

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: Welcome to the General Affairs Committee. My name is John Lowe and I represent the 37th District. I'm the Chair of the committee and will be conducting today's hearings, kind of. Today, we will be hearing five bills. If you wish to testify in person on any of these matters before us, we ask you fill out one of the green sheets of paper. They're located on the tables on either side of the room. If you're here and you do not wish to testify, but wish to state your support or opposition for any of the matters before us, we ask you to fill out the sign-in sheet. If you testify, please hand in your sheet to the committee clerk-- Ben over here-- as you come up. Please begin your testimony by stating and spelling your full name for the record, which is very important for our transcribers. The bill's introducer will be given an opportunity to open. Then we will hear the proponents, opponents and neutral testimony for each bill. We ask that you listen very carefully and try not to be very repetitive. We do use the light system in the General Affairs Committee. Each testifier is afforded three minutes to testify. The green light signifies your start. When the light changes to yellow, you have one minute remaining to conclude your remarks. When the red light comes on, your testimony has expired and we will open up the committee to any questions that they may have for 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, including a no button. We are equipped for electronics so you may see the members referencing their iPads, iPhones or other electronic devices. I can assure you they're just researching the matters before us. If you have a prepared statement, an exhibit, or anything you would like to have distributed to the committee members, we ask that you provide 12 copies to our committee clerk. If you don't have 12 copies, don't worry. Provide what you have to the committee clerk and we will make copies to distribute to the committee. With that, we will proceed to the introduction of the committee members to my right.

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

HUGHES: Jana Hughes, District 24: Seward, York, Polk and a little bit of Butler County.

HARDIN: Brian Hardin, District 48: Banner, Kimball, Scotts Bluff Counties.

HOLDCROFT: Rick Holdcroft, District. 36, west and south Sarpy County.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: And to my right is our committee counsel, Laurie Holman, and our committee clerk is Ben Earhart and our pages today are Mataya and John. They are political science majors. With that, we will proceed to LB596 and some of our members may not be here at this time because they're introducing bills in other committees. Senator Hardin, welcome to your committee.

HARDIN: Thank you, Chairman Lowe, and good afternoon or morning, fellow senators of the General Affairs Committee. I'm Senator Brian Hardin. For the record, that is B-r-i-a-n H-a-r-d-i-n and I represent the Banner, Kimball and Scotts Bluff Counties of the 48th District of western Nebraska. I'm here to introduce LB596. This bill will clarify Nebraska law to ensure that at least as far as the state of Nebraska is concerned, liquor manufacturers and wholesalers can engage in sponsorship of various organizations. There are many situations in which a nonprofit such as a church, charitable or civic organization holding an SDL seeks sponsorships to defray the costs of hosting an event. In the case of liquor wholesalers and manufacturers, such sponsorships are currently not allowed by current state and federal statute. While we cannot do anything here about the status of federal law, we can join other states like South Dakota and Minnesota in ensuring that Nebraska law permits the practice on the state level for that time when federal law is brought up to snuff. There are those that will be testifying behind me that can speak to the situation in greater detail and the need for this bill, as well as where it fits in the grand scheme of things for both nonprofits and wholesalers. I appreciate the committee's time and would encourage the advancement of LB596.

LOWE: Thank you, Senator Hardin. Are there any questions? Seeing none, will you be here to-- for closing?

HARDIN: Yes.

LOWE: All right. First of all, proponents for LB596.

BRENT SMOYER: Good morning.

LOWE: Good morning.

BRENT SMOYER: Good morning, Chairman Lowe, members of the committee. My name is Brent Smoyer, B-r-e-n-t S-m-o-y-e-r, here appearing on behalf of the Nebraska Travel Association. We are the instigators behind this bill and we do thank Senator Hardin for being willing to introduce it on our behalf. Just a quick background on what is, what

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

is occurring with this bill and what is being sought, it turns out some of the more active attorneys in our nonprofit organizations were perusing the statutes and realized that over the years, this situation had been occurring. These sponsorships had been happening for various nonprofits. And according to the black letter of the law, they weren't exactly legal in terms of their, their statement. I have been informed by Liquor Control that enforcement of this provision has not necessarily gone into place for the last 15, 20 years because they understand the overall function of what's occurring between the sponsorship of the wholesaler and the nonprofit. So what we're trying to do here is essentially make sure that what has been tacitly approved is legally and technically approved by the Legislature. The best example or allegory I can give is Monopoly. When you're playing at somebody's house, you've got the house rules and you've got the official rules. In this case, this bill is meant to fix the house rules, Nebraska's look at this sort of sponsorship, while we wait for the federal government to fix the official rules. We do understand that this will not fix everything. The federal government can and would come in if they felt something was going on that was inappropriate. I think I know it's been mentioned recently that Iowa has had a couple of cases like this. We understand that. And of course, I think the Travel Association is working on a national level now or trying to get involved on a national level to remedy this situation with the federal government. Now, whether that happens in the next six months, six years, we don't know. But the fact is, is this bill is intended to make sure the Nebraska law sees fit to allow this practice for these nonprofits to be able to function and hold their events with the help of wholesalers and manufacturers if and when the federal government does get around to making that fix. We want to make sure that everything is kosher on all sides, on all fronts, and avoid any sort of ignorance of the law or any sort of, again, playing by house rules rather than official rules. With that, I'm happy to take any questions the committee may have.

LOWE: Thank you, Mr. Smoyer. Are there any questions? Could you give us an example of what may happen between the distributor and the nonprofit? They would, they would solicit sponsorship for an event, say?

BRENT SMOYER: Yes. Very simply, I mean, they would seek to defray costs of, say-- I try not to name any names so as to avoid, you know-- just so as to not point fingers or, or any of that.

LOWE: A church may have a cornhole--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

BRENT SMOYER: Yes.

LOWE: --game or something like that.

BRENT SMOYER: Yes, thank you. Yes, a cornhole tournament at a church and let's say the local Budweiser distributorship seeks to provide sponsorship, you know, have their names on the, the cornhole boards or have a banner and, of course, provide some beverages. Again, right now under that-- under the current SDL function-- and of course I know Director Rupe is going to be follow-- is going to be following behind me here. Under that current setup, it's technically not allowed under state law, which I do find interesting that when I was bringing up this bill and discussing it with various individuals, including the legal counsel here, often people kind of looked at me quizzically and said, well, wait, that's, that's not legal? But everybody does that already. And that's kind of the point is it's been going on for so long and, and we've had a very understanding and very well-researched Liquor Control Commission that said, OK, you're not doing anything that's un-- you know, a pay-for-play or sort-- of sorts and so we'll, we'll let it go. That yeah, it just hadn't been realized this hasn't been fixed. And so we're just trying to make sure that that piece gets into, into law.

LOWE: All right. Thank you very much. Senator Hughes.

HUGHES: So in that case that you're talking about, let's say we change this, then it's now legal in Nebraska, but it's still illegal federally.

BRENT SMOYER: Yes.

HUGHES: Is that what you're saying?

BRENT SMOYER: Yes. That's, that's the unfortunate portion. But of course, there's a number of things that are both legal federally and illegal in Nebraska or vice versa. This would, of course, again, make sure that when the feds finally get their ducks in a row, so to speak, on that front, if and when, the Nebraska law wouldn't be a hurdle then for these situations.

HUGHES: OK.

BRENT SMOYER: Kind of a belt-and-suspenders situation.

LOWE: Thank you. Senator Holdcroft.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HOLDCROFT: What federal department is responsible for enforcement of that, do you know?

BRENT SMOYER: Oh, I knew that was going to get asked and I apologize, I don't. It's-- of course, the experts behind me with the wholesalers could tell you. It's-- well, it's under the TTB and it's mostly a tax situation in terms of the, the sponsorship. Again, I apologize for not having that. I can certainly get you more information.

HOLDCROFT: Thank you.

LOWE: Thank you, Senator Holdcroft. Any other questions? Seeing none, thank you.

BRENT SMOYER: Thank you.

LOWE: Next proponent. Other proponents? Seeing none, opponent. Is there an opponent to LB596? Welcome back to the General Affairs Committee.

CHRIS WAGNER: Good morning, Senator Lowe, members of the committee. I'm Chris Wagner. I'm the executive director of Project Extra Mile and we're a network of community partnerships across Nebraska working to prevent and reduce alcohol-related harms. I do not have a prepared statement on this bill that I have provided, but I did want to give you a technical report that's been issued by the World Health Organization, which points out that in order to prevent alcohol-related harms, especially among young people, local and state governments ought to enact comprehensive bans or regulations with regard to sponsorships specifically. And obviously, this is not-- we're not really considering a comprehensive regulation with, with restrictions. And actually, I would, I would point to the, the language of the bill that allows political subdivisions and prop-- operators of property owned by political subdivisions to enter into these sponsorship agreements. And we're really concerned that this is going to increase young eyes being able to see alcohol advertising throughout their day. You know, I'm concerned about, you know, city hall. You know, if there's an event going on, that they're hanging up banners on city hall. This might, you know, enter into our public transportation systems as well. And so because it contradicts what we know and the recommendations that are out in the established literature, we ask that you oppose this bill.

LOWE: Thank you very much. And for the record, could you please spell your name?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

CHRIS WAGNER: Oh, I'm sorry. Yes. C-h-r-i-s W-a-g-n-e-r. Apologies.

LOWE: Thank you. Are there any questions for Mr. Wagner? Seeing none, thank you.

CHRIS WAGNER: Thanks.

LOWE: Are there any other opponents? Seeing none, those in the neutral.

HOBERT RUPE: Good morning, Chairman Lowe and members of the General Affairs committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. Most people call me Hobie. I currently serve as the executive director of the Nebraska Liquor Control Commission and I wasn't even sure I was going to testify but then Brent, you know, called me and said I can come up and clarify things. So gee, thanks. The issue here-- and I can sure give you an idea of what-- how the state looks at it versus the feds. Because it's a three-tier system, there are very different-- there are restrictions upon, especially financial things, that a wholesaler manufacturer can give to a retailer because it's designed to protect independent-- retailer independence, keep them from pay-for-play, slotting fees, all sorts of stuff. And the reason the feds get involved in this, the, the-- most of the manufacturers and wholesale-- actually, all the manufacturers and wholesalers are dual licensed. They have a state license issued by the commission because they have the federal license as you buy the TTB, the Trade and Tax Bureau. It was sort of when we-- when ATF sort of devolved and the ATF went clear-- the one side for law enforcement, this was stuff for the state and treasury primarily when ATF moved over to Homeland Security. We actually look at, if we get a complaint, is the actual intent of the rule being violated, not just the fact the rule is in violation? Is there some sort of pay-for-play issue? And so our administrative position is nonprofits who are getting STLs and then ask for a waiver of this rule pretty much get it because under the SDL, we can waive any statute except age of consumption. And we do that primarily because normally these nonprofits are, are, as, as you heard, are trying to get some financial benefit for their events. Generally, they only want to deal with one vendor anyway because they don't want to have to deal with multiple vendors. And so we're looking at it's-- and because these are temporary licenses, you're not getting the same problem that if a bar is be-- receiving money and decide to, oh, we're only going to carry Budweiser products hypothetically. The TTB has been throwing a-- you know, so my little nine-and-a-half-foot boot doesn't scare them as much as, you know, the TTB size 18 boot because they don't make that second step to look at is there a pay-for-play?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

They look, is there a sponsorship, is there a retail license of some sort here? Boom, we're coming down and usually with far bigger fees than anyone wants to contemplate. And so because of that, you've seen a lot of the wholesalers, because it's happening all over the country, have been looking at their sponsorship agreements and arrangements kind of pulled back, which is-- the only reason I think is the reason why we got this bill sponsored right now is, is traditionally, you know, they might have done these sponsorships, but because of the threat of federal litigation, they've really pulled back. So that's sort of the-- in my three minutes almost I can give you of why there's probably this bill here and what's really going on sort of nationally versus just in Nebraska. Nebraska is just a symptom of what's happening nationally with TTB's actions. And I see I'm at the red, so I'd be happy to answer any questions.

LOWE: Thank you, Executive Director. Senator Hughes.

HUGHES: So you're saying people are worried-- they're kind of pulling back from sponsorships now because they're worried about federal, but there's-- even if we get this in the books, they're still breaking the law federally.

HOBERT RUPE: The argument there is that TTB's-- there needs to be joint regulation. There needs to be a state statute of some sort, as well, is the way they look at it. And we have that, generally. It's 53-160, which regulates cash transfer between the tiers. So what effect this is trying to do is trying to carve-out. I'm not sure it does it legally. I know I've talked to some people who are much smarter than I am on the national side who don't think it does and some who think it probably-- who think it might. So we-- you have big lawyers either side disagreeing on that one there. I'm going to stay out of it for right now. The reason why the feds get involved is usually their comp-- offers in compromise start at \$1 million and go up for, for fines. So that's one reason why there has been a very-- a big pull back.

HUGHES: So if we would get this in the books, technically the feds would be like, eh, Nebraska's allowing it. We're going to just--

HOBERT RUPE: If I were to read the tea leaves, if I were to-- given the fact that I believe it's not clear, if I was offering my advice to a wholesaler, more than likely, they're probably to say, we're not going to do any of this until the feds clean it up because you're putting yourself at risk and exposure.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Got it. Thank you.

LOWE: Thank you. Senator Hughes. Any other questions? Seeing none, thank you.

HOBERT RUPE: Thank you.

LOWE: Welcome.

LANETTE RICHARDS: Thank you. My name is Lanette Richards. I am from Scottsbluff and--

LOWE: Could you please spell your--

LANETTE RICHARDS: Yes. L-a-n-e-t-t-e R-i-c-h-a-r-d-s. And I really wasn't planning on speaking on-- regarding this bill, but after listening to some of the comments, I just took some notes about some concerns that I have. I am the executive director of Monument Prevention in Scottsbluff. However, I'm here on vacation time, on my own expense to speak out on some things. And I guess there's two levels of really concern for me and that's the alcohol advertising and how it reaches out to the public no matter if you take part in the SDL or not, that this-- it's a-- makes it also prevalent that alcohol is about in every event that we, that we have. Also, it seems to increase excessive alcohol use and those are some concerns I have. So because of these questions, I'm speaking as neutral on this and feel that more information needs to be sought regarding this in-- this bill and the issues with it, that it seems to be there's a lot of maybe some confusion on it and I'd like to see it clarified.

LOWE: Thank you. Ms. Richards. Are there any questions for her? She's traveled a long way.

LANETTE RICHARDS: A lot of snow--

LOWE: A lot of snow.

LANETTE RICHARDS: --up in the western part of the state.

LOWE: Yes. Thank you for coming and thank you for--

LANETTE RICHARDS: Thank you.

LOWE: --testifying. Are there any other testifiers?

ADAM BARNEY: Good morning, Chairman Lowe, members of the committee. My name is Adam Barney, A-d-a-m B-a-r-n-e-y, of Cline Williams, legal

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

counsel for the Associated Beverage Distributors of Nebraska. I don't want to repeat too much of what has been said here, but a lot of the supposition is correct. This is a complicated area of state and federal law and the interplays between state and federal law on what distributors and suppliers can and cannot do on payments and sponsorships to licensed retailers and others. We are regulated by both state and federal law. And federal law on this issue has seen an uptake-- uptick in enforcement over the past few years that has caused our members to take a much more conservative approach on how to deal with these sponsorships. This bill does provide some welcome guidance on state law, and as it relates to beer distributors and beer suppliers, the state does have some flexibility on how to define what can and cannot be done. It does have less flexibility on kind of redefining what is done on the liquor and wine side from the federal, federal government's perspective. This bill allows, as we understand it, sponsorship payments to be made, but it's not a pay-for-play. It still remains the status quo in the state that pay-for-play is, is not allowed and that's consistent with the federal law posture as well. And that's, that's the concern primarily of the federal law. And one of the earlier testifiers mentioned, well, if somebody wants to give some money for a sponsorship, well-- and of course, sell some product too and that, that's where the, the tough part of this comes for my-- for our members. If-- it's not only a we're going to pay you \$10,000, \$500, what have you, and we get our name there. It's well, you also-- wink, wink, nudge, nudge-- we're going to give you some preferential treatment in the, in the buying of your product. And so that's why we've had to pull back. But again, as a general matter for this state, we're welcoming of this bill. And to the extent it gives us additional opportunities for sponsorships in the state, we welcome that. And our members do touch every area of the state and enjoy being good stewards of community in those, in those ways.

