing clear performance expectations in contract terms that would allow us to move our business if not met. This reform is in the best interest of small business owners and continued growth for our industry throughout Nebraska. Thank you.

BRIESE: Thank you. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese. Thank you for being here--

LINDSEY CLEMENTS: Yes.

J. CAVANAUGH: --Ms. Clements. So you kind of-- obviously with the time, you go-- went a little quickly there. So you're telling us a story about when you engaged the services of a distributor for the limited purpose of having your beer distributed at a beer fest or something along those lines.

LINDSEY CLEMENTS: Yeah.

J. CAVANAUGH: OK, when you have that conversation, do they explain these other-- that they're going to-- that by coming to an agreement with them, you-- that they-- that the scope of representation is going to be larger than what you discussed or how does that--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

LINDSEY CLEMENTS: I was under the-- I, I understood the fact that they would have to register my brand with the state and via email, we corresponded and discussed that the only representation would be for the sake of transporting my, my product to these specific beer events. There had never been a conversation about taking our beer any further into the market than those events.

J. CAVANAUGH: And could you have-- so you never had a written contract as to the scope?

LINDSEY CLEMENTS: No.

J. CAVANAUGH: Under the current statute, I, I did-- I read this bill and it's obvious there was a lot of changes and stuff in it, but there was one line crossed out where-- does not require writing, but was writing an option? Could you have had a written contract?

LINDSEY CLEMENTS: If-- yeah, I think that where I was so taken aback by kind of the way things evolved was the fact that in the email discussion, it was clearly specified, in what I thought to be an understanding between myself and the wholesaler, that it was going to only be limited to this at that point in time. Early on, again, because of the scale of our operation, we don't really have a lot of additional product to-- that, you know, we can send out into market and we've been able to successfully sustain a business within our own taproom and that's the model that we chose to focus on. So for us to comply with the current laws in order to participate in these events, I still had to utilize the distribution tier. For us, you know, we-- I was just simply disappointed by the fact that it was casually-- and, you know, it, it was just a matter of me saying, no, that's not the case, we don't have a, we don't have an agreement, we don't have a contract. And ultimately, we're at a point now where it looks like we'll be easily able to have that territory released. But, yeah, for me, it was just more so the fact that this representation was occurring without ever having a discussion about taking our brand a little bit further within that-- within the representation of that wholesaler.

J. CAVANAUGH: So just to clarify that, it seems-- it came to your attention through other means--

LINDSEY CLEMENTS: Yeah.

J. CAVANAUGH: --that this--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

LINDSEY CLEMENTS: I was, I was being told that like the-- our kegs were listed as available to be purchased through Hy-Vees. I had a craft beer bar in Omaha reach out and said, hey, the rep told me that you're represented by them and we'd like to bring your beer in for this event. And I was like, I didn't know that. I didn't know that that was the case because the only other instance in which I had any exchange with that wholesaler was in regards to beer festivals specifically.

J. CAVANAUGH: And then you sort of alluded to that you think you're going to get the situation resolved. Has it been taking a lot of time and effort to get it resolved or--

LINDSEY CLEMENTS: No, I-- so as my understanding right now-- since I haven't done any distribution with that, with that wholesaler since 2020, I've-- the terms in which I could be possibly held into a contract with them has elapsed. But I still have to go through the proper, proper mode of having them contact the state and remove that territory.

J. CAVANAUGH: OK, thank you.

LINDSEY CLEMENTS: Yep.

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

LOWE: Thank you and thank you for being here today. Can you restate the name of your business and the location? I love to give shout-outs.

LINDSEY CLEMENTS: Sure. Thank you. It's Vis Major Brewing, V-i-s M-a-j-o-r, and we're located at 3501 Center Street.

LOWE: All right, thank you.

LINDSEY CLEMENTS: Thank you.

BRIESE: Thank you, Senator Lowe. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Briese, and thank you, Senator Lowe. That's in my district and I would be happy to take you there sometime, Senator Lowe. I'm a big fan. I've spent a bit of time in the taproom myself at Vis Major, so you do have a very fine product. And it did make me think of a question, though. In terms of the harm, potential harm suffered by being listed when you're not intending to,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

were you concerned at all that people thinking-- that maybe people you might want to engage as a client in the future might be turned off by the fact that you--

LINDSEY CLEMENTS: Yeah.

J. CAVANAUGH: --had told them that you were not selling when they thought you were, I guess?

LINDSEY CLEMENTS: Yeah. There isn't-- in my opinion, there was no true harm done. The reason why I felt like my testimony is important is just to simply showcase how there's not enough structure around these agreements and so that's why I felt it was important to, to share my story as to what happened. I, I did feel uncomfortable with the fact that if we ever did want to pursue more of a distribution effort, then, yeah, I would have to kind of go through the process of, of working with that wholesaler in order to either-- and like I said, we-- I did sit down and said, what would that look like? Since apparently I'm already being represented by you, what is that-- what would that look like if we were to do some limited distribution? And ultimately, the amount of effort it would take to get my product into that tier, it was-- we felt like it was better for us to continue to focus on our, our own-- our taproom, so.

J. CAVANAUGH: Thank you.

LINDSEY CLEMENTS: Thank you.

BRIESE: Thank you, Senator Cavanaugh. Any other questions? Seeing, seeing none, thank you for your testimony. Next proponent testifier. Welcome.

TREVOR SCHABEN: Hello. Thank you, Senators. Thank you, Senator Briese. My name is Trevor Schaben, T-r-e-v-o-r S-c-h-a-b, as in "boy," -e-n. I started Thunderhead Brewing in 1999 with my wife and I've been selling beer through wholesalers pretty much ever since. I've got contracts, unwritten or written, with distributors all across the state. When we first started, I wrote our contracts and about five years later, four years later is when I figured out that those contracts were null and void. They didn't count because the implied contracts that the state already has set up superseded them. And ever since then, I've been looking forward to sitting here and so I am in support of LB1239. That's just all I had come up here and say.

BRIESE: OK. Very good. Any questions? Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

J. CAVANAUGH: Thank you, Chairman Briese, and thank you-- and I'm sorry, is it Shawben [PHONETIC]?

TREVOR SCHABEN: Yes, sir, Schaben.

J. CAVANAUGH: Schaben? Well, thank you for being here. Well, I'll ask Senator Lowe's question. Where, where's Thunderhead located at?

LOWE: Thank you.

LINDSEY CLEMENTS: 18 East 30---- 18 East 21st Street, sorry.

J. CAVANAUGH: In--

TREVOR SCHABEN: Kearney.

J. CAVANAUGH: Kearney. Well, we have a-- we'll do a back-and-forth visit here. So you said you did written contracts, which the statute says, as I noted earlier, that they can be in writing. You're telling me, even if it's in writing, it doesn't actually having an-- any effect?

TREVOR SCHABEN: From what I understand, they are subordinate to the state's contract.

J. CAVANAUGH: The language that's--

TREVOR SCHABEN: Yeah.

J. CAVANAUGH: ---set out in the statute. So if you make a specific agreement that is different than what's listed in statute, the statute controls and not what your specific agreement between you and the distributor would do?

TREVOR SCHABEN: That is correct.

J. CAVANAUGH: OK. And is there-- in terms of the relationship here, I guess, obviously there's a dynamic-- a power dynamic of a small brewer and a distributor, of course, but is there a dynamic in terms of the understanding-- I mean, the, the distributors deal with the statute more than, I guess, you would, or other-- other producers. Is it that distributors are understanding the, the coverage of the statute and not fully disclosing it or is there--

TREVOR SCHABEN: I don't think so because this was 20 years ago and, and the people I was speaking to, I think they were being honest. I

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

didn't think they knew that that was the case also. Now I'm sure everybody is truly aware of it.

J. CAVANAUGH: So in terms of-- is there a necessity for contracts that are different? Because essentially what you're saying is there's a one-size-fits-all--

TREVOR SCHABEN: Um-hum.

J. CAVANAUGH: --contract. Is there a necessity for contracts that are different or is there maybe a necessity for change in what's in the statute to make the statute more clear?

TREVOR SCHABEN: No. The way it's written right, right now, as far as I understand, it's extremely lopsided away from the brewers, so I would-- I'd rather just have my own contracts.

J. CAVANAUGH: On a case-by-case basis between those two parties?

TREVOR SCHABEN: Absolutely. I'm sure, I'm sure everybody would use the same backbone, but there might be some little differences in different regions.

J. CAVANAUGH: Thank you.

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

TREVOR SCHABEN: Thank you, guys.

BRIESE: Next proponent testifier. Welcome.