LOWE: Thank you very much, Mr. Barney. Are there any questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe, and thank you, Mr. Barney, for being here. I haven't asked any questions yet, but you made me think of one. So when you said preferential treatment in terms of buying your product, so sponsorship-- just so we're clear-- is, like, you, whoever-- I don't know. I just made up-- a beer company donates money to a festival and then they would put their name on the brochure and maybe on some-- like, a sign or something like that. That's what sponsorship means, right?

ADAM BARNEY: Correct.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

J. CAVANAUGH: And it wouldn't necessarily mean that then they're going to give a discount for all the beer that they would purchase.

ADAM BARNEY: It's not a discount for the beer. It's not an exclusion from other distributors. It's not a well, we're going to put your spot closer to the hot spot, right, any, any sort of preferential treatment. And if the federal government wants to try to find a way to argue you got some preferential treatment for that money you paid over, they're probably pretty good at finding something that they can hook that on. So that's why we're very careful in this area.

J. CAVANAUGH: So they would-- in theory, they would be just two different transactions; selling the beer to the festival or-- and the sponsorship.

ADAM BARNEY: Correct.

J. CAVANAUGH: OK. Thank you.

LOWE: All right. Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you, Mr. Barney.

ADAM BARNEY: Thank you.

LOWE: Welcome.

THOMAS SAFRANEK: Thank you, Senators. My name is Thomas Safranek, T-h-o-m-a-s S-a-f-r-a-n-e-k. You may have known me. I was a state employee from 1990 to 2021. I was the State Epidemiologist, spent my career working on public health issues and trying to understand the distribution and determinants of disease and trying to prevent problems from happening and keep people healthy. I wasn't prepared to testify so I'm, I'm extemporaneous here, but I didn't quite understand the sponsorship. You know, are there any restrictions on it? Could you sponsor events for kids? Is there a slippery slope here where we're trying to mainstream alcohol and normalize it or create an onramp to lowering barriers and, and predisposing kids to-- entice kids, advertise, promote it? I'm not clear if they have this pay-for-play. If I have a church event and, and I get my product a brand-- a given brand, a given distributor, does that distributor say, yeah, and I'll sponsor it? And is there a kickback where we'll say, hey, you know what, we'll help you set up, take down, put up banners, give you free beer cups with our logo on it or what? I mean, it's not quite clear if there's a slippery slope here and the-- and de facto, it is a pay-for-play. I'm just troubled by the whole thing. And it is-- it troubles me too a little bit that we're, we're, you know, in, in-- out

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

of sync with the federal law. And it's somewhat troubling to me. I'm sure-- I'm not sure what's going on right now with sponsorships around the state and that we're doing it with a wink and a nod, it sounds like. So I'm hesitant about this bill. I, I think it deserves some serious consideration. Thank you.

LOWE: Thank you, Mr. Safranek. Any questions? Seeing none, thank you, sir. Are there any other in the neutral? Seeing none, that closes the hearing on LB596. There was one online proponent and one online neutral.

HARDIN: Chairman, may I close?

LOWE: You may close.

HARDIN: Thank you to everyone who came to testify, particularly those from 400 miles away, for or against LB596. We appreciate all of the input. And again, the intention, as I understand, is not to in any way increase the scope of what can be provided, but to simply clarify in the case of a situation where a state or more in particular, a group hosting an event-- particularly a nonprof was one of the examples given to me-- that in the hosting of their marathon and athletic event, sponsors get up and have banners around and that kind of thing because there isn't something that provides this. An example can be made of them legally and with great financial hardship. And so that was kind of the nature of wanting to fix what is being commonly done. It's really not a bill about let's figure out a way to pave and make it easier for kids to drink alcohol. So any other questions?

LOWE: Are there any questions? Seeing none, thank you, Senator Hardin.

HARDIN: Thank you.

LOWE: And now we close the hearing on LB596.

HOLDCROFT: There's no time limit on opening and closing, correct?

HUGHES: Right.

LOWE: Why, you want to go on?

HOLDCROFT: No, but I noticed we're using the light.

HUGHES: Yeah, there's not--

LOWE: No, no.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: All right, you guys get me now. Senator Lowe is up for the next four.

LOWE: Not four hours.

HUGHES: It's not going to be four hours. We'd like to start testimony on LB259. Senator Lowe, are you ready for LB259?

LOWE: I think fine, yes.

HUGHES: Thanks for coming.

LOWE: Thank you. Thank you, Vice Chair Hughes and fellow members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e and I represent District 37, which is Kearney, Gibbon, and Shelton. LB259 will allow farm wineries to sell alcoholic beverages that they do not produce on their licensed premises. In other words, if LB259 becomes law, a farm winery could choose to sell beer or mixed drinks along with their locally produced wine. This is something the farm wineries have been looking to do long before I was elected. Previously, I have led the opposition to this concept, but after this committee approved a bill last year to allow limited self-distribution for craft breweries, I believe the time has come for this bill to become law. Farm wineries have long been allowed to have a foot on all three rungs of the three-tier system. Until last year, they were the only local producer granted this right since they were allowed to produce, sell and self-distribute their own wine. I had serious concerns about allowing them to sell alcoholic items that they did not produce. But now farm wineries are not the only licensee who can produce, sell, and self-distribute their own products. Last year, we gave the same abilities to craft breweries, but we also allowed these breweries to sell products besides their own beer. With that in mind, I want to see farm wineries have these same abilities. It is important to note that many farm wineries in Nebraska also function as destination spots and local event centers. It is very common for them to host bands, dances and weddings. Not all Nebraskans like wine so when a winery is hosting one of these three types of events, they either have to tell visitors that they can only have a wine-based product, or the winery has to request, request a special designated liquor license, or SDL, from the local governing body and then the Liquor Control Commission. SDLs are an important tool for these local businesses and the Liquor Control Commission, but they also have become quite burdensome. The SDL application process is not all that time consuming for one or two SDLs, but some small farm wineries have gotten to the point where they will request dozens, if not hundreds of

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

SDLs. Until recently, there were thousands of SDLs being requested every year and it was becoming a serious issue not only for the small businesses but also for the commission. I have introduced four pieces of legislation in the past that have helped alleviate some of the pressure. But the best way to fix the remaining SDL challenges is to allow local firm wineries simply to sell beer and liquor as part of their regular licensing process. LB259 will benefit farm wineries across the state and ease the burden of dealing with SDLs for political subdivisions and for local control-- and for the Liquor Control Commission. As I've already stated, I believe it is now time for this idea to become law. With that, I'd be happy to answer any of your questions. Previous challenge that I had to SDL was LB56 in 2019, which expedited-- expedited the SDL application process from 21 days to 12 days. LB1056 in 2020, the temporary liquor license expansion. LB274, promotional farm farmers markets SDL and LB1236 in 2022, not for profit at the same location with one application. Thank you.

HUGHES: Thank you, Senator Lowe. Do we have any questions? John.

J. CAVANAUGH: Thank you, Vice Chairwoman Hughes, and thank you, Senator Lowe, for this bill. I was just thinking, as you went through that list, I was, like, I've learned so much just by bills that Senator Lowe has introduced, things I didn't know existed. Well, first, my-- probably have questions-- I don't know if Mr. Rupe is going to testify on this one. OK. So I might reserve some of my questions for him. But just right off the top, this is-- they would have to apply for this as a separate license. It wouldn't just be part of the winery license.

LOWE: This would be part of the farm winery license.

J. CAVANAUGH: It would be part of the farm wine. So current farm wineries would then just automatically be able to have essentially like a Class-- is it Class C license on top of what they have? OK. Thank you.

LOWE: Thank you.

HUGHES: Other questions? Senator--

HOLDCROFT: This does not--

LOWE: --Holdcroft.

HOLDCROFT: --do away with the requirement for, like, a Knights of Columbus Council to get an SDL for a fish fry?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: No, we made, we made that easier last year so they only have to make one application pretty much for all of Lent.

HOLDCROFT: OK.

HUGHES: Questions? And just-- this is clarification for me. So today, a craft brewer can sell wine or liquor at their retail location, but you go to a vineyard that-- a winery and they can not. So we're kind of evening the playing field there.

LOWE: Yeah, in the past, because farm wineries were the only one that could do that where they could, where they could produce and sell--

HUGHES: Oh, they're all-- um-hum.

LOWE: --and distribute, some of them did not want to lose that right by being able to have-- sell--

HUGHES: Sell other stuff.

LOWE: --other liquor. They thought it might infringe on the three-tier system--

HUGHES: Right.

LOWE: --too much. So we kind of held off until now and once we passed the craft brewery license--

HUGHES: OK.

LOWE: --it, it just makes sense.

HUGHES: All right. Thank you. And no more questions? All right, seeing no more questions, can we have any proponents come forward?

HOBERT RUPE: Good morning.

HUGHES: Good morning.

HOBERT RUPE: Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission testifying in support of this bill. The first thing I'm going to do is sort of correct the Chairman, which is never a good sign. No, but to be consistent, if you read the statute, what this would allow them is to acquire an additional retail license, much like a craft brewery can. Currently, if you're a craft brewery, you'll have a Class L license. That Class L license allows you to produce, self-distribute,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

as per last year, and retail sell your own product. Then if you wish other products, you would have to get the appropriate license. Normally it would get-- the most likely one is a Class I restaurant license: beer, wine, spirits on-premise only. This bill would allow a farm winery to do the exact same. They still would have to get their initial retail license so they have to make a determination of what they want to do. More than likely, I think they'll vastly go for the I because they're probably not going to be-- want to do off-sale, but they're going to have on-premise sales for it. The reason we're supporting this is (a) as Senator Lowe did speak, it sort of levels the playing field amongst all the three different producers. There was always a disconnect between the Farm Winery Act and the Craft Brewery Act, and primarily that goes back to when they were both introduced back in the late 1980s, sort of as to what they were going to be. The purpose back then was Ys, which is what the, the farm wineries are, would be primarily producers. They always thought they would be manufacturers. That would be their, their main side. And then they would have on-premise tasting room, they would have the off-premise-- the one tasting room they could have offsite and then have the ability to retail themselves to get their business going. The Ls, the craft breweries, were always sort of determined they were going to be retailers with limited production rights. Because back in 1988, nobody thought that people would want to drink this dark beer when they can buy Bud Light still. Unfortunately, what's happened is a lot of those markets have reversed. In fact, a lot of you-- our breweries are regional in nature, local, state, regional, far more than actually a lot of our wineries are, though some of our wines are out of state as well. And so what's happened is their, their models have become more similar, the business model. But the statutory schemes were-- still had some of the problems that predated those back when they were originally produced back in the '80s. What this did-- would do is sort of have a level playing field for all. And one of the biggest things is this probably is going to take about 500 SDLs out of the system. We are giving SDLs out to places which are totally legally licensed to sell alcoholic product. People say, well, they have more than 12. Well, the 12 that we have as a rule is sort of our trigger point. If somebody-- one location gets more than 12 in one year, we look at should they be licensed because we want to make sure they're not avoiding fire code, health code, this kind of stuff. Well, these farm wineries are probably licensed, established, they meet all those codes and so that trell--12 point trigger never really triggered. But sometimes they're using hundreds of them overall, not every-- single. But they'll be doing weekend concert events where they'll have their own wines, but they might only have the local craft breweries, maybe

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

some beer for a local beer wholesaler. So this would address those concerns from that perspective. We're-- in other words, we're giving SDLs to places which are probably licensed already. So I see I'm on the red, so I would be happy to answer any technical questions.

HUGHES: Thank you. Do we have questions? John.

J. CAVANAUGH: Thank you, Vice Chairman. Thank you, Mr. Rupe, for being here again. Always interesting. So clarify my question that you-- sounds like you clarified there. This just allows wineries under the Class Y license to apply for the I in addition. So currently under law, they can't get an additional license.

HOBERT RUPE: No, the only way they can have any product other than what they produce at their own is through an SDL, where they would do a special designated license, where they would then bring-- temporarily bring beer in, sell it, then have some-- leave again.

J. CAVANAUGH: OK.

HOBERT RUPE: This would allow them to have an actual-- you know, they could have a, a small tap line there for, for the people who are beer drinkers. You know, five people show up, one's a beer drinker and the other for wine, you know, you're going-- they're going to have an option for that, for that beer drinker.

J. CAVANAUGH: But they should have two licenses.

HOBERT RUPE: They have two licenses, yep.

J. CAVANAUGH: And so-- I mean, I've been to some of these wineries and I feel like they have beer. And so you're saying every time that, that I've been there and they have beer, they probably had an SDL?

HOBERT RUPE: Yep. If they've had cider, they probably--- because they can produce their own cider because cider sort of falls underneath-- as a wine as well.

J. CAVANAUGH: That's like a Glacial Till or something like that.

HOBERT RUPE: So a cider would be legal, but they're actually having beer, they're probably using it as events. And so you're there for a concert or for a wedding event or for a special event, usually they're pulling SDLs. That's why, as I said, this is probably going to be 600 SDLs we issue a year they're going to come off our plate.

J. CAVANAUGH: Wow. Thanks.

HUGHES: Go ahead, Senator Hardin.

HARDIN: What does it cost to get an SDL?

HOBERT RUPE: SDLs are usually \$40 per day. But what they'll do is if you're doing more than that, you'll get a catering endorsement, which is \$100, one of the cheapest endorsements you can get, which allows you to get more than the six SDLs per year and then so that's what they'll do. It's-- they'll, they'll get catering endorsements and so most-- almost all your Ys have a catering endorsement on top of it.

HARDIN: How long does it take to secure one?

HOBERT RUPE: A catering endorsement?

HARDIN: Well, no, the SDL-- if I'm going to have an event on such and such--

HOBERT RUPE: SDLs generally-- you know, by our rule, they have to be sent to the commission ten days before-- ten working days before the event. Now, the problem is, is you usually-- you have to have approval from the local governing body where they have to sign off on it first. And so it depends-- a lot of times, you're slow with the local governing body, especially if you're doing a smaller county where they might not be meeting as regularly, and if you don't get your application on file. That's usually where the slow up is at. It's not at us. Our SDL process is an online process. They fill it out, they upload the, the local approval and so long if we have ten working days in advance, that's when we can usually then notify the local S-- NSP/trooper officers that there's an SDL vendor at that location.

HARDIN: Thank you.

HUGHES: Other questions? Oh, Senator Cavanaugh.

J. CAVANAUGH: Thank you. Another question. OK, so I assume some of these places have the-- like, an off-site tasting room.

HOBERT RUPE: Yes.

J. CAVANAUGH: They would have to get two separate--

HOBERT RUPE: Yeah.

J. CAVANAUGH: --additional licenses if they wanted to sell their--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HOBERT RUPE: Absolutely right.

J. CAVANAUGH: And getting a-- I guess, a Class I, like you were saying, wouldn't necessarily prevent them from doing off-sale of the wine that they would have.

HOBERT RUPE: No, the Y license allows them to off-sell--you know, the Y license allows them to produce limited wholesale rights, off-sell rights from their winery location and serve for consumption on their location. That's all underneath the Y license. So they would not need an additional-- to do that. They would need a D or probably a C if they wanted to sell -- off-sale beer. Most of these events, I don't anticipate them doing that because most of them, they just want the beer and wine for, for off-premise consumption events.

J. CAVANAUGH: Thank you.

HUGHES: Other questions? Do you have enforcement on, like, the craft beer licenses and things like that as a-- as your body?

HOBERT RUPE: Yes.

HUGHES: Yes.

HOBERT RUPE: Yes. Yeah, we, we regulate them. If, if you're selling or making alcohol in the state, we have our, our hooks in you.

HUGHES: And is it from-- is it fee-- like, fines that you--

HOBERT RUPE: Yeah. We can suspend, cancel or revoke a license for a violation of the act. And under the act, they can pay what's called an election form and pay off days of suspension rather than serve them. So we tend to be-- we don't fine them. But most-- 99 percent of the time, they'll pay off-- pay it off, which goes down to the school board per the cost-- the local school.

HUGHES: All right. Other questions? All right, thank you.

HOBERT RUPE: Thank you.

HUGHES: Thanks for your time. Other proponents.

MIKE SCHILLING: Good morning, General Affairs Committee. My name is Mike Schilling, M-i-k-e S-c-h-i-l-l-i-n-g. I'm here representing SchillingBridge Winery and Microbrewery in Pawnee City, Nebraska, and am in support of the passage of LB259. In 2004, my wife Sharon and I

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

decided to open a winery and microbrewery under one corporate roof. We were actually the first in the nation to receive both a federally issued winery/microbrewery permit, first in the state to be issued a winery and microbrewery permit, and the only winery in the state issued a Class C license on and off-sale alcohol, which we've operated under for the past 18 years. Due to the time restraints of my testimony, I'll answer any questions how that came about after, after I'm done testifying. Our family's seen many rewrites to our business plan over the last 18 years. As you're aware of, the 2020 COVID epidemic drastically disrupted the landscape of the hospitality industry. Not only did the mandatory shutdown completely change the consumer's travel habits, it has also become extremely difficult to redirect customers back to rural Nebraska communities. Our ability to offer a variety of alcoholic beverages has aided in helping our business slowly recover. Please keep in mind that we are required by state law to purchase our, our liquor through the appropriate channels using only Nebraska wholesale distributors. Today, you're probably asking why-- if we already have this licensing structure in place, why, why-- what advantage would that be to SchillingBridge to support LB259? Well, the answer is pretty much three fold. Excuse me. First, we have been members of the Nebraska Wine and Grape Growers Organization for 20 years and are passionate about the success of the Nebraska wine industry. Historically, we have seen the advantages our licensing structure has provided us and would like all wineries to have the same privileges. Secondly, we were passionate about our state and rural economic development and the economic impact wineries have in Nebraska and it is measurable. Lastly, plans for our future retirement would include selling our business and we'd like the new owners to have the same privileges we granted. Only 10 to 12 percent of our total sales are derived from the utilization of our C license. I reveal this statistic so you understand that approximately 90 percent of our income is generated from products we produce on site. This is important so you understand that Nebraska wineries are extremely proud of the products they produce and the tourism they bring to their communities by conducting-- by continuing to showcase themselves as destinations. In closing, I would like to thank everyone on the General Affairs Committee for listening and asking that you please help Senator Lowe move LB259 to the floor for debate and passage. Please help the Nebraska wine industry grow strong to continue the vital role it plays in Nebraska tourism. Thank you and I'd answer any questions.

HUGHES: Thank you, Mr. Schilling. Do we have any questions? Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

J. CAVANAUGH: Thank you, Vice Chairwoman, and thank you for being here, Mr. Schilling. So did you guys have to get a waiver? How did you get it Class C with your winery license?

MIKE SCHILLING: It's, it's-- like I said, we were the very first in the nation to get a farm winery and microbrewery permit under one corporate roof. When we called the federal government, we said, hey, we want to do a mic-- a winery/microbrewery combination and they said there's no licensing structure in place. So we thought, OK, this is probably going to be the end of it. But actually they worked with us for six months to establish this new permit. And so then we went to the state, Mr. Rupe was kind enough to work with the federal government and that's how they originally wanted it set up. And then later, they decided that they probably shouldn't allow those permits. So we were the only one that-- this C permit. So we were the only one that was issued that.

J. CAVANAUGH: And so you've just been able to keep it as a result of that then--

MIKE SCHILLING: Right.

J. CAVANAUGH: --because you already had that?

MIKE SCHILLING: Uh-huh, grandfathered in.

J. CAVANAUGH: Thank you.

MIKE SCHILLING: Um-hum.

HUGHES: Great. Other questions?

MIKE SCHILLING: All right. Thank you very much.

HUGHES: I guess there are no more. Thanks for coming in.

MIKE SCHILLING: Thank you.

HUGHES: Appreciate it. Other proponents.

MIKE MURMAN: I want to thank Senator Lowe for bringing this bill forward. I'm, I'm for the bill. My name is Mike Murman, M-i-k-e M-u-r-m-a-n. I'm one of the owners of Glacial Till Vineyard and Winery. It's a family-owned operation. I'm one of the guilty parties for the hundreds of SDLs. We have an event center at our location so we do 60, 70 weddings a year. We, in the summer, do Fermented Fridays

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

with local bands, local beers. As you already know, we need an SDL for every one of these events that we do. Timing of getting these SDLs typically is two to three weeks. As Hobie referenced, we have to get local authority first before we can seek a state approval. Both local and state have fees so the state fee might be \$45, but then we're also paying local fees. I worked on an effort a year or two ago with Senator Lowe talking about SDLs and the need to change them and I'm glad to see that we're at that place now. It's going to save everybody a lot of time and money. It doesn't change our business operation or anything that we do. Second thing, and probably more important to me, we are the largest cidery in the state of Nebraska, on par with some of the largest craft breweries. In the state of Nebraska, hard cider is regulated as beer. So I fall under all of the craft brewery licensing requirements, but I don't have the same privileges. I've tried to get a C license, I license. We also have a craft brewery license. But none of that matters. We're a farm winery. So if you go to Saro Cidery, for example, they have a brewery license. You can get any kind of beverage you want. You go to Glacial Till Cider House in Ashland, we only have wine and cider. So from a competitive standpoint, as there's more cideries, as we look to try to open up more locations, we're restricted. And any time you have food as a part of an operation, most people want a full-service bar menu option. So those would be my main points of why I'm in favor of this and why I think it needs to be passed.

HUGHES: Thank you, Mr. Murman. Do we have questions from the committee?

MIKE MURMAN: Thank you.

HUGHES: You got off easy.

MIKE MURMAN: Yeah.

HUGHES: Other proponents.

RICHARD HILSKE: All right. Good morning--

HUGHES: Good morning.

RICHARD HILSKE: --Vice Chairman Hughes and members of the General Affairs Committee. My name is Richard Hilske, R-i-c-h-a-r-d H-i-l-s-k-e. My wife Amy and I own Cellar 426 Winery in Ashland and I come in strong support of LB259, as we feel it's imperative in helping further the Nebraska wine industry. We've been now open 11 years and this bill will allow our winery to continue to grow and survive in a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

state not traditionally known for wine and tourism. It will greatly assist our winery by allowing us to obtain this Class C license or a Class I license, most likely, along with our winery license. It gives us the ability to provide additional options to our guests that may not be-- that may not enjoy wine as much as we do. This puts us on a level playing field with other businesses that are not limited to only selling the products they produce. Every week, we get phone calls and emails asking if we have beer or people walking in asking about that because they see their husbands or others in their group don't drink wine. And when I tell them I can't serve beer, (a) they are surprised. They didn't realize-- you know, it doesn't make any sense to them. And then they go elsewhere and spend their money elsewhere. In my growing community of Ashland, a new brewery with an outdoor music stage is in the works and they will be a direct competition to our winery and won't be limited on what they can sell. Along with selling wine in the tasting room, winery owners are farmers that have to work the land during the year, growing grapes and hope the harvest is a success. When we have years like 2022 when the harvest was light, it makes it difficult to make the wine we need, so other source of income are always a welcome relief. When I have a chance to travel, I will stop at wineries in other states. In October, I was in Oregon and the wineries we stopped at all had beer available. I can't really think of another state that we've been to that doesn't have beer available at wineries. It's a natural addition. But please know our main focus will always be on producing and selling our international award-winning wines, as we have won over 160 medals and have a presence nationally for our wines. To stay viable and in business, we have had to go-- have to have the ability to provide customers what they want when they decide to go out for an afternoon or evening. Since we opened 11 years ago, the winery business and what the customers that frequent wineries want is continually evolving. In conclusion, I am a lifelong Nebraskan, born and raised here, and I've never left here. I want to thank Senator Lowe for sponsoring the bill and ask for your support of the bill so the Nebraska wine industry can continue to grow the Nebraska economy, enhance tourism, enhance the Nebraska lifestyle. Thank you.

HUGHES: Thank you. Mr. Hilske. Questions? Thank you very much. More proponents. Feel like I should, like-- come on down, OK. You're on the next edition of--

MICK McDOWELL: Vice Chairman Hughes, my name is Mick McDowell, M-i-c-k M-c-D-o-w-e-l-l. My wife, Loretta, and I own Miletta Vista Winery, which is four miles north of St. Paul and 25 miles north of Grand Island. We have a nice hilltop facility on the edge of hill country

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

overlooking the North Loup River and we are a destination. The majority of our patrons come from within an hour, but we also have guests that have come from almost every town in Nebraska, all 50 states across the country, and over 45 countries internationally. We support LB259 as winery owners. What we've found is that more than a great view, music and great wine was needed to consistently attract visitors to central Nebraska. Thus, we added food to our business and eventually that turned into a winery with a restaurant, which brings many regular visitors, including some who request alcoholic beverages other than the wine that we make. We support the modification of the Farm Winery Act to allow the sale of beer and other alcoholic liquor not produced by our winery in order to meet our customer needs. With the advancement and passage of LB259, we would be allowed to purchase an IK license, I believe, for on sale only of other liquor, which would increase our flexibility for our customers. It would decrease the liquor license-- or the Nebraska Liquor Control's SDL workload and improve customer service as frequently requested. And in some cases, broaden our customer base while providing our restaurant patrons greater versatility in meeting the preferred beverage of choice. While this does not alter our desire to succeed as one of the nation's best cold-climate hybrid wineries, it does increase our ability to serve the needs of Nebraskans, their friends, their families and acquaintances as we work to expand the wine culture through our winery and restaurant. Loretta and I respectfully thank Senator Lowe for introducing LB259 and request the General Affairs Committee advance LB259. Thank you.

HUGHES: Thank you for your testimony. Questions?

MICK McDOWELL: Thank you.

HUGHES: Thank you. Other proponents? OK, seeing none, we will take opponents.

CHRIS WAGNER: Chris Wagner, C-h-r-i-s W-a-g-n-e-r, with Project Extra Mile. We're here in opposition to LB259 because it increases the availability of alcohol in communities across the state. As I mentioned earlier, the World Health Organization recommends three best buys for state and local governments to prevent and reduce excessive alcohol consumption and its harms, which is to-- they recommend reducing advertising, affordability and availability of alcohol. Best buys are essentially cost-effective strategies that are proven to keep communities healthy and safe and reduce costs to taxpayers from underage drinking, binge drinking, heavy drinking and drinking by pregnant women. While I understand part of the reason for this change

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

is to increase accountability by shifting farm wineries away from the SDL process and towards an annual license, which is something that we do support, the truth of the matter is the state does not allocate enough resources to adequately, adequately enforce our liquor laws. At the same time, we can't ignore that this bill goes against the established literature on how to reduce alcohol-related harms. And for these reasons, we urge you to oppose LB259.

HUGHES: OK. Thank you for your testimony.

CHRIS WAGNER: Thanks.

HUGHES: Do we have questions? OK, thanks for coming. Other opponents.

MAGGIE BALLARD: Good morning. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I'm an opponent from Heartland Family Service and I actually didn't have any testimony prepared for this one today. There's a couple other bills that I know the ins and outs of and I was prepared to give a lot more in-depth opinion about some of those other ones. But as I was sitting here listening to some of the things that have been said so far, I just-- I feel like we're kind of getting away from what products we're talking about here. We're not talking about bread or butter or eggs or roses or purses. We're talking about a substance that cost-- that causes more deaths than most other substances combined. And I understand also wanting to help businesses, but we also-- you know, we're picking and choosing what businesses we're helping. Because, again, you think about a nice boutique that sells, you know, nice shirts and purses and things like that. We don't see the government trying to get involved in helping make sure that their businesses thrive. And I also wonder if we were talking about some other substances like maybe marijuana or tobacco, I think that a lot of you that are giving a lot of consideration to this bill would be completely opposed to widening the scope of what would happen in some of-- you know, those types of shops. So with that, I ask you to-- if you're considering passing this, I would ask you to reconsider and think about the reasons why I think we should be opposed to this.

HUGHES: Thank you. Do we have any questions for Ms. Ballard? Senator Hardin.

HARDIN: I don't think there's anyone here that would say let's, let's figure out a way to make it easier for kids to go drink alcohol and act irresponsibly. Got a question for you?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

MAGGIE BALLARD: OK. I have a problem with what you just said, but OK. Because I'm not just talking about children using. There's a lot of problems that happen from adults using as well.

HARDIN: Sure.

MAGGIE BALLARD: A lot.

HARDIN: Did Jesus, did Jesus show bad judgment when his first miracle was turning water into wine in a public place?

MAGGIE BALLARD: I think there, you're making an assumption--

HARDIN: He probably did not file for an SDL.

MAGGIE BALLARD: At that point, one of the interesting things that was happening back then is that- and the same thing happened when our country was founded. It was that it was literally safer to consume alcohol than it was to consume water back then, not because alcohol wasn't damaging to the brain and the liver and things like that, but because clean, accessible water was so hard to come by. And I think that--

HARDIN: So are you--

MAGGIE BALLARD: --Jesus would also probably have done something to keep an eye out for those with an addiction or people who were in danger of becoming addicted.

HARDIN: So just checking to see, so the son of God didn't have the ability to create purified water, but did have the ability to create wine, the best ever? I'm only asking because I think the big picture of this is to say that somehow this bill causes public harm to any age. And I think that we're, we're really not making it available to anyone that it's not already available to. I don't think it broadens that scope is my sense. So we really want to come up with the best law overall for the best public good. And so I certainly appreciate your concern in that, but I think that there's precedent that goes on for hundreds, if not thousands of years that says there's a responsible way of doing things and somehow somewhere there's a threshold that's irresponsible. And I'm hearing you say that that threshold needs to be held in check.

MAGGIE BALLARD: Absolutely.

HARDIN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

MAGGIE BALLARD: Yes. OK.

HUGHES: Other questions? All right, thank you for coming in.

MAGGIE BALLARD: Thank you.

HUGHES: Other opponents? OK, seeing none. Anyone want to speak in the neutral? All right, Senator Lowe, would you like to close?

HOLDCROFT: Anything online?

HUGHES: Oh, yes. Online, we had one online proponent comment. That was it.

LOWE: Thank you, Vice Chair Hughes and committee for hearing this bill. As you heard, we had four testifiers from the winery industry. We could have filled the room. We decided just to request that just a few show up, just to give their point of view and I think they did a fine job. And several years ago, they would have been opposing me because I opposed their expansion at that time. So it's good to be on the same page now and it's good to be working with them and bringing this forward. Thank you.

HUGHES: All right. Thank you. This concludes LB259. We will now proceed to hearing on LB376 and Senator Lowe will be presenting that.

LOWE: Thank you, Vice Chairman Hughes and fellow members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e and I represent District 37, which is made up of Kearney, Gibbon, and Shelton. LB376 will grant the Liquor Control Commission the ability to create brand registration. The brand registration will allow the commission to more accurately and correctly identify the different alcoholic products that are being imported and produced in Nebraska. This information will be beneficial for the commission for both taxation and distribution processes. The need for brand registration has become apparent as more and more alcoholic beverages and categories are being created. A brand registration is something that would benefit the state of Nebraska and that is something that is necessary for the commission to keep track of a never-ending, changing and growing industry. But until recently, it was unclear to me how the commission could implement such a system. For the better part of a century, the Liquor Control Commission has been forced to use a database system that was outdated. Fortunately, the Legislature authorized money for a new and improved system. I was able to attend a meeting at the beginning of the legislative session to learn more about this new database, and it was being made clear at the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

presentation that a brand registration would be pretty easy to implement going forward. With that, I urge you to support LB376 and would be happy to answer any questions.

HUGHES: All right. Thank you. Senator Lowe. Do we have questions from the committee? Go ahead, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairwomen Hughes and Senator Lowe. I guess I'll start by asking you, I assume Mr. Rupe will testify on this as well?

LOWE: Let's hope I get this one right.

J. CAVANAUGH: Well, I think I'll save--

LOWE: Yes.

J. CAVANAUGH: --save my questions for Mr. Rupe so I-- just so we don't have the redundancy, but thank you.

LOWE: OK.