CALEB POLLARD: Thank you, Chairman Briese and members of the General Affairs Committee. My name is Caleb Pollard, C-a-l-e-b, last name P-o-l-l-a-r-d, and I represent both the Nebraska Craft Brewers Guild and Scratchtown Brewing Company in Ord, Nebraska, and today I ask that you support LB1239 as it relates to beer franchise law in the state of Nebraska. Why are we asking for you to support this bill? It's simple. It's my belief that all rights and responsibilities for contractual relationships, including franchise agreements, should be in writing, and I want to spell out that item specifically, franchise agreements, because they occupy essentially a tripartite component into entering into contractual relationships with distributors to distribute, distribute beer. These writing-- these contracts should be in writing and agreed upon by both parties before entering into a legally binding agreement. That's what we're asking for today. As it

stands, breweries should have written contracts with their distributors. My business does with all five distributors in which we do business with. They outline the responsibilities and the terms of the agreement, and then we also submit territory agreements to the Liquor Control Commission that outline which distributors carry which brands of beer by my brewery in specific geographic regions. In addition to that, though, is something that is not disclosed or oftentimes negotiated, and that is that distributors also own the brand rights of a specific brewery in that same territory. It's essentially ownership of an intellectual property and brand identity of a specific brewery in a given geographic area. This franchise relationship has significant monetary value, but what isn't clear is how that value is determined and at what cost. Distributors are not bound to disclose the means in which its monetary value as formulated, nor even that it exists when we're negotiating in good faith for our contracts for wholesale distribution services. In fact, many breweries are even unaware, as you probably just learned, that these provisions exist when they enter into agreements with distributors. So case in point, hypothetically, if a brewer terminates a contract with cause according to their, their contract or fulfills a contract term and chooses to sign with another distributor at the end of that contract, the brewery is still bound to negotiate the buyout of their own brand rights, per the franchise law. What isn't known, again, is how this value is determined and those terms are not disclosed at the time the distribution agreements are signed. In no other business relationship that my business is currently engaged in does this happen. Not with any single supplier, vendor, or professional service are there secret terms that exist that aren't spelled out during contract negotiations. The special protection exists solely for the benefit of the beer distributors and all that we're asking is that these agreements, the franchise agreements, along with our distribution contracts and, and our territory agreements, are all in writing. That's all we're asking is that they put in-- be put into writing. So I'd like to say that this isn't a case of the, the-- of new brewery entering into a contract with fine print. It's that there is no print at all in those contracts that specifically disclose the agreement related to franchise rights. No business should be bound by agreements that are not clearly spelled out, negotiated in good faith, and known when contracts are executed.

BRIESE: I'm going to have to stop you there, but I'll bet somebody will ask you a question here.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

CALEB POLLARD: And with that, I would be open to questions. Thank you, Senator.

BRIESE: Any questions? Senator Brandt.

BRANDT: Thank you, Chairman Briese. Thank you, Mr. Pollard, for your testimony. Is this the standard throughout the United States or is Nebraska unique in not having a written agreement?

CALEB POLLARD: To my knowledge, it's unique to Nebraska because all liquor laws are determined on a state-by-state basis based off of how the-- how prohibition ended in the '30s. So Nebraska is unique in its regard for these specific protections and what is disclosed--

BRANDT: So--

CALEB POLLARD: --but it can vary.

BRANDT: So the second question-- and I'm not an attorney-- is if-- how can they prove they own the rights to your beer if you don't have a written agreement?

CALEB POLLARD: That's a question I'd like to know the answer to.

BRANDT: All right, thank you.

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

J. CAVANAUGH: Thank you, Chairman Briese, and thank you for being here, Mr. Pollard. So there's a lot of language and a lot of struck-out and a lot of added in in this bill, but it sounds like your big beef is that these agreements aren't in writing. Couldn't we just add a sentence that said all these agreements have to be in writing--

CALEB POLLARD: Yes.

J. CAVANAUGH: --and solve those problems? Well, I mean, that's a quick answer. Thank you.

BRIESE: Thank you, Senator Cavanaugh. Senator Arch.

ARCH: Thank you. Just so I have it straight, it-- governed by franchise law, state franchise law, correct?

CALEB POLLARD: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

ARCH: The manufacturer is the franchisor and the distributor is the franchisee.

CALEB POLLARD: That's as I understand it, yes.

ARCH: OK. Thank you.

BRIESE: Thank you, Senator Arch. Senator Jacobson, did you have a--

JACOBSON: Thank you, Mr. Chairman. I, I guess my question would be-- I, I agree with the points you're making. I'm trying to figure out what you've run into. Are there issues for you being able, if this changes, to find a distributor to distribute your product?

CALEB POLLARD: I would hope not, considering I have a good relationship with the distributors which I'm signed with today. Typically, what you see are boilerplate contracts that are issued between the two parties and it's incumbent, in my opinion, upon the supplier, the, the brewery to ensure they have legal representation to negotiate good, good-faith contracts because, as you've heard, a lot of those contracts are still subordinate to state statute. There is no state contract for distribution at state statute. But when you enter into these agreements, never is there a disclosure that, oh, by the way, if your brand has value and you make us money, we expect payment for that if you choose to pick up your bags and move elsewhere, even if you fulfill the terms of the contract. And that's all that we're asking for, is that that be disclosed and that we negotiate in good faith when we negotiate the terms of representation because within those contracts are going to be their engagement length of what that contract is, what each party has with regard to responsibilities to maintain not just good relationships, but good beer and good delivery of that product to a particular retailer, so on and so forth. But at the end, that's the thing that, that upsets some of us in the industry that have been around longer than, than a few years is that these aren't being disclosed and they're not being negotiated openly.

JACOBSON: So to follow that up, you would be suggesting then that, that the buyouts would also be disclosed at the time that--

CALEB POLLARD: Yes.

JACOBSON: --the franchise agreement is agreed to.

CALEB POLLARD: Yes.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

JACOBSON: All right, thank you.

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

BREWER: Thank you, Mr. Chairman. So if I went through my district in, whether it be Kinkaider or Bootleg or where I go, the, the general feeling is probably going to be the same, that this issue is kind of a one that's going to carry throughout all the different-- because obviously, some are bigger than others, Kinkaider compared to Bootleg are. But the issue is the same. What you need is something that's actually in black and white, so you know where you're at.

CALEB POLLARD: Yes, because for some brewers, when you, when you find out what that price tag is to move your brand from one, one wholesale distributor to another in the same territory, territory, the sticker shock can be quite significant to the point where it can be completely debilitating as a, as a business owner. And I would wager to bet-- me not being able to speak for others-- that if they had known those types of relationships or expectations were in place, they would have thought second about signing with a particular, particular distributor in a territory if it cost them that much to move from, from one spot to another. In other instances, that, that price tag might be less because of the overall value of that brand. What we mean by value of that brand and that marketplace is essentially how many turns is your beer turning in that market? I mean, the bigger guys have more inherent value because they're moving more product, whereas when you're near a little bit smaller, like we are, it's just-- that price tag is, is much less.

BREWER: I see. Thank you.

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

CALEB POLLARD: Thank you for your time.

BRIESE: Next proponent testifier. Welcome.

KYLE ARGANBRIGHT: Thank you. Thank you, Senator Briese, Senators. My name is Kyle Arganbright, K-y-l-e A-r-g-a-n-b-r-i-g-h-t. I'm cofounder of Bolo Beer Company in Valentine, Nebraska, and I'm here to testify in support of LB1239. I've been part of four distribution agreements with three different distributors. The first agreement was a handshake deal with someone I trusted. Every contract since then has included the following language: item nine-- it's always item

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

nine-- (a) distributor may terminate this agreement at any time with or without cause by providing supplier with 60 days written notice; item (b), supplier, the brewery, may only terminate this agreement as provided by Nebraska Revised Statute Section 53-320-- or 53-218, which there's some of that language stricken in LB1239. You can see what language causes us to allow termination. It's a really, really high bar. My father has practiced, practiced law for nearly 50 years. He reviewed the initial contract and immediately advised you shouldn't sign this. He said, this is crazy, I've never seen anything like it. Well, when you're a small startup brewery in rural Nebraska with no good distribution options, options at the time, you sign it and hope for the best. After all, the distributors are just using the tools given to them by the state. I wear a few hats out in the Sandhills; banker, mayor, rancher, and brewery owner. In all of my dealings, I've never seen another contract like these distributor contracts. Here are the close, closest examples I can share, and I rack my brain to think of these. A few years ago, city of Valentine was negotiating the new contract for wholesale power with NPPD. They came to us with a contract with a term of 20 years and no set price. Twenty years, no set price for power. Contract was immediately and unanimously rejected by city council. Because of that blowback, NPPD eventually amended their contract to provide some price certainty. I'll note, too, Valentine went elsewhere and now has one of the lowest electrical rates in the state, but I digress. In the beef industry, four packers control 82 percent of the market, an oligopoly, and are using this power imbalance to drive one-sided price contracts. As a result, there have been price-fixing accusations, with hundreds of millions of dollars in fines recently levied against packers and proposals in the United States Senate to force price discovery and improve transparency. Those are the closest, closest examples I could come up with and neither is in the same stratosphere of one-sidedness as Nebraska franchise law. There is no economic or public safety justification for continuing the franchise law as written in Nebraska. It's archaic and flies in the face of free enterprise. God forbid its existence be used as precedent to apply similar rules to other industries in Nebraska. Adopting the language proposed in LB1239 will not harm distributors, nor will it affect the three-tier system. All we're asking for is the ability to enter into contracts with distributors with all terms mutually agreed upon and clearly detailed without being kneecapped by the Nebraska State Statutes. It's a perfectly reasonable request. Thank you. I'll answer any questions.

BRIESE: Thank you. Any questions? Senator Brewer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BREWER: Thank you, Mr. Chairman. Well, first off, I apologize that I didn't include Valentine and--

KYLE ARGANBRIGHT: Apology accepted.

BREWER: --Alliance in my-- I have events in Taylor and Broken Bow this weekend, so they just came to mind first, but I'll be in Valentine in three weeks, so I'll take you up then.

KYLE ARGANBRIGHT: See you there.

BREWER: All right. So the one thing that I was trying to get out of the last question was kind of answered by your testimony, that this isn't just a single outlier here and there, that this is really a concern that runs across the spectrum, whether you're-- you're just kind of kicking off and getting going or whether you're actually fairly established and, and, you know, are doing well, because you're just literally operating without a, a known guideline or, or requirement as it is now.

KYLE ARGANBRIGHT: Um-hum. Yeah, and--

BREWER: Go ahead.