HUGHES: Other questions? And I'll-- might ask this question, but I might need it for him too. So this is kind of a new thing. We're starting a database, like, where every single alcoholic beverage sold, you-- you're kind of classifying it, if you will.

LOWE: Yes.

HUGHES: Or not classifying, but you're identifying it.

LOWE: It'll be easier to keep track of everything.

HUGHES: It'll just be easier, OK.

LOWE: The old database was very dated.

HUGHES: OK, very good. All right. Thank you. Other questions? None? All right, we will have any proponents to this.

HOBERT RUPE: Good morning again, Vice Chairman Hughes, members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently serve as executive director of the Nebraska Liquor Control Commission. Yeah, this was our big ask-for in our legislative letter you would have gotten from us. Nebraska was one of the few states which didn't-- does not do some sort of brand registration. And it's been a problem that's been percolating for the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

last couple of years as we're seeing more and more product lines coming in. And where we get-- see what the big interstate is, we can't really tell what the individual cars are because, you know, we're getting the raw gallonage, but we're not seeing the further breakdown on that because we didn't have the technology. Our current database went online when I was a sophomore in college. That was a couple of years ago. Our new database and on this bill here, we'll be asking maybe for an operation date of July 1, 2024, is scheduled to go online second quarter of that year. We had the kickoff last year. We are going with a company called Comptronics, which is in eight other states with their ABCs, alcohol beverage control agencies of some sort. And what this will allow us to do is a lot of states which have always had branded registration would have file cabinets after file cabinet after file cabinet. Well, we had never gone down that road and I enter-- under our existing system, that's what we would have had to have been forced to use. This online system will make it very easy for us to keep track. One thing that most alcoholic beverages in the United States have is what's called a COLA, certificate of labeling authority. So if I'm going to bring a new brand out into the product line-- let's say I'm going to call it "Hobie's Hooch." It's a, it's a whiskey. And I am located here, but I want to sell, I want to sell to multiple states. And because it's a distilled spirit, I would have to get approval from the TTB, who we've heard about them before. This is one of the things they do that's good. And they would have the labeling authority to make sure that it's meeting the requirement, the ABV, where it's produced, original source of, of production, all right? Our system would allow them to enter a couple of data points and just upload their COLA that they already have right into our database. And so we're going to see it as they're going to help us. Hopefully, it's also going to help out the industry in that let's say a, a weird whiskey comes into the state in a bar when you know who's got it. They'll be able to query our database and they'll see that "Hobie's Hooch" is being sold by Republic National. And so they'll call the Republic National guy and say, hey, can I get five bottles of this to give it a shot when they're making their liquor orders. So we hope it's going to, it's going to increase enforcement because we're going to know exactly when-- where it is. We're going to know exactly what it's classified as for taxation purposes, which is a big one, because some things can look the same and be taxed at different rates. So it's going to help us out hugely on that. It's also going to help out the industry to know where the product is. And God help us if there's ever a recall issue, it's going to help us be able to do a recall because we'll be able track down the wholesaler and, and through them, notify all the retailers which had that product. So it's

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

going to help us on tax collection, it's going to help us on public health safety and welfare, and it's going to help us on access for the industry to new product lines. So we think it's a win-win-win and I see I'm into the red, so I'd be happy to answer any questions at this point in time.

HUGHES: All right. Thank you for that. Questions? Senator Holdcroft.

HOLDCROFT: Thank you, Vice Chair. I see there's a fee, registration fee--

HOBERT RUPE: Yes.

HOLDCROFT: --that goes with this. Is that, is that new?

HOBERT RUPE: That would be a new fee. We would go forward through rules and regulations. It is lower than any of our abutting states by a lot and its primary purpose would be then to defray the ongoing cost to maintain the system.

HOLDCROFT: So how many other states require this type of--

HOBERT RUPE: Just around us, Iowa doesn't, as my-- Iowa does and doesn't because they're a controlled state. So they sell the whiskey themselves and wine. Missouri has brand registration. Kansas has brand registration. Wyoming is a controlled state, so they've got brand registration built into their system. I think if I were-- last time I looked, 37 of the 50 states have some sort of brand registration, but I can give that exact number. I'll, I'll make sure I'm correct on that one.

HOLDCROFT: When you're estimating-- it appears here, they're estimating 35,000--

HOBERT RUPE: Yeah.

HOLDCROFT: --new registrations.

HOBERT RUPE: Um-hum.

HOLDCROFT: And do you think we have a system in place that will be able to handle that kind of--

HOBERT RUPE: The system will be able to handle that, no problem. Is-- it, it was designed from the outset and a lot of those other states

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

which I just mentioned are utilizing the same system to maintain their databases.

HOLDCROFT: OK. Thank you.

HUGHES: Other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairman Hughes, and thanks for being here again, Mr. Rupe. Senator Holdcroft asked basically kind of the questions I was gonna ask, but just for a follow-up on that, the fee in the revenue projection is \$20 first year and then \$10 for subsequent years.

HOBERT RUPE: Yes.

J. CAVANAUGH: And that will be set by regulation so that's just kind of the estimate.

HOBERT RUPE: That's the estimate, yeah. We have to do a rule because we're-- as we're building out, we'll get a better idea of where the costs are going to be and make it consistent.

J. CAVANAUGH: And so since the fee is set by the commission and not by statute, you guys would be able to adjust that up or down year to year just-- to make sure that it just covers operating costs.

HOBERT RUPE: Absolutely right.

J. CAVANAUGH: OK. Thank you.

HUGHES: Other questions?

HOBERT RUPE: And, and potent-- and also probably for potential upgrades as the system would require upgrades, so.

J. CAVANAUGH: But just to make sure that it covers the cost--

HOBERT RUPE: Absolutely.

J. CAVANAUGH: --of the system itself and not to then--

HOBERT RUPE: Yeah. I got to make sure that--

J. CAVANAUGH: --a fund to-- for ongoing--

HOBERT RUPE: Oh, yeah. It's not going to be a boondoggle funded. It's going to be a maintain the system for everybody.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Anything else? All right, thank you for your testimony.

HOBERT RUPE: Thank you.

HUGHES: Other proponents. All right, we will have opponents. Oh, are you a proponent?

TYLER RUDD: Yes.

HUGHES: Go ahead.

TYLER RUDD: Thank you, Madam Chair and senators. My name is Tyler Rudd, T-y-l-e-r R-u-d-d, and I'm with the Wine Institute. Wine Institute is a trade association made up of roughly 1,000 California wineries and affiliated businesses. We are the only public policy association to cover all 50 states, federal and international, and I'm here in support of LB376. We-- our initial concern was whether or not this would create more paperwork for us. We have-- our, our membership is made up of a lot of smaller wineries that do direct shipping to Nebraska and other states. And then we have a lot of larger wineries that are in the distribution system through our partners in the wholesale system. We wanted to make sure that there was not a further burden of paperwork and registering all of this. And having spoken to Mr. Rupe, he's alleviated our concerns on this. And as far as the fees are concerned, we are used to paying fees in all of the states and, you know, the lower the better because obviously everything costs money. But we are in support of this bill and we're used to having primary source legislation in a lot of states and registration in a lot of states of our products to make sure that the state knows what's coming in, knows that we are the ones that are doing things correctly. And we're not trying to sneak some wine in illegally in, in-- into the state, and this is creating some better controls on that. So I'm happy to answer any questions.

HUGHES: Very good. Thank you. Questions? All right, thank you very much. Other proponents? Seeing none, opponents.

PAUL OETTINGER: Hello. My name is Paul Oettinger, P-a-u-l O-e-t-t-i-n-g-e-r. I own a brewery in North Platte called Pals Brewing Company. We do a lot of-- if you, if you understand the nature of the craft brewing business these days, it's a, it's a lot of small batch products. We make one to two new brands per year that we sell in our taproom and distribute to mostly your typical type craft beer bars. I'm wondering, this bill, when I read it, said it was about importation, but it sounds like from hearing from the commissioner

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

that it also relates to Nebraska craft breweries. And actually-- it actually adds Nebraska, Nebraska craft breweries to the kind of the importation definitions, which confused me. So I'm wondering if, if we can clarify, does this only apply to things that are imported into the state or will this be a requirement for craft breweries in Nebraska as well, even if we don't distribute that product outside of our taproom? I liken this to, you know, as a craft brewer, I like to think of myself as a beer chef. So if you imagine going down to your favorite restaurant, an analogy would be to ask the chef to register every single new dish that he puts on his menu. And you can imagine what all the restaurateurs in the state would think about that. And so I'm, I'm just curious exactly what the intent of this is and if the intent is to have all the craft breweries register all these brands of small batches, then I would be opposed.

HUGHES: OK.

PAUL OETTINGER: And I'd take any questions about--

HUGHES: Do we have questions for Mr. Oettinger. Thank you and we will ask that question.

PAUL OETTINGER: Thank you.

HUGHES: Other opponents? OK, seeing none. I think we can-- or do we have anybody testifying in the neutral?

JUSTIN BRADY: Senator Hughes and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association and I was also asked to submit comments on behalf of the Nebraska Grocers Industry Association [SIC] in a neutral capacity. From a general concept, both these associations and especially-- specifically the liquor wholesalers are supportive of it. They do understand the need to have product registration, fully support that. Their questions are more so some of the ones that have already come up in the committee. One, Senator Holdcroft, they looked at this bill and it just said fees as set by the commission. If you promise me that Mr. Rupe and the three commissioners that are there now, we'll have no problem. I don't know who the future executive director is. My client doesn't know who the future commissioners are. To just give a blanket, open-ended you can charge applicable fees-- historically, taking the liquor hat off and looking at other bills you've passed, the Legislature has put caps. You can charge a fee to cover costs up to X. So you still have a control. Yes, they proposed in their fiscal note

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

they would be \$20 and \$10. No problem with that, but nothing stops it at \$20 and \$10 and that's just a concern. The other one, as Mr. Rupe talked about for product registration, was to get to-- wants to know what cars are on the highway. He made reference to that. We're again OK with that, but to what detail? Liquor wholesalers have over 100,000 SKUs in their warehouses. So is he talking about you would-- we would brand-- when it says brand names, but then it goes on and say brand name, class, or type of product, does that mean a 1.75 of Crown Royal, a 750 of Crown Royal, a one liter-- a-- all the way down? And then you do that all the way again for Crown Peach and Crown Apple? And so it's just-- it's more so what is a brand and how far in each detail. Another example along those lines is so at Christmas time, a lot of times they'll do a-- you get two holiday glasses with a bottle. Well if that changes next year that it's two different holiday glasses in a bottle, is that a separate brand register? So just some of those questions. And the last one was brought up by the proponent testifier. It currently says you must do it on forms and submit a letter. Well, back to if we have to submit 100,000 forms and 100,000 letters to the commission, I don't think Mr. Rupe and the commission want that and nor does my client. So, sounds like they're trying to work to make sure you can put it into the database, whether we load it or they load it. But those-- it was those questions that they just didn't feel comfortable coming up here saying absolutely, we support the bill as it lays out. But 100 percent support the concept. With that, I'll try to answer any questions.

HUGHES: Any questions from Mr. Brady? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairwoman. Thank you, Mr. Brady, for being here. But it sounds like some of those things probably could be addressed in an amendment to the bill, maybe could be addressed in regulation--

JUSTIN BRADY: Absolutely, yes.

J. CAVANAUGH: --without undermining the intention of this--

JUSTIN BRADY: Yes.

J. CAVANAUGH: --the bill. So I guess I would just say I assume Senator Lowe was willing to work with you to figure out which ones those are. But I just-- I asked that question kind of about the fee limitation. And I've just seen another section statute where we have put in there, you know, they can charge a fee exclusively for the purpose of operating this and which would preclude them from collecting more than

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

they would need to operate it. And they'd have to drop the fee the next year if they have a surplus. It's some kind of language like that. I, I would just be hesitant to put a specific dollar amount in there because I don't know year to year whether they're going to need an upgrade or something like that. But to constrain-- I'm, I-- I'm comfortable with the idea of constraining the fee to make sure to clarify that it is just for this purpose. I guess I'm just asking if that--

JUSTIN BRADY: I think that does go a long way, Senator. The one question I'd have and I'd have that just dawned on me as you were asking the question I'd have to go ask Mr. Rupe, without getting too much miss-- the Liquor Commission is a agency that comes to the Appropriations Committee and gets their budget. They aren't like the Department of Banking or Insurance where they get to retain their fees or taxes collected. So and this, I believe the fee would still just go back to the state of the General Fund and Mr. Rupe will go in front of the Appropriations Committee and say, I need \$100,000 of the \$100,000 I gave you to pay for my computer system. But it can work, yes.

J. CAVANAUGH: Yeah.

JUSTIN BRADY: But you cut it-- it's a little different where they aren't able to retain their fees. I mean, if they were able to retain all the taxes and fees, they'd be sitting right next to the Department of Revenue as the largest agency in the state, at least when it came to tax and fee collection.

J. CAVANAUGH: Yeah. Thank you.

HUGHES: Other questions for Mr. Brady? All right, thank you.

JUSTIN BRADY: Thank you.

HUGHES: Other testifiers in the neutral?

ADAM BARNEY: Good morning again, committee members. Adam Barney, A-d-a-m B-a-r-n-e-y, legal counsel for the Associated Beverage Distributors of Nebraska. We are supportive of the general concept and idea of this brand registration bill and as we understand it, it would apply equally to out-of-state and in-state producers. If it, if it didn't, it wouldn't carry the purpose of a brand registration bill. It would simply be a primary source bill. Our concern, which is not really too much of a concern, but our, our-- well, I wouldn't necessarily coin it is a concern, but there's a, there's potential unintended consequences with the language as presently drafted. Our

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

members, we have 17 members of the association independently, family-owned-- or family owned, independent businesses and distributors. Some of those businesses have affiliated companies from out of state and sometimes they'll be necessary transfers and really on rare occasions, there will be necessary transfers from an affiliated wholesaler out of state to the affiliated Nebraska wholesaler. For one reason or another, on those rare occasions, there will be more product in Iowa or Kansas or what have you that move to Nebraska. So we have proposed and submitted a-- to counsel for the committee, a proposed amendment just to make sure that this bill does not restrict that, which is a practice that has been occurring for-- and my understanding is decades. Everything is documented on those transfers. Taxes are paid on those transfers. We just would like to maintain the status quo and not impact our ability to continue those transfers between affiliated companies. Happy to answer any questions.

HUGHES: Any questions from Mr. Barney? All right, thank you for your testimony.

ADAM BARNEY: Thank you.

HUGHES: Other people testifying in the neutral? All right, seeing none, Senator Lowe. Oh and online, there was nothing submitted.

LOWE: Thank you, Senator Cavanaugh, for raising some of these issues and Senator Holdcroft and for those testifying today. We did see the amendment come in Friday afternoon late. We weren't able to review it in time. So we'll, we'll review the amendment and take a look at some of the other issues brought up today and maybe fold those in. This will be for every product produced outside the state and in the state, just, just to keep it fair across the board. So with that--

HUGHES: OK.

LOWE: --I'll end my testimony.

HUGHES: All right. Thank you. Questions? All right, thank you. That concludes LB376. Two more. All right, we will now switch to LB377 brought by Senator Lowe. Wait till we get our number up there.

LOWE: Thank you, Vice Chair Hughes and fellow members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e. I represent the 37th District, which is Kearney, Gibbon and Shelton. LB377 would grant not-for-profits the ability to request up to 12 designated liquor licenses in a calendar year. Currently, not-for-profits are only allowed six SDLs. If you look at the section

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

of law being changed by this bill, you will see language that states that holders of different types of liquor licenses are also allowed up to six SDLs in a year. So why should we change that number for just not-for-profits? Because we also allow holders of liquor license to get a catering permit. This catering permit allows for potentially unlimited SDLs. SDLs are an important tool for not-for-profits. This process allows the group to hold events in which the nonprofit is allowed to sell alcoholic beverages in order to raise funds for churches during Lent are only one great example. But there are many other groups who will benefit from SDLs. I have spent the last four years looking at ways to streamline, improve the way the state issues SDLs, but I believe that when it comes for not-for-profits, we should increase their ability to use this very important tool. With that, I'm happy to answer, answer any questions.

HUGHES: All right. Thank you, Senator Lowe. Do we have questions on LB377? All right, no questions.

LOWE: Easy group.

HUGHES: That is easy. We'll have the first proponent, please.

JAMES ENGELBART: Good morning. My name is James Engelbart, J-a-m-e-s E-n-g-e-l-b-a-r-t. I'm the operations manager for Emyrean Brewing Company and past president of the state's Brewers Guild. I just want to thank Senator Lowe for bringing this bill before the committee today to see if we can get this change made. We feel like this is a common-sense change and again brings non-profits up to par with other entities in the state that can apply for SDLs. On behalf of the guild, I've helped organize events for our state's Brewers Guild. This is a group of businesses. We're registered as 401(3)(c) not profit. We still, as a, as a group, to achieve our group ends, have to come up with funds somehow. And as producers of alcohol, beer specifically, we feel it's a good way to raise funds to use what we produce. So for us to raise the majority of the funds for our association or guild, about one-third of them anyway, we raised typically through events. And our ability to function as we've grown as an association from 12 members ten years ago to over 65 members is hindered considerably by this lack of SDLs. The example I would give would be how spread out our state is and the number of breweries that operate in Lincoln in Omaha is quite large. However, we have-- almost every community above 30,000 people in the state has a brewery in it now. So for us to throw fundraisers in all parts of the state with only six SDLs in a year becomes difficult. With that said, I would answer any questions you have for me today.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: All right. Questions for Mr. Engelheart [SIC]? You got off easy, also. Thank you for coming.

JAMES ENGELBART: Thank you.

HUGHES: Other proponents.

VANESSA SILKE: Good morning, members of the General Affairs Committee. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and lobbyist for the Nebraska Craft Brewers Guild. I'm here in support of LB377. First, I-- we really can't thank Senator Lowe and his staff enough. They have worked tirelessly with all members of the industry for a number of different purposes and looking at SDLs and how we can have reasonable regulation to make sure that these one-off events at places that aren't already licensed can be enforced and regulated by the commission in a way that makes sense and is tailored to those events. Jim Engelbart highlighted exactly why the guild needs this. From a practical perspective, we think the bill is written as simply as possible. It modifies only Section 53-124.11(2)(a) and it simply changes 6 to 12 and includes the specific description of the guild as a 501(c)(3), which is generally described in statute as the not-for-profit or nonprofit entities there. So with that, if you happen to have legal questions, I'm happy to help you with that. And again, whatever we can do to work with the Legislature to make it more reasonable for businesses to grow here, that's what we're here for. And we have long enjoyed a cooperative relationship with the committee. So with that, I welcome any questions that you might have.

HUGHES: Questions for Ms. Silke?

VANESSA SILKE: Thank you all.

HUGHES: Thank you. Other proponents.

HOBERT RUPE: Good morning.

HUGHES: Good morning, again.

HOBERT RUPE: Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of the Nebraska Liquor Control Commission. We're here in support of this bill. As stated, we worked with Senator Lowe's office recently to update the SDL process over the years and hopefully, knock on wood, we've got most ones taken care of. This is one of the last ones that was sitting out there, especially like if Lent happened to go seven or eight Sun-- weeks, depending on the calendar, you'd have two different nonprofit organizations, which

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

miraculously have exactly the same membership, doing the, doing the thing just because they're limited to the, the six days. So in a lot of ways, we don't see any real increase in the number of SDLs. It's just going to be transparency. It's gonna be easier for, for just the one support organization to do this. The people who can get-- there's two broad classifications of groups who get SDLs. One is, of course, a liquor license, a retail liquor license holder. They're limited to six unless they want to get the catering permit, which costs a whole \$100, in which case, then they can have an unlimited amount, which is one reason why most places which do events have a catering permit. The other one is nonprofits. And then also under the nonprofits would be-- the nonprofits would be art museums, political parties, libraries. You know, you're additional nonprofits where they're using it as a fundraiser for, you know, you know, for the 4th of July beer garden or for the county fair. County fairs are big users of SDLs. So not everybody's going to be using this. What's going to be happening is the people who are, you know, more civic organizations who are being limited to six, as you heard testified earlier. So we don't anticipate a large increase in the number of SDLs being, being put out for this. And more importantly, we'd probably see more transparency because we're going to know exactly who they are and we're not going to make them get to different 501(c)(3) organizations, which we've seen.

HUGHES: All right.

HOBERT RUPE: Any questions, I'd be happy to--

HUGHES: Any questions for Mr. Rupe?

HOBERT RUPE: I'm going to get out of here without any question for a change.

HUGHES: Other proponents? All right, we will switch to opponents.

CHRIS WAGNER: Chris Wagner, C-h-r-i-s W-a-g-n-e-r, with Project Extra Mile. We're hearing in opposition to LB377. Again, going back to the science, increasing the availability of alcohol increases excessive consumption. And there's-- really, the main difference between a licensee and a nonprofit SDL is that these SDLs, there's no accountability, right? So if there's a violation of the law, if there's a sale to a minor, if there's a sale to an intoxicated person at one of these events, there's no way to hold that nonprofit accountable. And so when you have events like this, which you already heard, the main purpose is to raise money and you're doing that on the back of alcohol sales, you increase the likelihood of these illegal

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

sales occurring at these events. And, and that's obviously something that we're really concerned with. I would also point out, as I did earlier, there is inadequate law enforcement around our liquor laws in our state. So we don't really have a great deal of law enforcement happening around these events. So that's obviously concerning as well. Volunteers are typically organizing and running these events so they don't-- they're not trained in the state's liquor laws, how to spot a minor, how to notice somebody that's displaying signs of visible intoxication. So we have a lot of, a lot of concerns with this bill. And we're not, we're not asking you to vote against nonprofits. We're simply saying we've seen a consistent rolling back of regulations to our-- kind of our restrictions that we have in place around these events and of the industry in general and that's leading to so many harms in our communities. We have over 700 alcohol-related deaths every year in our state. We have over \$1 billion in annual economic costs from excessive consumption and it's, and it's policies that go against the science that are contributing to this and, and this is one of them. So we would urge you to vote against it.

HUGHES: All right. Thank you. Other-- or questions for Mr. Wagner? Oh, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairwoman Hughes, and thanks for being here, Mr. Wagner. So you heard Mr. Rupe talk about in these situations-- and I'm-- of course, the fish fry is one that comes to mind with everybody and fish fries put on by, say, the Knights of Columbus at a parish. And then they run out of these SDLs, they are just going to have-- the, you know, women's auxiliary to the Knights of Columbus is going to apply for a liquor license. So basically what it sounded like Mr. Rupe was saying, they're still going to get an SDL. It's just going to be under another organization's name at the same address, same time, same place. Isn't there some value in saying, well, let's just make sure it's all clear that it's this one organization does all of these, that-- and then they have some consistency. I mean, I, I volunteer at these events through, you know, my church and things like that. And you're right, there is limited expertise in terms of that oversight. But don't you get more expertise if you have consistency across 12 as opposed to two different sets of six?

CHRIS WAGNER: Well, I-- as a counterpoint to that Senator, I would say, well, you're increasing the limit to 12 from 6, what's to stop those organizations and their affiliates from continuing to operate as they are currently, whereas they might, you know, apply for 12 and then their affiliate applies for 12? I just, I just think you're,

you're off-- you're giving the ability of every, every nonprofit across the state the ability to double the number of liquor licenses that they can apply for. And so in my view, it's not unreasonable to think that that's going to increase the number of these events in communities and contribute to the harms that we're experiencing.

J. CAVANAUGH: But I guess-- I appreciate that. To, I guess, Mr. Rupe's point, they're doing it and it's not-- it-- the, the current mechanism to get around the six limit does not sound like it's a violation of law or even of the necessarily the spirit of the law. So I guess my question or thought is-- maybe this is more of a thought than a question-- it sounds like they're going to-- they're getting the number of licenses they need currently. Isn't this just sort of bringing the whole process under one roof so we have, we have more of a clear picture of what's going on as opposed to telling ourselves that it's separate organizations?

CHRIS WAGNER: Well, you mentioned that one-- the, the two organizations that you mentioned, Mr. Rupe, you know, mentioned that-- you know, he brought that to your attention. What I, what I can't say with authority-- and maybe you can ask Mr. Rupe to clarify, but when you're allowing the availability or the number of these to increase across the state for every nonprofit, I, I-- you know, I'm just concerned also with the nature of the events, events as you mentioned, being volunteer run. It's just, it's just to step back and say we have a lot of alcohol-related harms in our state and we ought to do something about it. And this would be one thing to say six is enough, let's stick with that limit. So that's our position.

J. CAVANAUGH: Thank you.

HUGHES: Other questions for Mr. Wagner? All right, thank you.

CHRIS WAGNER: Thanks.

HUGHES: Do we have other opponents? All right, do we have anybody coming to testify in the neutral? We do not. Senator Lowe, you may conclude. And for the record, online, there was one letter proponent-- proponent letter sent in, one online proponent and one online opponent.

LOWE: Thank you, Vice Chair Hughes, and thank you, Chris Wagner, for coming and testifying today with Project Extra Mile. We need people checking on us and making sure we're doing everything right. There is local control that is built into this. If the local control does not

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

want to add any more of these SDLs, they can put a stop to it. This is just to make things easier for those applying for-- and for the Liquor Commission. And it's just the right movement. We're trying to get a nice balance with our liquor licenses. And with that, I close.

HUGHES: All right. Thank you. Any further questions? All right, we are finished with LB377. I think we are on our last one. We were supposed to be done at 11. That did not happen, so. All right, number change, LB258, come on down.

HOLDCROFT: We took too long on the first one.

HUGHES: It took a long time, didn't it? And we're all new.

LOWE: That's because I was in control--

HUGHES: We'll get the handle-- I think, I think it's Brian Hardin's fault. All right, LB258. Please, go ahead, Senator Lowe.

LOWE: Thank you. Vice Chair Hughes and fellow members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e. I represent the 37th District, which is Gibbon, Shelton and Kearney. LB258 is a straightforward piece of legislation. It simply removes the term "near beer" from the definition of beer. Near beer is-- or nonalcoholic beer is not an alcoholic beverage so I believe it does make sense to remove this from the purview of the commission. This bill was the recommendation letter that was sent over by the Liquor Control Commission before legislative session this year. Another reason I brought this legislation is for consistency. Over the last few years, there has been a proliferation of nonalcoholic substitutes for alcoholic drinks. That seems to be the new fad going around. Nonalcoholic wines, liquors, mocktails and canned mocktails have all hit the marketplace. None of these items are regulated by the commission. In my view, the legislation-- or the Legislature has to choose between regulating all of these nonalcoholic items or regulating none of these. LB258, LB258 takes the approach of regulating none of these nonalcoholic beverages. I've been hearing from people who have concerns about this bill. Those concerns vary, but I, but I want-- one area that I want to talk to about this is consumption of nonalcoholic beer, which is under 0.5 alcohol by volume. Near beer is under 0.5 alcohol by volume. A Budweiser is 5.0 alcohol by volume. It would take ten near beers to get the equivalent of one Budweiser. That's 120 ounces to have the same impact of drinking one can of beer. It is almost impossible for someone to drink near beer and get drunk. In fact, there was a study done in 2012 in

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

Germany. Students were allowed to drink as much near beer as they could in an hour. The person with the highest rate of alcohol consumption was three points in an hour, or about 48 ounces of beer-- of near beers, excuse me. The highest blood alcohol level after that was 0.0056 percent. With all that in mind, I'm happy to answer your questions.

HUGHES: All right. Do we have any questions for Senator Lowe? Senator Brewer.

BREWER: Thank you, Madam Vice Chair. John, I will, I will just make more of a comment than a question here in the sense that for the entire time we were both in Iraq and Afghanistan, every soldier that liked beer attempted to figure out a way to drink enough near beer to, you know, get an effect and they failed. So I think you're probably correct in that assumption that that is an impossible way to, to get intoxicated because the military would not have made it readily available to soldiers if there was such a thing.

LOWE: Thank you.

HUGHES: Other questions? I just have one. So the-- because currently the, the wine and the hard spirits that are nonalcoholic, are they-- are those completely nonalcoholic or do they also have the 0.5 percent alcohol by volume or do you know?

LOWE: Even some diet pops--

HUGHES: Really?

LOWE: --have some alcohol as a way of taking out sugar or for flavoring.

HUGHES: OK. Huh, interesting. OK, that was my question. Anybody else? All right, thank you. We will have proponents, please come forward. None? Any opponents? Go ahead.

MAGGIE BALLARD: OK. Good morning again. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and this testimony I have written out for your point of reference. I am a prevention specialist with Heartland Family Service, founded in 1875. Heartland Family Service, we're a large nonprofit that serve about 140,000 individuals through direct services, advocacy, education and outreach in both eastern-- or east-central Nebraska and southwest Iowa. Our programs and services provide critical human services to the individuals and families who ultimately shape the future of our community in the areas of child and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

family well-being, counseling and prevention, and housing safety and financial stability. So today, I'm speaking on behalf of that agency in opposition of LB258. We view this as beer on training wheels. It's honestly appalling to me that we would even consider having this in Nebraska. As a prevention specialist, I talk to middle schoolers on a weekly basis and we don't talk to them simply about, you know, just saying no or don't do drugs. We do more than just explaining the side effects of use. We go further into talking about advertising and bringing attention to the fact that the alcohol industry, the tobacco industry, the marijuana industry target people their age. They do this because while it's completely unethical, it's a good business model. The younger that I am, the further away I am from my brain being fully developed. And the further away I am from my brain being fully developed, the more likely to develop an addiction. So I work with youth to try to see through the ads and the marketing that is targeting them. And so I ask each of you to do the same. On a more personal level, like many of our clients, when I was younger, I made enough high-risk drinking choices in the past that I eventually became addicted to alcohol. With the help of going to intensive outpatient treatment, like many of our clients, I have been sober for quite some time. But unlike many of our clients, I never had a taste for beer back in my drinking days. I was assured that beer was an acquired taste, but that never happened for me. Therefore, after I got sober, I never understood why sober people would want to drink N/A beer or near beer for the taste. To me, the taste is terrible. Ultimately, when someone in recovery chooses a drink N/A beer or not, it is between them and their sponsor or them and their alcohol counselor. My stance has always been that there's actually as much and sometimes more alcohol in certain fruit juices or diet sodas. So drinking in N/A beer does not break someone's sobriety even-- any more than a glass of orange juice. But if you're someone that likes the taste of beer or likes to get-- drink to get drunk, drinking N/A beer can trigger them into drinking the real thing. And that's what this would-- bill would do not just for people in recovery, but for children and youth under the age of 21 and that's why I call it the beer on training wheels, so-- sorry, so I would ask you to vote no. I'd be happy to answer any questions.

HUGHES: All right. Thank you, Ms. Ballard. Questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairwoman, and thank you, Ms. Ballard, for being here. So the, the issue you have-- because the product would still exist-- it currently exists, would continue to exist.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

MAGGIE BALLARD: Right.

J. CAVANAUGH: But the bill is that it would-- since we take it out of the Liquor Control Act, people could buy it under the age of 21.

MAGGIE BALLARD: Correct.

J. CAVANAUGH: And they can't currently do that.

MAGGIE BALLARD: Correct.

J. CAVANAUGH: OK. That's what I was trying to make the connection between.

MAGGIE BALLARD: Sure

J. CAVANAUGH: Thank you.

HUGHES: OK. Other questions? All right, thank you for testifying.

MAGGIE BALLARD: Thank you.

HUGHES: Other opponents.