KYLE ARGANBRIGHT: You know, I think, too, a lot about startups. We need to create a culture and a system to allow new businesses to start in our state. It, it-- with all of these rules in place, it is, it is feasible that, you know, a-- startup brewery (A) could not get distribution if they didn't want to. LB1236 is addressing that, or LB1235, with some self-distribution. Two, you could get signed by a distributor and shelved. They could just-- they could sell just very little bits about it and you've got no way to get out of there. So if somebody wanted to go sideline all of the Nebraska breweries in the state, they go get them on these franchise agreements and have a little, have a little meeting and, and make it happen pretty quickly.

BREWER: OK, thank you.

KYLE ARGANBRIGHT: Yep.

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

JACOBSON: Thank you, Mr. Chairman. Yeah, Mr. Arganbright, I appreciate the testimony and I, I really want to zero in on your last point. And to join the crowd of evidently avid beer drinkers on this committee, I do have Peg Leg Brewery and, and Pals Brewery in North

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

Platte, and I know I've had conversations with them, particularly Pals, about the very thing you brought up at the end-- it's why I asked the question before-- about are we going to have a second problem here in terms of being able to get distribution, and, and the very issue I think you've alluded to of you could enter into a franchise agreement today, be locked into this franchise agreement, and then not have them promoting your product. And so you're-- you can't go somewhere else and yet you're not getting the promotion that you want and I, I think that's very one sided. It, it would concern me greatly and I'm, I'm very interested in both of these bills as it relates to cleaning things up and making this open. Obviously, our economies continue to change. As I indicated before, we're in a gig economy. These breweries are, are really growing rapidly. That's something that the public really is looking at and we need to be open to making changes that are appropriate to just, you know, lower some of these barriers. So thank you for your testimony.

KYLE ARGANBRIGHT: You're welcome. If, if I might add to that, they're-- the distributors aren't bad guys. This is just a tool that they're allowed to use and they're kind of silly not to use it. But there's a lot of change in the brewery industry as well. When we started, the, the distributor in, in North Platte, was it the last years of the guy that owned it, didn't want to deal with craft beer, got since purchased by a distributor that loves craft beer. So who, who's to say that these things aren't going to change in the next 10 to 15 years and these contracts might need to change to reflect that to put these businesses, both sides, in a position to be successful?

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

KYLE ARGANBRIGHT: Thank you.

BRIESE: Next proponent testifier. Welcome.

VANESSA SILKE: Good afternoon, members of the General Affairs Committee. My name is Vanessa Silke. That's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm the licensed practicing attorney and registered lobbyist for the Nebraska Craft Brewers Guild. I want to thank Senator Vargas for working on a multiyear effort, along with many members of this committee and some new members, to work to grow this industry in Nebraska. Of course, my focus is on the producers, as you know, but really, we work hand-in-hand; particularly, our most successful breweries have very good relationships with their distributors. And so that was the disconnect that I've seen in

negotiating I don't know how many agreements with people that don't agree with each other in my decade-plus year of legal practice. I just-- I still can't understand why we wouldn't have a meeting about this before we have a hearing, but here we are. And the reality is exactly as Mr. Arganbright highlighted, that the distributors aren't bad people. They're simply taking advantage of a very protectionist statutory scheme that is very lopsided and guarantees everything for them. And I also agree that they're not bad business people, but that's why this bill should not be an issue for them. Their businesses are worth millions of dollars and they've been held multiple-- over the course of multiple generations. They're very valuable. These aren't unsophisticated business owners. They can sit down and hammer out a contract. And one thing, to the point of every testifier before from the guild here, is that by passing LB1239, we're going to inspire this tailor-made contract for distributors and producers to decide what works best on which terms. Right now, even if these weren't lopsided, it is one-size-fits-all in the Liquor Control Act. And there's certainly more than one way that we could accomplish the goals of LB1239 and for that reason, I'm open to amendments. The biggest one that I want to make sure we highlight here, because there's all this back-and-forth, new language, and language that stricken, is page 12, line 20, and it says that-- or actually lines 19 or 20. It says, "the following section is outright repealed: Section 53-221." That section right there is the nonwaiver provision within the Liquor Control Act and that's why Mr. Schaben and others have noted that even if you have a contract in writing that says a lot of stuff that was freely negotiated between the parties, 53-221 means that it is absolutely unenforceable unless it's on the back end when you're trying to settle and it's at the distributor's discretion whether or not they'll waive their rights. You can't prospectively negotiate that. Before I run low on time, I want to invite you all to ask me questions about a few items that are significant and are legal issues: one are constitutional law issues with changing these statutes; one is the statute of frauds in Nebraska, for the lawyer folks on the committee and who love to talk about that; and potential amendments for this bill. So with that, I'm happy to answer questions.

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

BREWER: Well, I'm not a brilliant lawyer like some of the others here, but on the amendment issue, I can probably dive into that one. So I'm taking it we're going to hear some opposition to this, just guessing here.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

VANESSA SILKE: Maybe just a little bit.

BREWER: And, well, if we have to come up with something that is a, how shall I say, compromise or something that's going to be acceptable that still gets us off the current situation we have, what's out there that could potentially, potentially be that option?

VANESSA SILKE: So I'm going to couch this in terms that, you know, this is what I perceive, because today-- and this goes for all five years of my involvement on behalf of the guild. This happened the very first year that I helped negotiate. We brought up franchise law issues and they said, you're ripping pages out of our bible, we won't discuss it. And I will own that, that quote, that's a paraphrase. That is-- been their, their opinion all the way up through Friday, as of last week. And so my perception is that if we tailor this-- if we wipe everything out on the franchise law provisions and simply state that the contract must be freely negotiated, signed by both parties, and satisfy the statute of frauds-- we actually have two statutes that are relevant in that issue-- and that we give a timeframe, so let's say a year from the enactment of the legislation to give everyone time to negotiate those tailored agreements, that would be probably a negotiating point. It would give everyone time to figure this out. The other thing would be to cap the requirement at 20,000 barrels of production. So that would go across the board for any producer nationwide that if you were 20,000 barrels a year or less, that this is the requirement and above and beyond that, the state's franchise law protections would apply. Now I can't speak for them because they haven't been willing to entertain those options, but I perceive as an attorney those would put additional controls.

BREWER: And the 20,000 or less, how many would that affect in Nebraska? Does that include all of our micro--

VANESSA SILKE: That's our production cap for the L license in Nebraska. There are a number of producers nationwide that would be at or below that amount. So that would not protect only Nebraska producers. That would protect anybody--

BREWER: And if I remember right--

VANESSA SILKE: --under that amount.

BREWER: --the craft breweries account for-- is it 6 percent of the total amount?

VANESSA SILKE: I think it's 3 to 4 percent.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BREWER: OK.

VANESSA SILKE: Craft beer is 3 to 4 percent of the entire market for beer sold in Nebraska and of that, a portion of it is Nebraska craft brewers. So that-- you know, it's actually less among my producers that I represent.

BREWER: All right, thank you.

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

JACOBSON: No, go ahead.

BRIESE: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you, Ms. Silke, for being here. Well, I was going to ask-- I had some questions that-- kind of been thinking about while I was sitting here and I wrote-- so the nonwaiver provision is struck. I was trying to find this provision where folks have been talking about this kind of secret formula on the back end part. Is that in the statute somewhere? Is it not in this statute-- the, the bill I have because it's been struck or is it-- am I not going to find it in writing anywhere?

VANESSA SILKE: I may have to get back to you because there are literally that many lines on this statute. So what happens is when there is a buyout provision, right now, in much of what's stricken or rebalanced to count against both parties, there's a notice and cure provision that applies under different circumstances. So there's a choose-your-own-adventure aspect to the current statutes, and the producer figures out if there's been a breach or they simply want to get out of the relationship. And then after they've gone through a series of notice and cure periods, they're able to get out with this buyout provision. The statute does not dictate that there's-- you know, the math formula that's there, but it's up to the wholesalers. And in this case, this is where we get into potential litigation, and this actually happened in recent years, where a distributor leveraged a position to say, well, the buyout is going to cost X, and it was many thousands of dollars for breweries that their only choice would be to pay that, find a distributor to take them over and pay that amount, or refrain from providing any product in that territory for a period of a year or more. That's, that's no market access for that entire time period simply to get out of a relationship with a

distributor that either doesn't want to serve you or, or isn't doing their job.

J. CAVANAUGH: But to be clear, you're not advocating that a buy-- that going forward, contracts, if we were to adopt this and put contracts in writing in these requirements, that they not include a buyout provision.

VANESSA SILKE: Oh no, we want that in there, but we want it to be freely negotiated and be a condition of the contract to qualify as a franchise agreement. And this would apply to any agreement between a beer producer and a beer wholesaler. Right now, those are left up and it's when you get to the end. These are also infinite term. Some contracts may, that you've heard about here, say that they're only going to be for a period of years. I anticipate, based on testimony from prior years, that the distributors will talk about all the value that they add for their services and investments that they make. And none of my clients are saying that that isn't valuable or doesn't happen. It simply should be tailored into the contract on a case-by-case basis, depending on the size, the location, and the actual territory being served.

J. CAVANAUGH: OK, so-- well, I'll take the bait on the statute of frauds then.

VANESSA SILKE: It's so much fun.

J. CAVANAUGH: So the infinite term, of course, makes me think that. So it's been-- I did go to law school. It's been a while so I'm not necessarily recalling the statute of frauds exactly, but I do recall that the reason that generally in contracts you would have a written contract for anything over a year is for the very reason you're talking about, is people could disagree about what is the subject of that contract.

VANESSA SILKE: Yeah.

J. CAVANAUGH: Is-- so is that what you're talking about or--

VANESSA SILKE: That's what we're getting at. So the statutory citations here are 36-202. And then I was a nerd and actually did well in secure transactions, so if you also look at 2-201, you will see the UCC version of the statute of frauds in Nebraska for products. So under the first statute, 36-202, every agreement that is not to be performed within one year, it's got to be in writing. It has to be signed by both parties. If it's not freely negotiated, one

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

party could argue that it's a contract of adhesion, which has its own litigation issues that fall from that, and that's why we think it's really important that we put in statute that these agreements have to be in writing and they've got to comply with the statute of frauds. The second aspect here, because we are in-- you know, these agreements in part deal with the sale of a product, that's where 2-201 comes in. And 2-201 has a couple of exceptions to a writing where goods are sold and paid for that suffices to, to meet the, the written contractual requirement. However, Nebraska law has specifically stated that 2-201 does not apply to agreements for the performance of a service and that's *Professional Recruiters v. Oliver*, 226 Neb.16, from 1987. And as you heard from each of the prior testifiers, the franchise agreements are-- go above and beyond just the sale of beer. In fact, we had a testifier talk about getting shelved. So they might buy your beer, but the rest of their contractual obligation that you actually need them for is to market your product to retailers, to service all of the lines in bars, to make sure that your product is stored properly and refrigerated and taken and rotated when it's out of date. That's a service agreement and that brings us back to 36-202. So but for the current version of the Liquor Control Act, these very simple provisions would apply, just like they apply for every other contract that most of you, as business owners in the state, have dealt with. As an attorney and dealing with real estate transactions, development, energy contracts, all sorts of things that our testifiers identified, this is the only example where the state of Nebraska protects businesses to this level. To date, there are only 17 distributors and they're private business owners. They can decide to sell out and consolidate down to five or two. They're protected in a way that we don't even protect ag producers and that's the backbone of our economy. So I ask for your support on LB1239. I remain willing to discuss this further. I've been on-- up here for a while. If any of you want to hear about constitutional law issues, I'm happy to discuss those also.

JACOBSON: Thank you, Mr. Chairman. I'm not going to bite on the constitutional question, but I-- my question would be if the bill was passed as it's proposed currently, then what's going to happen to the existing agreements that are out there? And I guess I'm thinking about the distributors at this point. And obviously, I've been involved in financing distributors.

VANESSA SILKE: Yeah.

JACOBSON: They pay pretty big prices to get those distribution opportunities and I think they're looking at certain revenue streams

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

that are going to be there. So how would you see this phase-in occurring if we went to this and at what point-- because I'm assuming if, if we're going to say, here's a hard date, then are we saying there's no buyout unless there's been agreed to? That, that's probably the big question is the transition.

VANESSA SILKE: Yeah, that's a great question and that's part of the difficulty of moving, frankly, from the current regime into something that looks more like a regular business arrangement. I would recommend an amendment. And again, I prefer to negotiate this so that we have something reasonable that people can work with. We may not all like it. We had that discussion this morning on LB1236. There's parts of that that I don't like, but it gave us enough to move forward. It gave us enough to work with. And so I would look at an amendment and be willing to negotiate that for the horizon line for these provisions to end. I would consider any other tweaks to what is left versus what's taken out because, for example, if the distributors agree that we only apply this contractual requirement to producers at 20,000 barrels or less, we can leave the rest of the statutory language in there and protect them the same way above that amount. So we'd be looking at a couple of different ways to reduce those impacts and to give people time to work together to figure out a path forward. And I don't think that that's a controversial thing. I respect that it would be very different, but I really see that this is something that the Legislature should change and I think that it would create so many opportunities for distributors to tailor what it is that they are offering when they take on new or smaller or remote breweries.

BRIESE: Thank you, Senator. Senator Lowe.

LOWE: Thank you, Chairman. Ms. Silke, thank you for being here and for doing all the hard work on LB1236 and everything else. These craft brewers have been in business for years now. When they negotiate these deals with the distributors, are you there helping them negotiate the deal or, or is there some talk between the craft brewers so that they can negotiate a better deal with the distributors?

VANESSA SILKE: Yeah. So there's only so much I can say about that because that covers the-- crosses the line into legal representation, so I can't disclose anything that's privileged. Very generally speaking, the members of the guild can choose to hire me or their local counsel. Some members of the guild are trained, practicing attorneys and so they've done this. But all of us agree that, to the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

extent a term that you would negotiate is covered by the Liquor Control Act, you can't negotiate anything around it. And so we still encourage things to be in writing, but that's very much limited to things like the actual counties. So Ms. Clements, the first testifier that we had, said, well, I just email back and forth, but they registered my brands. And this is the last nugget that I want to make sure everybody is in line with. They will work on a case-by-case basis to build that relationship with distributors. Those emails should have been enough. She shouldn't have been in that position. Because of the way the statutes are written, it gives that person leverage to choose to do something that maybe not everyone would choose to do, and that's where there's education across the board. But for so many people, other than the territory agreement, the geographic range, there are only so many terms that aren't already overridden. One other-- that last piece that I wanted to note, the only piece that the Liquor Control Commission has jurisdiction over at all is what's called a brand registration form. So when there is an agreement, verbal or otherwise, with a producer, the distributor is going to register those brands with the Liquor Control Commission. And if you haven't negotiated the geographic range, they'll register it and they could purport that it's for the whole state, which is part of what Ms. Clements got stuck in with that distributor, was they were asserting those rights. You know, we could certainly work with the commission to require that those forms be signed by both the producer and the distributor and include the geographic range. It doesn't fix everything. We still want LB1239, but that would be one regulatory way. Beyond that, the commission has zero jurisdiction over these agreements and Mr. Rupe is here to tell you about how they are Switzerland when it comes to this particular issue.

BRIESE: Thank you, Senator Lowe. Any other questions? So, yes or no answer, because of the statutory framework currently in place, you're unable to craft a contract sufficient to protect members of the guild from what we're--

VANESSA SILKE: No, unless it's something that's not covered by statute and this covers the gamut.

BRIESE: OK, very good. Thank you.

VANESSA SILKE: Yep.

BRIESE: Thank you for your testimony.

VANESSA SILKE: Thank you all.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRIESE: Next proponent testifier. Seeing no one, any opponent testifiers, come on up. 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 and general manager of Premier Midwest Beverage Company located in Omaha, Nebraska. I'm also the immediate past chairman of the Associated Beverage Distributors of Nebraska, the trade association that comprises 17 independent family-owned beer distributorships in the state of Nebraska. These 17 distributorships cover every square mile of this state, servicing licensed retailers both on and off premise. I am opposed to LB1239. LB1239 purports to require all brewer-distributor agreements to be in writing. It inappropriately modifies the purposes section of the beer franchise law. It changes the burden of proof. It seemingly eliminates the distributor's right to recover damages and attorney's fees if a supplier violates the law. It provides a suit must be brought in supplier's, not the distributor's state. LB1239 is a solution in search of a problem. As chairman of ABDN, I asked our association to survey distributor members to ascertain how many had written distribution agreements for suppliers and how many had verbal agreements. Fourteen of the seven [SIC] distributorships all have written agreements with our Nebraska craft brewers. There are only three distributorships that have a verbal distribution agreement with Nebraska craft brewers, only four verbal agreements within that. Out of the hundreds of distribution agreements that Nebraska distributors have with suppliers, only four are verbal. Each of those distributors is ready, willing, and able to enter into a distribution agreement with those four suppliers if they indicate that they want one. To date, they have not done so. I would also note that ABDN met with the guild in Q4 of 2021, most recently in Q1 of 2022. ABDN has consistently kept open lines of communication in good faith. What happens in the future if the brewer and the distributor cannot agree on the terms of an agreement? The bill does not address that dilemma. Currently, if parties can't agree, a brewer has two choices. They can find another distributor or they can proceed with a verbal agreement. If LB1236 passes, they can self-distribute. The choice lies with the supplier. What is preventing the supplier from executing a written agreement? Seems like it is education or knowledge. In closing, I would remark that the franchise law as currently written is the backbone of our businesses. The safeguards within the law protect us from largest of suppliers, as well as our smaller Nebraska craft brewer partners. If this law is allowed to morph, it will impact the millions of dollars of local investments into our fleets, equipment,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

and warehouses. It will impact the hundreds of jobs with full benefits that are offered. It will impact the substantial investments we make in the communities where we reside and service. There are many other reasons why this bill must be rejected, but in the interests of avoiding repetition, I will defer to other testifiers to make those points.

BRIESE: Thank you. Any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman. Thank you for being here, Mr. Tims. Nice to see you again. So in terms of the things that are in writing, obviously we've heard that, you know, some people that don't get them in writing. But the question I guess I have is that one about the buyout clause. Is-- of those 14 that have written contracts, does that include laying out how the buyout clause was fact-- factored in?

DAVE TIMS: I would-- in some of them they are and some they aren't. I would say, you know, based upon trying to establish a buyout clause initially, we live in a world of capitalism. How am I supposed to know the value of that brand before I've even sold anything?

J. CAVANAUGH: And admittedly, I have no frame of reference for the-- this question, but isn't there some, I mean, mathematical parameters that you would lay out there? I mean, isn't there a way to be clear with people about what the potential range is?

DAVE TIMS: You can agree to a certain buyout, 100 percent, beforehand, definitely.