LANETTE RICHARDS: Good morning, General Affairs Committee. My name is Lanette Richards and I am from Scottsbluff. My name is spelled L-a-n-e-t-t-e R-i-c-h-a-r-d-s. I have traveled from the western part of the state and have taken vacation time to be here because I feel this bill is very harmful to our young people. I'm here before you to ask the committee to indefinitely postpone LB258. I want to be clear that I am here as a citizen of Scotts Bluff County and have taken time off work because I see the harms that can arise from this bill. I am executive director of Monument Prevention in Scottsbluff. I have had over 20 years experience in working in prevention of underage drinking and excessive alcohol use. I have seen firsthand the risk of the health-- the health risk to the health and safety of our youth. This bill removes near beer from the definition of beer, which would still-- would allow children to purchase the bill-- beer with less than 0.5 percent alcohol by volume. The result of this bill would allow Pepsi or Coke or any soft drink to sell these products and place them with other soft drinks. Any age would be able to buy, including eight-year-old children. And I'm going to go off script a little bit here because I want to say when we talk about it takes a lot of, a lot of these near beers for-- to get intoxicated, with everybody that's been talking about this, it's been on their level. We're not talking about eight-year-olds or ten-year-olds and the brain development with

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

them. So that's why I wanted to point that out here. This says to me that you are promoting and preying on our youth to start them drinking younger by introducing them to the taste of beer at an early age. In addition, let's look at the brain development. We know that teens are risk takers because the brain isn't fully developed. That is why the legal drinking age is 21. The part of the brain that links the actions to consequences is the last in the brain to develop. We know that youth know that if you drink enough of these near beers-- now, remember, we're talking about youth here-- they can become intoxicated or getting a buzz, basically. As teenagers, they can get in a car and drive while they, they drink and they can be going to and from school. What about law enforcement? How is this going to work for them to handle enforcing the law when they stop a car with youth drinking these products and may have drunk enough to affect their driving? These are just a few of the harms that I can see as a result of these products. My vision is not the here and now. It is what is down the road. This affects our youth. That is who I'm trying to protect. What you do today affects them tomorrow. You as adults can do as you choose, but we've got to remember our youth and that they follow in our footsteps. What kind of example are we leading here? I ask the committee to indefinitely postpone LB258.

HUGHES: Thank you, Ms. Ballard. Quest--

LANETTE RICHARDS: No, I'm Richards.

HUGHES: Oh, gosh.

LANETTE RICHARDS: I'm sorry.

HUGHES: I-- you're right.

LANETTE RICHARDS: Nope, no problem.

HUGHES: I wrote you down that-- sorry, sorry.

LANETTE RICHARDS: Yeah, no, that's fine.

HUGHES: Questions for Ms. Richards? Senator Hardin.

HARDIN: On that, you're concerned this is a gateway drug.

LANETTE RICHARDS: Right.

HARDIN: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LANETTE RICHARDS: Um-hum.

HUGHES: Senator Day.

DAY: Thank you, Vice Chair Hughes, and thank you for being here today. Appreciate your testimony. I just have a question since you have some experience working in the prevention of underage drinking and excessive alcohol use. There's often discussion about how this is a uniquely American problem that we have, where in other countries in the world, kids grow up around consuming alcohol regularly at meals. Even-- and I'm not saying that this is an OK thing, but people will serve, you know, watered-down wine to their kids when they're younger and they seem to have less of a problem with excessive drinking when they become teenagers and even into adulthood. What-- is it the advertising or what's the difference between how Americans consume? Why do we have such a significant problem with underage drinking here, binge drinking, or do you have any--

LANETTE RICHARDS: I, I think it's because we're an alcohol-infused nation. We're an alcohol-infused state. But more than that, I think some of the information that gets-- that is put out as far as globally on the number of alcohol and how the youth are not affected like they are in the United States-- you know, the number of problems-- and that's incorrect because when I looked at a study on it, most of them do have a problem. They just have more severe consequences.

DAY: OK.

LANETTE RICHARDS: If they're picked up for driving while they're drinking, they lose their license, a lot of--

DAY: OK.

LANETTE RICHARDS: --countries. So that, that's the-- different, but very-- there's really very few countries in the world that is-- that has lower alcohol than-- alcohol problems with our youth than us. Turkey is one of them. You look at some countries that, you know, where alcohol is just forbidden altogether. And so of course they don't have the problem that we do. But I do think advertising-- you know, advertising, accessibility, price.

DAY: OK.

LANETTE RICHARDS: --those are all things that affect our youth and why they are-- plus, again, remember I'm-- this is under my, my thought is kids want to be like the adults. What do they see in adults? We can't

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

have a wedding without alcohol. We can't have a Christmas party without alcohol. We can't even have a four-year-old's birthday party with alcohol being there. And so whether they-- to have fun, we need to drink. And I-- so I, I include myself into it. We, as mentors, are we failing our youth? We can-- alcohol is legal after 21. Are we saying that? No, we can, we can give it to them in our home, you know. So some of it--

DAY: Sure.

LANETTE RICHARDS: --some of the thought-- and I guess I need to make a little comment too. I like this-- I'm listening to this nonalcoholic beer. It is not nonalcoholic. There is alcohol in it. It might be small amounts, but anyway.

DAY: OK. Thank you, Ms. Richards.

LANETTE RICHARDS: Just my--

DAY: I appreciate it.

LANETTE RICHARDS: I'm sorry.

HUGHES: Other questions for Ms. Richards? All right, thank you for coming all that way. Appreciate it.

LANETTE RICHARDS: Thank you. I feel this is really important.

HUGHES: Clearly. Other opponents.

JON LUCAS: Hello, everyone. My name is Jon, J-o-n, Lucas, L-u-c-a-s. Thank you so much for your time and your consideration. I will be very brief as to not belabor or repeat what everyone else said, but my question is how does this help overall Nebraskans? Changing the classification alone or the label is going to reduce the amount of taxation that you get from this particular beverage so it's not helping us financially. Out of all the bills that you've heard today, I think this is the one that really has the feel of the slippery slope. This one really feels like we're grooming or we're recruiting kids. And I think our kids here in Nebraska deserve a lot better. Outside of being a pastor at a small church, I'm a facilitator at an at-- at an after school program in three different middle schools. So I see a bunch of teenage kids. They are hurting. They are incredibly irresponsible to say a variety of different things. But I think our kids deserve better and I think that we can do better.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: All right. Thank you, Mr. Lucas. Questions for Mr. Lucas?

JON LUCAS: Thank you for your time.

HUGHES: All right, thank you for coming. Appreciate it. Other opponents?

DON HOES: Hello. My name is Don Hoes. That's D-o-n H-o-e-s, and thank you for having this hearing. I'm writing as a private citizen, Nebraska resident, but I currently work and have worked in the field of substance abuse treatment and recovery for many years. During this time, I have worked with both adult and adolescent clients who have struggled with alcoholism. Many of these clients have found long-term recovery and maintained long-term sobriety through total abstinence from all forms of alcohol. The discussion as to whether or not consumption of beverages labeled "nonalcoholic" or "near beer" would be considered a relapse occurs often among the newly sober. It is generally the position by most individuals with long-term sobriety that yes, a beverage containing alcohol in any amount, consumption would not be maintaining total absence of alcohol and therefore would be considered a relapse. Alcohol is alcohol. And it was pointed out earlier that you can't call this near beer when it does-- nonalcoholic when it does contain some form of alcohol. Further declassifying this beverage with low alcohol content would be dangerous-- a dangerous precedent and misleading for minors, which was said in many previous statements. To highlight a couple that were identified earlier, near beer is defined as 0.05 [SIC] alcohol content, even those often refined-- referred to as nonalcoholic. Removing this definition will allow these products to be purchased and consumed by minors and consumed while driving will result in effects to the state. While it may be greater consumption to lead-- take greater consumption to lead to intoxication, youth are reportedly consuming more than 90 percent of the alcohol in women's binge drinking and intense, intense drinking and at least double the, double the levels of men's drinking. And it gives them, as was said earlier, a taste for alcohol. They may not get drunk on one or two near beers, but they acquire the taste. I urge you to defeat this proposal and thank you for your consideration.

HUGHES: All right. Thank you for coming. Questions for Mr. Hoes? All right, thank you. Next opponent. Hello again.

CHRIS WAGNER: Yeah, it's good not to be first. Chris Wagner, C-h-r-i-s W-a-g-n-e-r, with Project Extra Mile here to express our extreme concerns and opposition to LB258. Our state really has too many tragedies involving underage youth drinking and, you know, losing

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

their lives prematurely due to that product. And we ought to be looking for ways to reduce their exposure and not introduce them to the product at a young age. We really need more regulation around alcohol in our state, not less. And we were encouraged to see that the Liquor Control Commission, in its annual legislative letter, which I've concluded as an attachment, number two on that letter asked the Legislature for the ability to regulate, quote unquote, nonalcoholic. I know folks have already mentioned it can contain up to 0.4 percent of alcohol for nonalcoholic wine and spirits to-- so that they could regulate that as well because it's becoming more popular. And we also agree that we're really concerned that this, you know, basically opens it up for any child of any age to, go down to the local gas station with their allowance and buy some, some near beer. And that's really troubling because we do strongly believe that it introduces them to the product, gets them used to the taste and will encourage them to want to get their hands on the actual product, the full-strength product before they're the legal age of 21. And we know, as the woman from Heartland Family Services pointed out, the research shows that if a youth drinks alcohol before the age of 15, they're six times more likely to become dependent on alcohol than if they were to have waited until the age of 21 to consume that alcohol. Furthermore, I want to really draw out that youth we know binge drink quite excessively. They're, they're the highest risk group for high-risk drinking or high-intensity drinking, which is over ten drinks in, in a sitting. And there's a zero tolerance law we have. A youth cannot be 0.02 or above in operation of a motor vehicle. So I think we're sending a mixed message to youth that you can drink as much as you want, but then, you know, tell them to-- it's OK to drink this while they're driving, but if they're over 0.02, then they're in violation of the law. Furthermore, I want to point out that this actually happened in the late '80s in our state. And it didn't last long because police departments complained about, you know, having to waste their resources responding to 911 calls about youth driving down the street with near beer in their vehicle, at parties in the neighborhood, being loud with near beer in their hands. So it's a waste of resources for law enforcement. And there was actually an eight-year-old girl that testified at this committee in the late '80s that said she witnessed her fourth grade-- a fourth-grade boy in her class during lunch hour at the elementary school drinking near beer. So very concerning and we would ask that you indefinitely postpone.

HUGHES: Thank you. Questions for Mr. Hoes? Chris-- Mr. Wagner. God, sorry.

CHRIS WAGNER: That's all right.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Senator Day.

DAY: Thank you, Vice Chairwoman Hughes, and thank you, Mr. Wagner, for being here. So in your testimony, you mentioned the Nebraska Liquor Control Commission asking to have the opportunity to regulate nonalcoholic spirits and wine in addition to near beer, which they can currently regulate. So by removing near beer, we would add-- be adding the non-- nonalcoholic beer to the list of things that they can no longer control.

CHRIS WAGNER: Correct.

DAY: Essentially going in the opposite direction of what--

CHRIS WAGNER: Right.

DAY: --they' re asking for. OK. I just wanted to clarify that for my-- so thank you.

CHRIS WAGNER: Sure.

HUGHES: Other questions for Mr. Wagner? I have a question just to make sure. So if a-- an 8-- a 16, 17-year-old has-- today would be-- have a near beer in his car or her car and gets pulled over, that is against the law because that is like having alcohol?

CHRIS WAGNER: Oh, today?

HUGHES: Yes, today.

CHRIS WAGNER: Yes, so the law enforcement would, you know, obviously be forced or-- you know, they would they would cite that--

HUGHES: It would be like an MIP.

CHRIS WAGNER: --person. We've talked to law enforcement and they would, they would yeah, they would cite them for possession because it's, it's considered alcohol currently.

HUGHES: OK. Thank you for that clarification.

CHRIS WAGNER: Sure.

HUGHES: Other questions? All right, thank you.

CHRIS WAGNER: OK. Thanks.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Any other opponents? Does anybody want to testify in the neutral?

HOBERT RUPE: Good morning. I think it's still morning, isn't it, Vice Chairman--

HUGHES: It's still morning, you're good.

HOBERT RUPE: --and members of the General Affairs Committee? Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of the Nebraska Liquor Control Commission. Our legislative letter did say-- as we did because we were confused by the product because we have one wing in this fight. We have near beer, which believe it or not, a lot of the near beers now are being sold-- their-- one of the biggest sellers is a place called Athletic Brewing Company, which basically it's beer-flavored Gatorade is what they're selling, but it's regulated. But then Lyre's vodka or Ly-- you know, L-y-r-e, which is designed to taste like vodka or gin is not. And so we were sort of OK, we, we-- you know, we-- do we regulate nonalcoholic products or not? No, we regulate nonalcoholic near beer as specifically defined. So although in our letter, we did say, you know, you know, we always look for probably-- for public health, safety, welfare, but we're just looking for some clarity from this-- from the Legislature, Do we regulate nonalcoholic products or not? And now the problem about having a director who was a history major, in alcohol, you get a history lesson sometimes. And so alcohol-- what is near beer? OK, as Ms. Ballard stated earlier, before, at the founding of our country, beer was sold-- was drunken by all ages, primarily because the water sources could not be trusted. They were generally called small beers. They were generally about 3.2 to 3.3 percent, very-- relatively low alcohol, but still on the alcoholic side. But near beer as a category really comes out during Prohibition. When Prohibition happened, you had large brewers who-- what are we going to make now? And so they couldn't call it near beer under, under Prohibition, under the Volstead Act so they called it cereal malt beverage. One of the commentators at the time said whoever called this near beer either had no sense of taste or sense of depth perception because of taste-- because of how far away he thought it was from beer. What it is is there's two ways to get nonalcoholic products. The one is you take an alcoholic product like a beer and "dealchify" it. The other one is, is to use other substances and flavorings to mimic the flavorings of beer with-- or of alcohol without utilizing alcohol. And so the .05 [SIC] percent-- actually, Nebraska is-- once again has a great history in alcohol law and litigation-- was during Prohibition, there was a challenge to the Volstead Act by a farmer down near Wilber who was

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

making a 2 percent beer. And his challenge to the Volstead Act was this is not an alcoholic beverage because a grown man can't get drunk on it. The federal government, through litigation, came up with .05 [SIC]. I believe it went all the way to the Supreme Court as a determination. Then the federal government later codified that. So for federal law, if you're under 0.5, you're not an alcoholic beverage. You're just not. In Nebraska, the only product we regulate that is nonalcoholic is near beer specifically. And in that is there's no tax paid on it. It's tax-free. There's no-- you don't pay the beer tax on it. But you have to be 21, you have to, you know, be-- go through the wholesale tier, has to be sold by a retailer licensed to sell alcohol. Conversely, the newer-- the proliferation recently of the nonalcoholic spirits and wines, there is no regulation at all on those at all. You can be two-years-old-- wait a minute-- five-years-old and go buy one of those technically. So there's some confusion in the market because you have had an explosion in these nonalcoholic products because people want to be social. They want to enjoy. They don't want the del-- the bad effects of alcohol or the negative of drinking and driving or of something like that. So for a regulator, I'm sort of caught between a rock and a hard space on these things. I regulate part of it, but not all of it. I see I'm out of time now, but I'd be happy to any questions, especially on sort of the mechanics of how the products are made and regulated in other states.

HUGHES: Senator Cavanaugh.

J. CAVANAUGH: Thank you, Vice Chairwoman Hughes, and thanks again for being here, Mr. Rupe. I actually had-- that was my exact question is how is near beer made?

HOBERT RUPE: Most of your beers will-- much like caffeine-free coffee-- or no caf-- no caffeine-- decaffeinated coffee, is you start with the real stuff and then you alter it and you blend it out and you take out the alcohol down to below. That's how most of the beers do. Funny story: a lot of your common products that you eat and consume or utilize have under 0.05 percent. In fact, one of the interesting things I looked at was a law-- a DUI lawyer's warning sheets was people who have blowing devices. So be careful util-- taking these things. Honey Buns can mimic alcohol because-- sugarless gum because alcohol, the ethanol is a flavoring in sugarless gum and they're chewing sugarless gum and you blow into a PBT on your car, it's not going to start. Be very careful eating ripe bananas. Very ripe bananas can actually be over the legal limit over .05 [SIC] of alcohol because anything that's got sugar, starch or yeast, depending upon what status, can have a minimal amount of alcohol in its consumption. So

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

what you'll see is when they're making these, they'll take beer, they'll "dealchify" it below the-- [INAUDIBLE]. A lot of the flavors-- I mean, Lyre, L-y-r-e-- it's a very great pun on names-- they're-- is they start off with a nonalcoholic thing, but then they'll add certain things for the flavoring. They actually have capsaicin to give it the bite, supposedly of it. But a lot of times, nonalcoholic sugars will contain small amounts of alcohol. So they'll start with something zero that might drop it up to .001, depending upon what flavorings you're adding to it. Most of your flavorings recreate-- like, for instance, lemon flavoring. Lemon extract is point-- is 85 percent alcohol, just the flavoring is. But then you add a little of that to-- a drop of that to a big container, you're way below it, but you're actually adding alcohol to the flavoring.