J. CAVANAUGH: And--

DAVE TIMS: The way some of these are left open-ended, you know, it depends. If I have a brand for a year, maybe it hasn't done much; maybe there isn't much value to it; maybe, by year three, we're selling exponentially amount. We've invested thousands of dollars in the marketing and advertising with it, as well, so the value could be higher.

J. CAVANAUGH: But those are-- there are a lot of criteria, I suppose, that you would consider, but there is a finite number of them that are potential to be considered, right? So it could contemplate a set of scenarios.

DAVE TIMS: Absolutely, but I'd say that's in good-faith negotiation to create in a written agreement.

J. CAVANAUGH: And the-- and I ask this and I-- I haven't seen it in here. I haven't had a chance to look it up because I didn't know about this part. But if you were to have a written contract that included the buyout clause, that would control limits, not the statute. Is that-- am I understanding?

DAVE TIMS: I, I think every member of the ABDN-- I can't speak for anybody who isn't-- is probably going to honor the written contract that they, they would mutually have.

J. CAVANAUGH: Even if the statute would supersede whatever it is in that--

DAVE TIMS: I, I can tell you I have not been a part of one that we haven't honored that written agreement.

J. CAVANAUGH: Thank you.

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

BREWER: Thank you, Mr. Chairman. All right, so only four, so the ones that testified here are part of that four?

DAVE TIMS: Correct.

BREWER: So if I call the others I have in my district, I don't have to worry. They're not going to have an issue or a problem?

DAVE TIMS: Not to the knowledge I have for, for what we surveyed.

BREWER: OK.

BRIESE: Thank you, Senator Brewer. Senator Wayne.

WAYNE: So what's wrong with stuff being in writing?

DAVE TIMS: We're saying I don't think there is a problem. We're, we're available to have in the written agreements as is. We're, we're actually practicing that, so. There are things that have morphed over time. I will give you the one example of a previous testifier where it was a verbal agreement and the only agreement to that was to try and get them to festivals. That was clear. We were part of that. I have since said, hey, if you want to be released, we would definitely release you, but I can't even find a product listing that we would have exposed to the market. So whether things are word of mouth, I

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

can look at details and I know that I can't find a product listing, which means I can't sell it. It's not in my system.

WAYNE: But right now underneath-- if I'm reading this right, statute of frauds don't apply.

DAVE TIMS: Correct.

WAYNE: And you're against them applying.

DAVE TIMS: No. I just-- we, we, we don't think this-- there's a need for it, a morph to what is going on. Because of the ability, the agreements would impact our large suppliers as well. And if those morph and, and loosen, our businesses become even lesser valued than what they are. And those things are protecting us against these large suppliers, whereas, if they're 60, 65 percent of our business, how much attention do you think we're going to give to those big suppliers without the protections? They come in and say, we don't want you to carry so-and-so's product. We're probably going to have to listen to them because we'd better support the biggest supplier that we have. And have the opportunity of losing that business without the franchise protections? And this is the, always this thing we say is as things evolve and loosen, someone's out there with enough money to crack the door wide open.

WAYNE: Yeah, but on the other side, see, I used to run a concrete company where that same attitude put me out of business; where if you listen to the big dogs all the time, little guys can't ever break in or you put them out of business.

DAVE TIMS: How many liquor wholesalers are there in the state?

WAYNE: That ain't the point, but your attitude just made me support this bill.

DAVE TIMS: No, I'm just saying, as you look at that, compare that, the Nebraska beer distributors, the ABDN members have individual warehouses all across the state and they're better than those communities. When we look at the liquor side of it, there's like four and they all reside in Omaha. So as franchise protections go away, you know, we're stuck with lesser and lesser and lesser businesses that are out there helping this economy grow.

WAYNE: Thank you.

BRIESE: Thank you, Sen--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

DAVE TIMS: I do apologize. I didn't mean to offend you, Senator Wayne.

WAYNE: I'm not offended. It's the way of the world, but--

BRIESE: Thank you, Senator Wayne. Anyone else? Thank you for your testimony.

DAVE TIMS: Thank you.

BRIESE: Next opponent testifier. Welcome.

MILAN KNEZOVICH: Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Milan Knezovich, spelled M-i-l-a-n K-n-e-z-o-v-i-c-h, and I am president and CEO of K&Z Disturbing, located in Lincoln, Nebraska, again opposing the LB1239. Beer franchise laws, which are also called fair competitive laws, also serve as a regulatory fashion. They safeguard distributors' independence, enabling distributors tier to serve as a buffer between suppliers and retailers. They prohibit vertical integration industry by suppliers. In the past, vertical integration of the industry led to excessive retail capacity, overstimulated sales, and tempered consumption and alcohol abuse. If a supplier is allowed to monopolize a beer market and effectively eliminate distributor independence, it will not only deny competitiveness access to the market, otherwise restrain trade, but also will cripple, at least significant undermine, effective liquor regulations by injecting pay-to-play trade practices in the market. Again, back to the-- again, they just brought up-- Dave just brought up about the contracts. I represent seven microcrafts. We all have contracts with them. I heard some information-- for clarification purposes, when we talked about territory, say territory, it's the suppliers that set the territory, not the distributors. That information is per-- actually given to the Liquor Commission when we establish that contract. Why establish a contract? Primarily for protection for both of us. And I find when we're talking about actual justification for buyout plans, I personally had an incident with a major microcraft out of Minnesota called Summit Brewing about seven years ago. He called me and said "Dieter," what's going with your market? That's going-- I says, hey, I don't what's going on, I'm giving it all the best I can. He says, well, what do you think? I says, well, if you want to move on to another distributor, please do, I don't want to hold you, hold you hostage. And he was like, what? I said, well, yeah. I says, it's not serving us any purpose. I said, if it's not doing good for you and for me, what-- why am I going to justify it? And I think it was-- the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

other thing that was stated about putting something on the shelf. I find it hard to believe-- I can't speak for all of the other constituents, but if I'm going to buy something and have \$5,000 of inventory, why wouldn't we want to put on the shelf? I did get my return on my, my, my-- so I find that a little different, why somebody would say we put you on the shelf. To me, every brand I sell is important. I've had major relationship with the Emyrean Ales, for example, 25 years of experience, never had an issue and stuff. So with that said, that's pretty much my-- any questions?

BRIESE: Thank you. Any questions? Senator Arch.

ARCH: Thank you for coming today. I've got a question on the arrangement with the, with the supplier. Is that a, is that a consignment arrangement? Or you just mentioned you actually purchase. Do you pur-- or does that vary depending on the relationship?

MILAN KNEZOVICH: When we, when we get that-- the approval to sell their product, to buy-- I buy their product up-front before I even sell it today, but--

ARCH: Do others do it differently?

MILAN KNEZOVICH: No, that's not-- liquor will be different, but with beer, that's how you do it, so--

ARCH: So you purchase.

MILAN KNEZOVICH: Correct, yes.

ARCH: So you're motivated to sell it.

MILAN KNEZOVICH: Of course, yes, absolutely, and that's a concern. Once it's here, I don't-- I'm not high-fiving my employees going, man, we got ten pallets on the floor, another two days, let's-- so, you know, that's it, so.

ARCH: So, so if you don't sell it, if you're not able to sell it, it doesn't move, what then?

MILAN KNEZOVICH: We--

ARCH: Do, do you eat it?

MILAN KNEZOVICH: We-- our-- you, know, we'll talk to the brewery. There's usually a good relationship with buying back, but again,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

sometimes if it's under our own purchase and our ability to sell and stuff, then we eat it, but usually there's a good relationship. We've never had an issue with anybody not assisting us on that type of factor, so. And we're going to do our best week. We-- like I said, I-- I, and I tell the suppliers to justify or do we have display execution? Do we-- are we following all the proper-- and if I did everything I can and it's still not selling, then the writing's on the wall. I'm not gonna hold you hostage, so. And I don't think we should change the laws for the opportunity to bigger groups to come in and saying, hey, discriminatory purposes, that you allow these, why can't we be allowed to do that? That's my concern is opening a can of worms that could cause more issues in the future.

ARCH: Thank you.

BRIESE: Thank you, Senator Arch. Senator Brewer.

BREWER: Thank you, Mr. Chairman. All right. You talk pretty fast, so let's just back up a little bit here. [LAUGHTER]

MILAN KNEZOVICH: Sorry about that.

BREWER: All right. So you're good with putting it in black and white--

MILAN KNEZOVICH: Yes.

BREWER: --in a contract.

MILAN KNEZOVICH: Absolutely.

BREWER: OK, so you're good with LB1239 then because isn't that the idea behind LB1239 is to put it in black and white?

MILAN KNEZOVICH: Well, I think there are some other issues in LB1230 that actually make it more-- lose my opportunity for the future for my protecting my franchises now and stuff, could open up a lot of can of worms. So that's the concern. If we don't like you, get-- you know, that type of thing, that we can get rid of you in a split second. So that-- it could open more can of worms--

BREWER: OK.

MILAN KNEZOVICH: --for other ones too. Like I said, if it was stipulating--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BREWER: Can of worms, let's dig into that can of worms.

MILAN KNEZOVICH: Can of worms, like he said, a bigger-- it was brought up a bigger supplier comes in and goes, you know, now that we know that we have this opportunity to disrupt your organization by saying we can get rid of you by tomorrow, you're under their control where I have no opportunity to sell other people's products and stuff. They can use that against me.

BREWER: But it seems like the guy who's really going to get crushed on this is the guy at the bottom of the line here that's trying to sell his craft brewery stuff, isn't it? I mean--

MILAN KNEZOVICH: Well, the bottom line is if, if he's able to sell from his location, it's-- and it's-- there's a demand out there, the market will dictate the sales. I said all these other guys I've been working with for 25 years, yes, it was, it was a slow start, but they're doing well and some of the new ones that come in, not to disrespect, but we see it too. A lot of times their suppliers will bring up new brands; in three months, usually, we're "DQing" it because it's, it's not there, it's not selling. That's the reality of it.

BREWER: But the contract you could do, say, yearly and if, if it takes off, you can always change it, either positively or negatively, couldn't you?

MILAN KNEZOVICH: Well, if I was to write a contract, I wouldn't even worry about up or down. It's just that we give you 90 days or 60 days, whatever the days are. If this, this relationship is not working, you justify your relationship by, hey, you're not supposed-- like you said before, is you're putting them on the shelf, you're not selling my beer. I mean, you gotta come with that, but I don't think there's an-- it's an ongoing, an ongoing whatchamacallit, bullet point or whatever, that, that once you establish it, I assume it's gonna-- you, you have to-- a supplier has to figure out for themselves what they want to put in their writing and stuff and make sure that that distributor is willing to write-- sign on that. And then, you know, the-- the relationship, if he's unwilling to sign stuff, then there might be an issue that maybe you find a new distributor. But his response-- what do you-- what does he want? What are his needs? And then I can always revert back into negotiations, what my needs would be, because at least-- I want to make sure I'm protected, too, because there's an investment for us. I'm not going to sit there and build something up, then all of a sudden, two years

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

later, they say, see you later, we're, we're leaving. You go, man, I built this all up.

BREWER: I guess what I'm, what I'm concerned about it-- is if the attitude is that LB1239 is a solution in search of a problem, I think there is a problem and, and we're trying to figure out how to line things up to be fair and I'm, I'm not sure that everybody's agreeing to meet somewhere in the middle. It's my way or the highway on this. And I think LB1239 might give us some ability to, to force some issues with putting things in black and white that need to be for the protection of both parties.

MILAN KNEZOVICH: Well, but I see it as-- like I said, I have seven microcrafts local that I work with, have no issues. And it's-- and then all of the sudden, you start-- you're seeing three or four that might have some issues. And speaking for the whole, so we're going to whole-- disrupt the whole, whole law to meet your needs when, in fact, God willing, I hope you do sell some product, but at the end of day, reality is you might not be around. In the last two years that we've had two or three of them, major talkers in town that were very outspoken and we're the new brewer and stuff, they're nowhere to be found and that's because the market didn't play into their or buy their product. It just-- that's the nature of the, nature of the game. That's the reality. But I-- some people I've been with have no issues. I mean, we have representation from Thunderhead and Empyrean. I've had a good relationship with them guys, do the job and stuff and give them incentives and do the stuff, try to put it on the shelf, make sure it's happening. I'm always on top of that, so. But I just can't seem to change the whole-- what we've had for years and years, change for a couple, to, to change it when-- and again, has these contracts and they said, we've had contracts, but they would be-- they would never work in litigation. But has anybody ever changed-- challenged it to litigation? Where we're all hearing would have, could have, should have, but we never proceeded. Because I had one-- I'll tell you what the kiss of death with a major brewery is, is the out-of-date rotation. They'll write you up, and I've had instances in my operation in Omaha where they gave me 90 days to either fix it or you're going to have some major problems. So, I mean, that's, that's-- they used it.

BREWER: Well, I wish I was an attorney and really was able to dig in and, you know, figure out what right looks like here because, not being an attorney, it just looks like there ought to be a way of giving them some peace of mind, security in this written agreement,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

without all of a sudden causing a complete disruption of the universe with how you guys have done things before.

MILAN KNEZOVICH: Correct.

BREWER: Anyway, thank you.

MILAN KNEZOVICH: I agree.

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

WAYNE: Being an attorney, it's still pretty simple. It's, it's-- I'm just trying to figure out why people can't negotiate case by case. You're saying they can, but--

MILAN KNEZOVICH: I don't have an issue with it. I do it.

WAYNE: But isn't that what this bill is doing, allowing that-- the non-negotiated terms to be negotiated case by case?

MILAN KNEZOVICH: I think there's a little bit more involved in it and stuff. So I'm not sure why-- you know, if there's a little bit more changing involving the, the actual franchise law.

WAYNE: Like what? I guess I'm not seeing what you're seeing, because the statute imposes a one-size-fits-all for all negot-- non-negotiable terms and all we're saying is-- all this bill is saying is, why not let everything be negotiable and put it on to-- on paper?

MILAN KNEZOVICH: I think if that was the only part that was stipulated, that would be something to really look at, but I-- I think this other had more that you could integrate. You could actually be a retailer and still be a wholesaler. You're in all three-tier systems. You're able to do all that, which we're not able to do all that. That-- if you read more into that, that's what it would evolve. But what you're saying is, if we base it just on contractual, that's something that, yeah, that's something that you want to look at. That's [INAUDIBLE]

WAYNE: So is your objection the three-tier system is being violated?

MILAN KNEZOVICH: Yes, and not only just on a small scale when you're establishing a-- whatever the gallonage is, it's when others can come out of state and cause havoc to your future.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

WAYNE: OK, thank you.

BRIESE: Thank you, Senator Wayne. Anyone else? Senator Lowe.

LOWE: Thank you, Chairman. And thank you, Milan, for being here today and testifying. Being this late in the-- in the session, I'm not sure the bill will go, go anywhere, but none of us really want to spend a summer day in the Capitol. Would an interim hearing be good to discuss this further to maybe bring out the good points and the bad points?

MILAN KNEZOVICH: I think so. That's fair [INAUDIBLE] like I say, I-- I say more-- it would help.

LOWE: Yes, please do.

MILAN KNEZOVICH: We've had that conversation. We, we've talked and we are told by the Liquor Commission that we want no lobbyists, lawyers involved; we want you guys to have a relationship and get this thing settled, so. And I, I'm not sure how it morphed out, not-- because it is my-- these guys are my partners, so, I mean, we work together, so I don't want to have this idea of having disgruntlement and stuff between us, so, no, I think if we can get this evolved and get whatever he needs, but without changing the whole operation for the future because I think that would be the-- that's where I gotta put my foot down because I could see the demise of that, so.

LOWE: I could see it working out between the--

MILAN KNEZOVICH: Yes.

LOWE: --distributors and the craft brewers and having a good conversation.

MILAN KNEZOVICH: Yes, sir.

LOWE: Thank you.

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

MILAN KNEZOVICH: Thank you.

BRIESE: Next opponent testifier.

DON ADAMSON: I'm the nervous guy so be careful with me.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BRIESE: Welcome.

DON ADAMSON: Good--

BRIESE: Welcome.

DON ADAMSON: I'm sorry. Good afternoon, Chairman Briese and members of the General Affairs Committee. My name is Don Adamson, and that is spelled D-o-n A-d-a-m-s-o-n, and I am the president and owner of Adamson Distributing out of O'Neill and Heartland Beverage out of Norfolk, both in Nebraska. I appear before you today in opposition to LB1239. You know, a lot of things we talked about I'd like to-- if you have questions for me. For the record, for me, I've never had a craft brewer approach me to be a distributor that I've turned away, and I always ask them for their contract. And we, we want some protection, so if a brand takes off and it's growing and all of a sudden it gets it yanked out from underneath you, it hurts, you know? So I had-- we've had one over the years that didn't work out and we just signed the brand rights back to them, is the way we did that. These guys are great guys. I mean, I'm all for them. I'm, I'm a big Nebraska craft person and Nebraska supporter and, and I get it. You know, everybody wants what's best for them to move their business forward, but you need to do it in a logical, legal manner. You know, there's a lot of laws that are in place for a lot of good reasons. I don't know. I'm kind of a handshake guy. I'm not a real contract guy. If we can't get along, if our words ain't good, we, we probably aren't going to get along and be in business anyway. But if you have questions for me, I'll answer them the best I can.

BRIESE: Thank you. Any questions? Senator Lowe.

LOWE: Thank you, Mr. Adamson, for being here. Can you kind of walk us through-- after you take a product on, what kind of costs and what do you go through to get that product to be successful?

DON ADAMSON: Well, that's part of the deal.

LOWE: Because you're taking it out of, out of the brewer and you've got to make it sell well, so you buy more from them.

DON ADAMSON: Yeah. See, I'm a small distributor. I always have been. That's why I kind of emphasize these guys or try to help them. We, we bring it on. And a distributor, you know, we distribute. I mean, we promote the best we can, but we make the brand available. I have never had somebody say, I'd like to try this brand and I say, no,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

there's no way. You know, we, we line it up. We make sure they get the product. But-- I'm sorry, what was the question?

LOWE: Well, just what do you have to go through to make sure that product [INAUDIBLE]

DON ADAMSON: Well, it's very expensive and it's pretty involved business, being a distributor anymore. I mean, they've got climate-controlled warehousing. I spent \$100,000 just in a pick system for my warehouse this year. CDL drivers are horrible to find. Everybody else helps, a huge issue. I, I still ride trucks and sell product a lot. But, you know, we get the product in. We usually have a meeting. We sample the products and they're always good and we get excited about them. We go out and tell our customers about them.

LOWE: That's the best part.

DON ADAMSON: Yeah. And I mean, I've never had a tap take over in my market that wasn't Nebraska craft beer. I never have. And-- and they come down and we have a great time. I feel like we got good relationships with them, but I understand kind of their concerns and thoughts and things too. But the two times I've been approached to bring on a brand that was already owned by a different distributor, I paid the variable, and it was a variable, and went off what they felt was fair. I mean, you can't overpay. That's where-- like these businesses that are different, a huge part of what-- your businesses are your brand rights. It's kind of like owning the land. You get the rent, but-- so you got to protect, you got to protect your property. You don't want to start unraveling something here. Like I say, the big guys, everybody wants to get bigger and if they could probably figure out a way to get rid of us, they would, you know, cut, cut out that route to market.