J. CAVANAUGH: So I-- just looking at the statute and kind of the general section of statute, beer means a beverage that is obtained by alcohol, fermentation or infusion or concoction of barley. And then it sets down specific definitions, but it says excluded but not limited to, and we have near beer there that we're crossing out. Based off your description, it sounds like crossing out near beer would still capture near beer under the definition of that statute.

HOBERT RUPE: It possibly could, but it would be-- if you read, it says, it says alcoholic beverage obtained, right?

J. CAVANAUGH: Well, it says, "means a beverage obtained by alcoholic fermentation."

HOBERT RUPE: Yes, but the alcohol, the alcohol fermentation would then be-- it would no longer be considered an alcoholic beverage under .05 [SIC], I think, in other part of the statutes.

J. CAVANAUGH: Well, but we're also eliminating that part about the 0.05 [SIC]. That's--

HOBERT RUPE: No, I think that's, that's, that's in another part of the statute, I think, defining alcohol. Not, not here. It's not changing this.

J. CAVANAUGH: OK. So we're just eliminating near beer and the definition of near beer.

HOBERT RUPE: Yeah. Yeah, we're eliminating near beer from a beer. I think a-- I think there's a statute that defines alcoholic beverages and alcohol beverages contain .05 [SIC] percent alcohol by volume.

J. CAVANAUGH: OK.

HOBERT RUPE: And so this would not because it doesn't, near beer wouldn't. I'll clarify that on the, on the statutory--

J. CAVANAUGH: OK. Thank you.

HUGHES: Other questions for Mr. Rupe? Senator Brewer.

BREWER: Thank you, Madam Vice Chair. OK. I sent my brother a quick text and I just said, hey, as a sheriff, do you ticket people for MIP that have near beer? And he goes, no. He goes, we could but the county attorney wouldn't prosecute it because he said right now, he said, you're going to have more alcohol in your system from NyQuil or ZzzQuil than you would from, from near beer. So he goes, you know, that, that, that's just usually something that we warn them about and, and, you know, that's, that's about as far as we go with it. Does that sound right?

HOBERT RUPE: Yes. Yeah, NyQuil-- I mean, medications-- cough medication has alcohol in it a lot. And that's one of the, the list I referred to from the DUI attorney. Said be very careful taking cold medicine before you, you are-- activate your blower because you might blow--

BREWER: And--

HOBERT RUPE: --and you actually have alcohol in your system.

BREWER: And Honey Buns.

HOBERT RUPE: Honey Buns, bananas, yogurt-- some yogurts because of the fermentation and the yeast will also have a small amount of alcohol in it. Yeah, it's weird which-- most bread does.

HUGHES: Other questions for Mr. Rupe? I-- what do other states do with near beer and the, the wine and the hard liquor that are--

HOBERT RUPE: The vast majority of states don't regulate it.

HUGHES: OK.

HOBERT RUPE: There are some states which do, some states which regulate it in a interesting way. Texas, for example, doesn't regulate it, except it still has an applied to their franchise law because they-- because the beer guys generally sell it as well and so it falls

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

underneath their franchise law for beer protection. Illinois does regulate it very similar to us, but it's, it's, it's scattershot. But most of them don't regulate it because it doesn't fall under the federal definition of an alcoholic beverage and if they do, as, as Senator Brewer said, it's generally not--

HUGHES: They don't prosecute on it.

HOBERT RUPE: There's not prosecution on it, yeah.

HUGHES: OK. Any other questions? Nope. Thank you.

HOBERT RUPE: Thank you.

HUGHES: Other testifiers in the neutral?

THOMAS SAFRANEK: I was going to go neutral, but then after hearing everything, I-- is it possible to testify in opposition still?

HUGHES: Can you do that? Yes. OK.

THOMAS SAFRANEK: Thomas Safraneck, I-- OK and I'll fill it out. I introduced myself earlier, a physician, State Epidemiologist in the past. I'm not persuaded--

HUGHES: Can you say your name and--

THOMAS SAFRANEK: Thomas--

HUGHES: Yeah.

THOMAS SAFRANEK: --Safraneck. T-h-o-m-a-s S-a-f-r-a-n-e-k.

HUGHES: Thank you.

THOMAS SAFRANEK: I'm not persuaded by the concept that we can find alcohol throughout our food supply so that-- why do we regulate it in this product? I'm persuaded that this product is a gateway that normalizes and popularizes, in the eyes of youth, the concept of what they see in adults. And, and if anything, I'm persuaded after this hearing that we should be regulating the nonalcoholic wines and the nonalcoholic spirits. The concept isn't about the alcohol. As Senator Brewer said, the, the soldiers in Iraq can drink this, you know, to their heart's content and never have any effect. It's not going to raise your blood alcohol level. The concept, it's the way the tobacco manufacturers used to give candy cigarettes to kids. It's a way of, of integrating this into people's lives and normalizing it and

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

popularizing it, making it cool. And for me and the reason I come down here is when I see these tragedies, the six 20-year-olds that wrapped their car around a tree with super high alcohol level here on 56th and Randolph or a couple of years ago, the five high school kids in Gretna who were incinerated in their vehicle. The question I ask is what are we doing as a culture to discourage this kind of thing? And when we come to this hearing, I'm just struck that every piece of legislation that comes up is pro alcohol. How can we broaden access? And a lot of it just makes sense. I mean-- and I'm not a, I'm not a Mormon. I'm not a prohibitionist by any means and I partake probably just as much as anybody here in the room. I, I took umbrage with the Fridays during Lent that Catholic churches with Knights of Columbus. Some of these practices, I feel, are, are sacrilegious, frankly, but I'm not opposed to alcohol in general. The concept, though, is what are we doing to create rail guards or barriers, a culture of respect for a product that is devastating, that has massive health consequences and, and massive economic consequences? So this is one little piece of legislation-- I would support next year, coming back with legislation to move nonalcoholic wine-- I can see eighth graders having parties with nonalcoholic beer. Isn't it cool? Just like our parents do kind of thing. I don't think it's a good practice. Thank you.

HUGHES: Thank you so much. Do we have any questions for Mr. Safranek? All right, thank you. Anyone in the neutral? All right, Senator Lowe to close, please. And online, there were no letters. There was one proponent online comment and 13 opponents online.

LOWE: And I thought this was going to be easy. There's been some talk about binge drinking. Binge drinking is defined as having five or more alcoholic drinks over a two-hour period, according to the National Institute of Alcohol Abuse and Alcoholism. I'm even less than my, my friend Mr. Wagner over there. I think he said ten alcoholic drinks. In near beer, that would equate to an alcohol-- blood alcohol level of about 0.056 percent, well below the legal limit. The Guinness Book of World Record for the most beers consumed in an hour is 42 cans. With near beer, that individual would max out with a blood alcohol content of 0.05 percent, still below the legal limit. I'd hate to see the guy that had the 42 cans of beer. Now, if, if you're a minor, to get to that 0.02 percent, you would still have to have almost a case of near beer to get to that 2 percent in an hour. We've heard a lot of testimony about influencing the children or other people. And you look in a grocery store, you know, the first childhood soda pop I think I ever had was root beer. So the name ensues. Or how about ginger beer? The name is there. We get away from that and we have Bloody Mary mix sold with no alcohol. You can get it with alcohol in it, but it can be

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

sold with no alcohol. Left in a car for a while, there may be some alcohol in that nonalcoholic drink. There's also margarita mix. We'd be regulating these too. What about Red Bull? When mixed with vodka, all you do is taste the Red Bull. Would we be regulating Red Bull? How about lemonade? Would it be regulating lemonade or many of the other drinks? There's a new popular drink called Mom Water, which is flavored water with vodka in it. We'd be regulating all those flavored energy drinks out there. And then at 3:00 this morning, because I had nothing better to do and my mind was racing about this bill, I got up and I went to my bathroom in my condo, which is very limited because I'm only here during the weeks. My mouthwash had alcohol in it, had a higher content than what near beer is. And then I started thinking again. I went to my kitchen cupboard and there was a small bottle of vanilla made with bourbon and vanilla beans. There was also almond extract made with alcohol and almond. Both of these, in that small bottle, contain a lot more alcohol than multiple cans of near beer, legal, legal to be purchased by an eight-year-old. Do we regulate all of these? Now, I don't want eight-year-olds carrying around a near beer and going to school. I think that should be against the school policy, not against in our statutes. So with that, I close the hearing on this bill.

HUGHES: All right. Questions? Senator Day.

DAY: Thank you, Senator Hughes. I am-- I-- surely, we understand that this isn't simply about the alcohol content of near beer. It's about the social and cultural normalization of the consumption of what will at some point potentially be alcoholic beverages in large amounts. So we can't-- I don't know that it's fair to conflate lemonade or root beer with a beverage that is specifically created to simulate the taste of an alcoholic beverage while being nonalcoholic, right? Like, I think what some-- what maybe some of the testifiers were mentioning was that there are, outside of the fact that it doesn't contain enough alcohol to, to get you drunk-- just like a, you know, a container of vanilla or mouthwash also contains alcohol, but could not get you drunk. There's-- I think maybe some of the testifiers were speaking more to the social and cultural aspects of the, of the consumption of alcohol and I think that maybe that's their concern. I'm a mother of a teenager so I guess maybe that's why I'm thinking about this a lot more deeply. Do you have anything to say to that? I mean, do you feel like it would normalize the consumption of beer at an earlier age if we just allowed anyone to purchase near beer?

LOWE: Normalizing consumption, I think we can normalize consumption in anything if we think about it. It's, it's the name. It's maybe, maybe

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

the packaging on it. But as we've seen, the packaging has exploded now. It used to be easy for a State Patrolman to recognize if you were holding up the can of beer as you're driving down the street. Well, with packaging and many, many different kinds, I don't know if a State Patrolman could recognize if you were drinking a near beer or a beer or a soda pop any more because the packaging is all, all over the board. You know, it's, it's a stigma. I mean, it, it could be a cool thing to drink a near beer with your, with your friends or a mocktail, one of the things that we don't regulate, or a Bloody Mary. You stole your mom and dad's Bloody Mary out of the cabinet, the nonalcoholic, and you and your friends are now swishing a lemon straw with, with your Bloody Mary. Do we need to regulate it if it has no effect? And you would have to drink massive amounts and I think you would get hydration poisoning if you drink that much.

DAY: OK. Thank you, Senator.

HUGHES: Other questions for Senator Lowe? All right, that closes LB258. Thank you, everybody that came. Appreciate all the, the driving that was done to get here. So we really appreciate that.

[BREAK]

LOWE: There are just three of us here. They may be presenting in other committees.

HUGHES: Can I do a call of the house on a committee hearing?

LOWE: No. You can't do a call of the house.

HUGHES: Aw, darn it.

LOWE: Welcome to the General Affairs Committee, afternoon session. My name is John Lowe, and I represent the 37th District. I am Chair of this committee and will be conducting today's hearing. This afternoon, we will be hearing four bills. If you wish to testify in person on any of these matters before us, we ask that you fill out the green sheets of paper. They are located on the tables on either side of the room. If you are here and you do not wish to testify but you wish to state your support or opposition for any of the matters before us, we ask you fill out the sign-in sheet. If you testify, please hand in your sheet to the committee clerk as you come up, which is Ben, over here. Please begin your testimony by stating and spelling your full name for the record, which is very important for our Transcribers Office. The bill's introducer will be given an opportunity to open. Then we will hear the proponents, opponents, then neutral testimony for each bill.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

We ask that you listen very carefully to try not to be repetitive. We do ask-- we do use the light system in the General Affairs Committee. Each testimony is afforded 3 minutes to testify. The green light signifies your start. When the light changes to yellow, you have one minute remaining on your-- to conclude your remarks. When the red light comes on, your time has expired and we will open the committee to any questions that they may have for you. At this time, I'd like to encourage anyone to turn off or silence any cell phones, electronic devices, anything that makes noise. We are equipped for electronics. So you may see members referencing their iPads, iPhones or other electronic devices. I can assure you they are just researching the matters before us. If you have a prepared statement, an exhibit or anything you would like to have 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, to the committee clerk and we will make copies to distribute to the committee. With that, we will proceed to the introduction of our members. I'll start over here on my right with Senator Cavanaugh.

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

DAY: Good afternoon. Senator Jen Day, Legislative District 49 in Sarpy County.

HUGHES: Jana Hughes, District 24, Seward, York, Polk and a little bit of Butler County.

HOLDCROFT: Senator Rick Holdcroft, District 36 west and south Sarpy County.

LOWE: On my right is our committee legal counsel Laurie Holman and on our far left is our committee clerk, Ben Earhart. Our pages today are Audrey and Luke. They're both poli-sci majors. With that, we'll begin with LB301, Senator Linehan.

LINEHAN: Thank you, Chairman Lowe, and members of the General Affairs Committee. I'm Lou Ann Linehan, L-o-u A-n-n L-i-n-e-h-a-n, and I'm from Legislative District 39, Elkhorn and Waterloo. Today I'm introducing LB301. Nebraska has a distinct tax structure for alcohol. Beer, wine and liquor are taxed at different rates. My intent with LB301 is to make sure that Nebraska's taxing ready-to-drink cocktails, or RTDs, at the proper tax rate. RTDs are a liquor product. They are not wine or beer. RTDs contain liquors such as whiskey, vodka and Jim. Jim-- not Jim-- gin, to name a few. Currently, beer is taxed at the rate of \$0.31 per gallon. Wine is taxed at the rate of \$0.95 per

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

gallon. Liquor is taxed at the rate of \$3.75 per gallon. Two years ago, under LB578, the Legislature created a statutory definition of RTDs and chose to tax them at the wine rate, which is \$0.95 per gallon. At the time, it seemed that the wine tax rate was adopted so that the retail price of RTDs would not rise. Back then, the fear was that liquor tax would price RTDs out of the marketplace. The Legislature decided to give RTDs the lower tax rate of wine in an attempt to influence lower retail price. Today, the average retail price of RTDs has increased by 65 percent. At the same time, retail sales of RTDs have also increased at a strong pace. This price increase seems to be exact opposite of what the Legislature intended two years ago. Therefore, I propose LB301 to make sure that we are taxing these goods properly. As I said before, these liquor products are not wine and they're not beer. They're liquor. And they need to be taxed appropriately within the definitions given to us by law. Thank you and I am happy to answer any questions.

LOWE: Thank you, Senator Linehan. Are there any questions for the senator?

HOLDCROFT: Yes.

LOWE: Senator Holdcroft.

HOLDCROFT: Did you do any studies to see what, what kind of impact you think this will have on the, on the sale of RTDs?

LINEHAN: I didn't do any studies. I think there'll be people behind me with studies, but I did-- I have noticed there's like an explosion of these drinks in grocery stores and then quick shops and I don't-- it's like, over the last couple of years, it's just gone from you walk in and there's beer and wine to now, there's all of this. So it seems like they're very, very popular.

LOWE: Thank you, Senator Holdcroft and Linehan. Any other questions? All right, Senator Hughes.

HUGHES: Do you think the explosion could have happened because the tax on that went down to something more-- at a more, I don't know if you say reasonable level, just because it's not a full alcoholic amount?

LINEHAN: I think there's people behind me that will have--

HUGHES: OK. I'll ask that then.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LINEHAN: --because I think the cost-- that was the argument that if you put in a liquor tax, they would skyrocket--

HUGHES: Skyrocket, yeah.

LINEHAN: --the cost, but the costs have spiraled up, anyway. And they're very popular.

HUGHES: OK. Thank you.

LOWE: Thank you very much. Thank you, Senator. Will you stick around for closing?

LINEHAN: I-- depends on how long, because I have two bills to introduce in Education.

LOWE: OK. We will now go for proponents of LB301.