LOWE: All right, thank you.

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

DON ADAMSON: Thank you, guys.

BRIESE: Any other opponent testifiers? Welcome.

JOHN FORDHAM: Good afternoon, Chairman Briese and members of the General Affairs Committee, my name is John Fordham, J-o-h-n F-o-r-d-h-a-m. I'm the president and general manager of State Distributing Company, located right here in Lincoln, Nebraska. We're

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

founded, incorporated in Nebraska 45 years ago. We're a Nebraska beer wholesale distributor. We represent numerous brands, including those of our Nebraska breweries. Operating out of a 45,000-square-foot warehouse facility here in Lincoln, we service seven counties and 2,500 square miles in southeastern Nebraska. We use state-of-the-art sales and routing software. We deploy a dozen sales and delivery vehicles and effectively service over 700 Nebraska-licensed retailers. In addition to the reasons stated previously by my fellow Nebraska distributors, I oppose LB1239. I would like to clarify, there are actually 26 Nebraska wholesalers. There's only 17 that are members of our association, but there's actually 26. You know, and, and I'll kind of go off script a little bit so we can ask some questions. I don't want to be too repetitive, but the current regulatory system we have is working. You know, LB-- LB1239 is again-- it's not as though we're, we're against written agreements. We're just against LB1239 because of the changes in the language that are included in it. And, yes, it affects our, our Nebraska franchise law, but we want to be clear we're not against written agreements. The Nebraska franchise law actually gives us the freedom and the independence to do what we do best. It wasn't designed-- some-- I-- earlier people testified that, hey, it's-- there's a disproportionate bargaining position between the wholesalers and the craft brewers. That's not why the franchise law was started. The franchise law was started, was created by the Legislature, enacted by the Legislature so that we would, we would have the independence to operate freely from our suppliers who represent 96 percent of our business, right? You've heard the craft brewers say they represent 4 percent of the business. That other 96 is represented by our major suppliers. Think about that. Who's role-- who's controlling the ball? And so if they say, Mr. Fordham, you're not going to be permitted to carry Nebraska craft brewing products, they compete with our products, now where's their route to market? You aren't talking about getting shelved. How about not ever even getting picked up? Because I'm a business guy, not that bright, but I'm out there and if I have the option to either forfeit 4 percent of my business or 96, my math skills say I'm sticking with the 96. So to me, it's almost counterintuitive that they would do-- that the Nebraska craft brewers would do anything to weaken the franchise law because it directly and drastically impacts their ability to survive in the marketplace. And with that franchise law, look how successful they've been because we have together worked with them cooperatively and built businesses together. And I'll take on any questions you might have. Yes, sir.

BRIESE: Senator Brewer.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BREWER: All right, so how many meetings have you had with them to discuss LB1239?

JOHN FORDHAM: So I have-- well, there's been two. I was only invited to the last one and I had a specific and what I thought was a terrific conversation-- well, and there was three or four of us there-- with the president of their guild, who was a very, who was a very well-spoken, intelligent gentleman. He's-- and, and I thought we kind of had struck a chord together, but apparently we did not because I thought, you know, we, we kind of met on terms that we were thinking, hey, how do we move this forward? What's-- what are our next steps? And I asked him, I said specifically, what do you want out of this bill, right; what are you looking for; distill it down to me in a single word or in a sentence. He said, more options, more distributor options. And I thought, makes sense. Well, you've got-- solve distribution, which I think advanced, LB1236 advanced. And then we had a discussion about what the impact of these changes would have and how it affects route to market or distributor options. Well, once your major suppliers start controlling your destiny, they have the ability to consolidate. Consolidation means less and so all of a sudden you have not 26 distributors, you have 17 distributors, you have 12 distributors, you have 3 distributors left, and now where's your route to market, right? Somebody mentioned the liquor companies. Well, liquor does not have a franchise protection. So there's only three left. You know how many of them are family owned out of Nebraska? Zero. Do you know how many are headquartered in Nebraska? Zero. They're all multinational companies. And by the way, do you know how many of the top 10 producing Nebraska beer-- craft beer distributor-- manufacturers are with a Nebraska liquor house? Zero, because they chose the, the Nebraska beer wholesalers.

BREWER: OK.

JOHN FORDHAM: Pretty easy math.

BREWER: I understand your math, understand your points there. What I'm getting to is you had two meetings, you could not come to a resolution, so both parties walked away and that's why we're having this hearing today, is that right?

JOHN FORDHAM: Yes, sir.

BREWER: OK. And you don't see--

JOHN FORDHAM: Haven't given up.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

BREWER: You, you haven't given up.

JOHN FORDHAM: I'm not giving up.

BREWER: All right. So what you're saying is there is a solution. You guys just haven't had a chance to have enough meetings to figure it out? Because what's going to happen is we're going to figure it out and you may not like it if there isn't some give-and-take here. And so that's the part I'm kind of trying to figure out, whether you guys have polarized one side and they're over here, there's going to be no middle ground, and we're going to have to figure out the middle ground, or whether you guys actually have a chance of figuring this out.

JOHN FORDHAM: Senator, I would hope that we could, we could figure it out. As I said at the beginning, we're not opposed to written agreements. We're just opposed to the language that was presented to us in LB1239.

BREWER: OK, but normally how that works is through this process of negotiating, you try and figure out what's acceptable so these don't become law.

JOHN FORDHAM: Yes, sir.

BREWER: And we're to the point now where that didn't happen, so unless there's amendment or a desire to, to work this, you know, it's going to have a solution. May not like it or not, that's kind of where we're at with this. So I guess one more time, do you think there's a solution that you guys can come to as a compromise on LB1239 or are you guys--

JOHN FORDHAM: I think, I think we need to continue to, to work together to find a solution.

BREWER: That's music to my ears. Thank you.

JOHN FORDHAM: Yes, sir.

BRIESE: Thank you, Senator Brewer. Senator Jacobson.

JACOBSON: Thank you, Mr. Chairman. Mr. Fordham, I-- I-- I really appreciate your testimony. I think it brought a little more light on what we're talking about here and I would agree with you that you've got your major suppliers, the big guys that aren't craft brewers, that are the-- when we look at the beer industry, that's who the beer

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

industry had been historically. And clearly, they could come in and make a lot of changes if we mess with the franchise laws too much. I'm kind of back to Senator Brewer's worm can in that we're still trying to figure out-- you know, there's a lot of worms in there, evidently, and what we're concerned about is the worm that has to do with the written contracts. So I think we're agreeing that we can take that worm out and use that worm, correct? And we can all agree on that one. So what are the other worms that we need to talk about that are the big problem here? And, and I think I go back to Senator Lowe's comments that this is likely not going to move this year, but this issue is not going to go away. And, and I would think that an interim study would make a lot of sense, but I think our hope is your answer to Senator Brewer, which is we need to resolve this because I don't think you're going to love the answer that this group is going to come up with and so I think it'd be better for you folks to get it figured out. And so, again, I thank you for your testimony. I think you, you shed additional light, and I agree with where you're coming from, but let's go figure out how to deal with these little guys that are trying to make a living and how they can enter into a contract and get out without getting skinned alive or that they know exactly what the rules are and they're not-- they're not going to get back-- or they're not going to spend a lot of money on attorneys. And so I'm concerned about that piece of it and that piece only. I fully understand what's happening with franchise distri-- distributors and what you have to face, and you do have a lot of money tied up. Let's don't mess with what will really mess up your world. Let's fix, it seems to me, the problem we have with this written agreement thing.

JOHN FORDHAM: OK.

BRIESE: Thank you, Senator Jacobson. Senator Lowe.

LOWE: Thank you. And thank you for being here today. Did you see the amendments that Ms. Silke brought up?

JOHN FORDHAM: I--

LOWE: Have you seen those yet?

JOHN FORDHAM: I did not.

LOWE: OK. I was just wondering if you would agree to any of the amendments, but I appreciate it. Would amending this be OK to you?

JOHN FORDHAM: I think coming to a, to a mutually amicable working-- workable solution would be a-- would be great.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

LOWE: OK, something like producers of less than 20,000 barrels a year, work with that, you think?

JOHN FORDHAM: Making me think on my feet. You know, I'm not sure what the right number is, Senator. I don't know if it's 20,000 or 10,000 or-- I honestly couldn't give you an answer that I could stand behind.

LOWE: OK. All right, thank you.

JOHN FORDHAM: Yes, sir.

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

JOHN FORDHAM: Thank you.

BRIESE: Next opponent testifier. Welcome.

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, and I represent the Nebraska Liquor Wholesalers Association, as Mr. Fordham so politely introduced us as zero everywhere. No. Everything he said was accurate. They-- we used to be family owned. They used to all be family owned. They have sold. They do, however, represent and do market some craft brew. It's not a large market. They-- but they do have an interest in it, so anything you are changing in the beer franchise law does affect them to a small percent, not near the level that it does the beer wholesalers, but the way this bill is written, LB1239, we are opposed, specifically looking at the added terms that it has and, I would say, then it removes and eliminates good cause. The statute currently lays out what good cause is and I would say that's there for the protection of the wholesaler when negotiating, especially with larger suppliers. By removing that, obviously, you're giving the power, yes, some would say, to an open negotiation; others would say you're giving the power to whoever is the largest supplier or the largest person in the negotiation. So with that, I'll try to answer any questions, but can go from there. Thank you.

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

JUSTIN BRADY: Thank you.

BRIESE: Next opponent testifier. Seeing none, anyone wishing to testify in a neutral capacity?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

WAYNE: Oh, now you're gonna be neutral.

BRIESE: Welcome.

HOBERT RUPE: [LAUGH] Thank you, Chairman Briese and members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, and I, I was prepared to say-- I was prepared to be Switzerland here, but apparently even Switzerland is no longer neutral as they're following sanctions against Russia now. I'm just here to answer a couple questions factually. I mean, as stated, the role of the commission is very small in this. What the, the role of the commission would be is that the wholesalers would have to supply to the commission the territory agreements. For instance, we'll just use one of the biggest, you know, Budweiser, you know, so we would have the, you know, the counties that are distributed out of Quality Brands, Omaha, would be one agreement; the ones out of Lincoln would be a separate one as it goes down, as they're represented throughout the state. One thing I will clarify was asked by Senator Brandt. There are 47 states which have franchise laws, beer franchise laws of some sort, of some degree or not. So it's not a rare thing that Nebraska does. It's something that was put in there long ago and they were primarily put in, as you've heard-- is if you look at the fundamental theory underneath the three-tiered system, you wanted to have independence at all three tiers. You didn't want to have too much power coming down, and primarily that was always seen traditionally, when the act was first passed, as being at the brewery level, although, as I said, we now have retailers. You know, Walmart is bigger than Budweiser. And I really wish my wife would not decide to call me when I'm testifying here. Could we mark that-- think-- strike that one? [LAUGHTER] So-- you know, and so the design was to allow that independence at the wholesale tier so that they weren't beholden. You know, people have to remember that one of the reasons want-- we always look at what happened during Prohibition and we often forget what was going on in America that created the trial, the great experiment to take place the first time of Prohibition, was where you had, you had single and individual--

LOWE: She told me to take the call for you.

HOBERT RUPE: You know, Senator, I might have you do that and say, hey, Hobie's in the middle of a hearing right now. We're renovating our house and I bet you it has to do with that. So the theory was, is back then, you would have literally where a brewery would own from field to tap. They would own the, the manufacturing, the wholesale distribution, and the retail distribution, and you would go in there

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

and that would be the only beer that would be available. And someone asked me why that's important now, and my response always is, when was the last time you got a Diet Coke at Memorial Stadium? Because you have exclusive contracts which are allowed under areas which are not the Liquor Control Act. The Liquor Control Act is a little bit different. The-- one thing that was brought up earlier that I'll bring up is LB1236, what's coming out of there, there were some meetings over the summer with, with myself and Commissioner Hoch from the commission meeting with the individual beer and manufacturers, and as well as farm wineries, to try and find some issues. One of the issues that we had developed under our theory that there was maybe a problem in distribution was allowing the small self-distribution, which was passed off General File today. You know, we were looking at-- we were saying maybe there wasn't enough market access to-- on somebody that small, so we wanted to make sure that in the interest of having a fair and level playing field, which is one of our jobs, we were making that. And so that's one of the reason why you'll remember that 250 gallon was in our legislative letter we sent out. So we were addressing something, which there was agreement. There was agreement that there should be some split in distribution. The-- the barrels was always the debating point, but-- so they were having some work. We stayed out of the franchise law because our role is very-- is very small in this. I'll be happy to answer your questions, especially from a historical perspective.

BRIESE: Thank you. Senator Brewer.

BREWER: Thank you, Mr. Chairman. Well, after my cross-examining today, I'm probably hated by the distributors, but I figure, after closing Whiteclay, they hate me anyway, so. What we're going to try and figure out here is you're the-- probably the only one that can be the fair broker in this deal because you kind of see both sides of it. So when was the current regulations that we're working off of passed?

HOBERT RUPE: If memory serves, there was a significant rewrite back in the mid '80s. I think maybe '87, if I were to recollect. So, I mean, there has been franchise laws of some sort, but I-- if I remember the last time, if I, if I'm looking at it correctly, I think it was probably mid '80s was the last time it was-- there was a rewrite.

BREWER: OK, so early, mid '80s. How many craft breweries do we have back then?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

HOBERT RUPE: Probably none. Craft breweries, the first craft breweries-- brewery laws, I think, went into effect in '89.

BREWER: So could it be that some of these needs some updating?

HOBERT RUPE: The la-- the act always can be updated. You know, my, my cautionary tale always, always is to make sure that we're actually doing what we're accomplishing and to make sure that we're not having other impacts. I often describe the act as a quilt and if you pull one thread to fix one corner, you might have an unintended consequence. So I've always said a, a deliberate, thoughtful approach to making sure that the act is doing what you want-- changes that you want to make are going to happen without having the deleterious effect.

BREWER: Probably words of wisdom there. Thank you.

BRIESE: Thank you, Senator Brewer. Anyone else? Seeing no one else, thanks for your testimony.

HOBERT RUPE: Thank you.

BRIESE: Anyone else wishing to testify in the neutral capacity? Seeing no one, Senator Vargas, you're welcome to close. We have three letters in support of LB1239, no opposition letters. Welcome again.

VARGAS: Thank you very much. I was sort of laughing just partly because I know Senator Wayne came in through Executive Board and introduced a bill about individuals testify-- that work for agencies testifying, neutral testimony. So it just-- I do appreciate you for testifying. A couple of things I want to try to pinpoint on. I really like coming to this committee. I think each one of you-- I, I encourage you to trust your gut, largely because I find that the times that I've been in here, I've been bringing bills or changes to statute that are trying to encourage not necessarily market competition, but to address very-- a very specific issue or problem. This is not trying to upend the three-tier system. It's not my intent. Even if you look at the one-pager on what this bill would, would do, it's about making sure that there is an agreement on these franchise agreements that they can be freely negotiated between the parties. Each one of us has some sort of business or has engaged in contracts and we take our decisions to make sure that it is done with the intent or authority with the best interest of ourselves. And I think what you heard from, from the people that testified in support is that there is a problem, not that the whole system is broken, but

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

that there's a problem. And by solving the problem, it's by stating we need to have contracts that can be freely negotiated by both parties. And if you read the language, pretty much is what it dictates in it. If you've heard from the people that were in opposition--- and nothing against the opposition. I understand, I guess, they're-- many of you might have been in different committees or had bills where there's sort of the sky is falling reaction, you know? And I heard a lot of it. I wrote it down because it, it, it's-- if, if they want to, they will get rid of us. Look at the language. It's not the intent. It's to make sure that there's contractual, freely negotiated language, contracts by both interested parties, that if they don't like you or us, they will just get rid of us. That's not what you heard from the proponents of this bill. Nobody wants to get rid of anybody. They just want to make sure that they are better protected. I heard, you know, currently, the regulatory system isn't broken. I think we heard that it may not be broken, but there are parts of it that are not working for everybody. We're trying to make it better and improved. I appreciate the sentiment and questions on whether or not they can come together. There have been interim studies on certain aspects of what we're touching upon here. We're bringing this because it probably needs to be worked out within the committee where some people may or may not like what the outcome is, because at the end of the day-- and I'm only listen-- I'm responding to what Senator Wayne said in-- if, if you've ever had an instance where you have-- you're not protected and a contract doesn't provide you with the ability to follow through on what you negotiated--- we heard that most of them might have contracts, some of them are handshake agreements, and that's really the intent of what this is about is addressing that underlying issue. It is-- I did not hear very specific language, which as somebody who is in Appropriations and other committees, that they are as opposition against, like, this part here is where I am against this. I would have wanted to hear more of that and I hope, as a follow-up, they bring that directly to you. My hope is that we can move forward in trying to do something because there clearly is a problem. We're not trying to upend the entire system. That's not what you heard from the supporters. And at the end of the day, even though I do understand that there's small businesses on either end of this, neither small business is better than the other. Both small businesses deserve equal-- well, equitable say and protection. And I think what we heard from some of the opponents is some of these removals may make it hard to protect the wholesaler. Well, what in this is going to make sure that we also protect the craft brewers? With that, I encourage you to read through the language again. I don't want to read it line by

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee February 28, 2022

line, but if you've known people like-- well, I mean Justin does, and many of you do this. When you go through the line-- Senator Howard used to do this all the time-- when you actually go through the line, you'll find that 89 percent of this makes sense to you and you're like, we're just putting into statute there needs to be agreement and here's what we stipulate what the contractual agreement needs to at a minimum include; you'll see that that's the majority of what this bill is. And I hope we'll hear follow-up on what we don't agree with in this language and not just we're against it because it's a slippery slope. I appreciate you. I hope we can try to move something forward. No, there's not a vehicle, to your point, Senator Lowe, but we need to deal with this because small businesses are hurting. And it doesn't matter how many, in terms of the quantity, if it's every single craft brewery. It matters that there are some and we need to address it. Thank you.

BRIESE: Thank you, Senator Vargas. Any questions? Senator Brewer.

BREWER: Could you read the letters in again?

BRIESE: Oh, yeah: three letters in support, no letters in opposition.

BREWER: Well, this is consent calendar material. We got a path.
[LAUGHTER] Had to line it up.

VARGAS: I know. I appreciate it.

BRIESE: Thank you, Senator Vargas--

VARGAS: Good? Good.

BRIESE: --for joining us here today. That closes the hearing on LB1239 and that will conclude the day's--

VARGAS: Close it out.

WAYNE: There's a bill on General File you can attach it to. Thank you.