TED POWERS: Hello and thank you. My name is Ted Powers, director of government affairs at Anheuser-Busch. You're probably familiar with our beer brands, Budweiser, Bud Light, etcetera. But we are also one of the largest suppliers of the ready-to-drink cocktails, the spirits-based cocktails in the country. We have our Cutwater brands and Nutrl Vodka Seltzer and you may have even seen we had a Super Bowl commercial for our Cutwater brand of spirits, RTDs, last year at the Super Bowl. So a big component of our portfolio, but we also feel, just as the senator does, that the distinction between beer, wine and liquor is an important distinction to maintain. That those categories, every state and the federal government, ever since the end of prohibition have treated them for regulatory taxation, distribution purposes as different categories and that we need to maintain that distinction and not just kind of arbitrarily rename and reclassify them, whatever. If they're a spirit, they're a spirit. We make them, we're-- we plan-- you know, we kind of go by the plan that the states have and we don't advocate any changes. There have been a couple dozen proposals like this in the last couple of years on these ready-to-drink cocktails. Most states have rejected them. I think about 20 states rejected them. A few have, have changed the rates and the definitions-- Michigan, Nebraska, obviously, was one of them. And that-- the study that the senator referenced was from an entity in Michigan called Public Sector Consultants. They went out and checked the pricing since these bills have passed. And in Nebraska, the price went up, as the senator said, by 65 percent. So they are growing. They're a hugely growing category, to your, to your question and, you know, independent of the tax rate. In fact, in the case of Nebraska,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

despite the tax rate going down, the prices have gone way up. So we would just advocate passage of LB301 and returning and making sure each thing is classified as they ought to be and then go from there. Happy to take any questions.

LOWE: Thank you. Mr. Powers, would you mind spelling your full name for the--

TED POWERS: Ted Powers, T-e-d P-o-w-e-r-s.

LOWE: Thank you very much.

TED POWERS: Sure.

LOWE: Are there any questions? Yes, Senator Hughes.

HUGHES: I have two questions, if that's OK. Do all states tax beer, wine and liquor by-- I mean, but like that: beer, wine, liquor? Or do some states tax by percent alcohol content or something like that?

TED POWERS: All states have a differential rate for beer, wine and liquor. And then within that category, sometimes they'll have, like a special wine rate for over a particular ABV or what have you. But it's--

HUGHES: So potentially--

TED POWERS: --all differentiated.

HUGHES: --we could have a liquor rate for like the high volume like a, a bottle of gin and then a different liquor rate for ready-to-drink cocktails because it's a less content of alcohol.

TED POWERS: Yeah. In fact, we do.

HUGHES: And that would be OK with you.

TED POWERS: Well, that's not what we would advocate. We would, you know, you, in fact, have that now, where you--

HUGHES: Right.

TED POWERS: --have one rate for spirits that are in bottles, so to speak, and then another, another for the-- in, in cans. But for-- from our perspective, we just feel like it's best to have a beer, a wine and a spirits category. Whether it's in a can or a bottle is not--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: But you-- by saying this, you will lose money, right?

TED POWERS: We--

HUGHES: You're making more money.

TED POWERS: --do make these products.

HUGHES: Right.

TED POWERS: You're correct.

HUGHES: Because with your Cutwater--

TED POWERS: Correct.

HUGHES: --which is really good. I like it. I just had a moscow mule the other night. It was really good.

TED POWERS: You're doing the lord's work. Thank you.

HUGHES: But I'm amazed that you're sitting here saying that you want your tax on your product higher. That's what you're saying?

TED POWERS: What-- it would, in fact, result in that outcome. But the reason we want that is we feel like that distinction, that beer, wine and liquor is a distinction worth making and keeping, just like the three-tier system of supplier, wholesaler, retailer. Even if some, you know, quirk of a law would benefit us in the short run as a supplier, we don't support that because we, we support that architecture of a three-tier system. And the same in this category, the kind of the edifice of a beer, wine and liquor category that's regulated and taxed in distinct ways because it's-- they are distinct products consumed differently and, you know, even down to absorption rates in people and other things. So we feel like it's a distinction worth keeping.

HUGHES: And this is just me looking at it. I mean, I would think these are that way because kind of, of that alcoholic content. You might drink three or four beers sitting there, but I might only have, you know, one or two shots of liquor, which, you know, it doesn't equate. So it kind of seems like this is a little bit by alcoholic volume, if you will. I don't know. I'm just-- sorry. I'm processing out loud. go ahead. Next person.

TED POWERS: No, that's right.

LOWE: Thank you, Senator Hughes. Senator Cavanaugh.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

J. CAVANAUGH: Thank you, Chairman Lowe, and thank you for being here, Mr. Powers. So you're saying that the industry has grown leaps and bounds in the last couple years of the ready-to-make cocktail?

TED POWERS: It has. It's very popular.

J. CAVANAUGH: And that's not a result of a favorable tax climate?

TED POWERS: No, because most states have not changed. I mean, Nebraska is one and Michigan is another. Michigan has a very different system, they're a control state and so it moved into the private-- through private wholesalers, but most states have rejected it. In fact, North Dakota did about 2 hours ago, that-- this identical proposal to, to establish 12.5 percent RTDs at a lower tax rate, the rate of wine. They rejected it, so almost everywhere has rejected this change. So it's not due to any tax change. It's just due to the marketplace. And, you know, the Moscow Mule and the Cutwater are very popular and-- as is High Noon and other brands in that category. So yep. It's grown strongly.

J. CAVANAUGH: Well, so I sat on this committee two years ago when we lowered this tax rate. And that was, specifically, we were told, is that we need to lower the tax rate to help facilitate growth in an industry. So are you telling me is that was essentially unnecessary to change tax rates to incentivize businesses?

TED POWERS: Of all the categories, it's the oddest of tax cuts because it is growing leaps and bounds with or without tax change.

J. CAVANAUGH: OK. Well, that's good to know. Thank you.

LOWE: Thank you, Senator Cavanaugh. Any other questions? So you're suggesting we tax 80 proof liquor and 12 percent ready-to-drink cocktails at the same level?

TED POWERS: Any, any spirit taxed at the same rate, any wine at the same rate, any beer at the same rate-- I mean, you know, because we have beers at 4 percent of Bud Light and we have beers at 8 percent of Natty Daddy, you know. So that's double, you know. So I wouldn't think you'd want to get into, you know, pursuing it in that way. We, we just feel like beer, wine and liquor, out of that three.

LOWE: OK. Are there going to be great commercials on the Super Bowl this year?

TED POWERS: Let us hope so. Yeah. It's a very important day.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: I was the champion two years ago or a year ago, whenever it was, that we reduce these rates because-- down to the wine level because we thought that the competition between a large seller such as InBev would compete, would have less-- well, it would give the smaller manufacturers a chance to compete with large manufacturers such as InBev. Would this have any effect on that? By raising it, would, would the smaller manufacturer be able to compete at such a higher tax rate?

TED POWERS: I mean, because everyone would be paying the same rate, I don't know that there is a distinction or you know, that there is a market share advantage or disadvantage to anyone. I mean, the identical tax rate for you know, because like I say, we're selling a lot of it and so is Gallo with their High Noon product and smaller producers as well. So I don't know that there's a market share component. I can't say there wouldn't be, but I just don't know why there would be.

LOWE: All right. Thank you. Any other questions? Thank you, Mr. Powers.

TED POWERS: Thank you.

LOWE: Appreciate you coming to Nebraska. Are there any other proponents?

THOMAS J. SAFRANEK: You guys know me from this morning and I have to apologize. You're experiencing this pent-up demand. For 31 years, I worked in state government, and the governors who'd never let us step over here to kind of communicate and educate and engage with the lawmakers. So I'm thrilled to do it right now. And I come here with a public health perspective in trying to look at alcohol policy.

LOWE: If you would state your name and spell it?

THOMAS J. SAFRANEK: Name again. Thomas J. Safranek, S-a-f-r-a-n-e-k . Yeah. So I'm kind of like Senator Hughes here. It's kind of, what's the catch? You know, usually you're, you're in the industry and you're trying to get the taxes lowered, but I'm certainly in favor of this. I would love to see good data on exactly what this amounts to, to the consumer. Part of why I'm so enthusiastic about this, from a public health perspective, I'm saying what kind of alcohol policy is best for the public health and can we do that in a reasonable, you might say, nondraconian, nonfascist way? Can we do it in a reasonable way? And in this area, there's some really good data. The things that we were testing-- testifying on this morning, it's difficult to find data on

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

some of these issues. You know, if you allow, you know, a brewpub to, to sell liquor on top of it or a vineyard or whatever. But there's really good science on the correlation between the price of alcohol and the alcohol taxation and a reduction in public health problems. In the article in UP [PHONETIC]-- I have one copy. I'll, I'll put it into the record for you guys. But Illinois raised their state tax across the board for beer, wine and liquor in 2009 and they studied the impact on one small dimension of alcohol-related health problems that would be fatal motor vehicle crashes and realized that that's just a small piece of the pie of all alcohol-related health problems. But in that area and it's an area where I think it's got high visibility and your constituents are really tuned into this, it had a dramatic impact, very slight increases in the tax. And I'd love to see what these rates are. But in, in, in, in Illinois, the tax increase, it was like a 26 percent tax increase, but it amounted to a .4 cent increase on a glass of beer, a 0.5 cent increase on a glass of wine, a 4.8 cent increase on liquor. So the impact was like-- I think they had ten deaths per month, fewer alcohol-related fatal crashes. So I'm in favor of my colleague from Budweiser, InBev. We're on the same page on this one and I think he's pro public health on that one. But I-- fair warning. I wouldn't object to increases on some of the other categories of alcohol here. And I think public health might be a lot better off with just very, very minor increases. With that, I'll close and take questions and I'll provide this article for the committee.

LOWE: Thank you, Mr. Steferonic [SIC].

THOMAS J. SAFRANEK: Safranek.

LOWE: Safranek.

THOMAS J. SAFRANEK: Czech. Yeah.

LOWE: Excuse me. Are there any questions? Seeing none, thank you.

THOMAS J. SAFRANEK: Thank you.

LOWE: Welcome back.

MAGGIE BALLARD: Thank you. Now I can address chairperson, which I had in my earlier testimony to not Vice Chair Hughes, earlier. So good afternoon, Chairperson Lowe and members of the General Affairs Committee. My name is Maggie Ballard, M-a-g-g-i-e B-a-l-l-a-r-d, and I am still a prevention specialist at Heartland Family Service. And on behalf of our agency we are in support of LB301 and we would like to thank Senator Linehan for bringing this bill forward. Back when the

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

pandemic began, to-go cocktails seemed like a bad idea for public health, but I could understand why restaurant and bar owners relied on them to stay in business at that point. Now the stay-at-home orders are long a thing of the past. If we are going to keep to-go cocktails legal, we need to tax them appropriately. Now, getting real with all of you, I understand we live in a conservative state where tax increases are bad words. I understand that when you are up for reelection, it doesn't matter if you voted to increase an alcohol tax by even a penny or somebody's property taxes by 10 percent. If an opponent can cite that you voted for any tax increase, it seems like political suicide. The reality, though, is that it makes a huge difference what you vote to tax. Another reality is that as policymakers, you have a responsibility to regulate and tax alcohol. When prohibition was lifted, that didn't give the states a free for all. A three-tier system was put into place and taxation was supposed to help the states make some money off of these sales. Now, Nebraska has not increased our alcohol taxes in over 20 years. We could talk about what could be done with that increase in tax revenue and that would probably be more of a fun, interesting conversation. But I'm here to talk about the positive outcomes that a tax increase will have on public health. Increasing taxes has been proven to reduce underage drinking among youth, binge drinking or heavy drinking in adults, and the costs and harms that come from underage and binge drinking. In 2010, Nebraska's costs from excessive alcohol consumption, consumption, excuse me, were over \$1,000,000,000, and almost half of that was paid for by the government, meaning that it was paid for by your hard working, taxpaying constituents, whether they were drinking or not. That same year, Nebraska only brought in \$27.6 million in taxes. So do we also need to discuss the number of people that die each year as a result of alcohol use? Too many times I hear people say that drinking is a personal choice. While drinking or not drinking is a choice, that choice does not occur in a vacuum. You can pass laws that will make it more challenging for people to make high-risk choices or you can pass laws that will offset the damage that occur from people making those high-risk choices. Or you can contribute to passing laws that will make it easier for people to make low-risk choices. You can either be part of the problem or part of the solution. So I ask you to please be part of the solution and please vote yes on this bill, and I'd be happy to answer any questions.

LOWE: Thank you, Ms. Ballard. Are there any questions? Seeing none, thank you. Welcome back. You're making your trip worthwhile.

LANETTE RICHARDS: Yes. If I make the trip down here, I'm going to do all that I can while I'm here. My name is Lannette Richards,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

L-a-n-n-e-t-t-e R-i-c-h-a-r-d-s, up from Scottsbluff. And, you know, I have traveled here. I want it to be known that I did-- I'm doing this on my time, but I am also the executive director of Monument Prevention and have been for over 20 years. So some of these things really touched my heart. And one thing is, is our taxation on our alcohol. It's proven over the years that increasing alcohol taxes saves lives and make communities healthy and safe. Research shows that increasing alcohol taxes is one of the best strategies for reducing alcohol-related harms in our communities. Alcohol taxes in Nebraska have not increased in 20 years. Cost of living has increased, so why do we not increase the tax of the alcohol? Ready-to-drink cocktails contain distilled spirits. Shouldn't they be taxed as such? The bill would increase the taxes on these drinks to the appropriate tax bracket, bracket. Not only does this fall in line with the Nebraska Liquor Control Act, but the added revenue for the state is also there. I ask the General Affairs Committee to advance LB301. Thank you.

LOWE: Thank you very much, Ms. Richards.

LANETTE RICHARDS: Thank you.

LOWE: Are there any questions? Seeing none, thank you.

CHRIS WAGNER: Good afternoon.

LOWE: Good afternoon.

CHRIS WAGNER: Chris Wagner, C-h-r-i-s W-a-g-n-e-r, here on behalf of Project Extra Mile Coalition. I never thought I'd say it, but if you want to save lives in our state, support the bill that is being advanced or proposed by Anheuser-Busch. Strange bedfellows, bedfellows, definitely. But literally this- the, the research is overwhelming. It's like, literally, the best strategy you can do is to increase alcohol taxes to save lives and reduce harms. We do have, and as I mentioned, over 700 alcohol-related deaths every year in Nebraska, over 17,000 years of potential life lost in our state each year. We-- recent research has shown that one in eight working age Americans died from alcohol-related causes. Among 20- to 49-year-olds, it was one in five and one in four for 20- to 34-year-olds. This is one of the reasons why our state pays an annual estimated \$1.2 billion in economic costs. Those are primarily, you know, shouldered by our small businesses across the state. So 75 percent of those costs are work productivity lost. We also have increased corrections costs and healthcare costs associated with that excessive consumption. We're also the second worst self-reported alcohol impaired driving state in

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

the country, with nearly double the national average of 955 episodes per 1000 population, which means we have about as many episodes of, of alcohol impaired driving, so going from point A to point B, as we do men, women and children in our state. We're, we're the sixth worst binge-drinking state in the country, with nearly 20 percent of adults over the age of 18 saying that they did so at least once in the last 30 days. And we have some of the worst-- we have four of some of the worst binge drinking cities in the country. So these tax increases in other states have produced some impressive results. Dr. Safranek mentioned the Illinois study. There was also an alcohol sales tax that was implemented in Maryland in 2011. And studies have shown that it decreased binge drinking among adults by 17 percent and 20-- 28 percent reduction among youth, as well as a 21 percent drop in gonorrhea cases and an 11 percent decrease in chlamydia cases. So it, it, it expands beyond the public safety domain. Of course, this bill only really applies to ready to drink cocktails, not all types of alcohol in our state and we would encourage the committee to work towards that goal. We actually haven't increased alcohol taxes in 20 years in our state, which was the longest period. Immediately preceding that increase, it was 17 years. And with inflation as it is now and over that course, we've lost well over 30 percent of the value of our, of our tax because it's based on volume and not on the price of the product. So please vote to advance LB301 to General File. It's going to save taxpayers nearly \$500 million each year. And it's, it's going to be a tax break to all Nebraskans.

LOWE: Thank you, Mr. Wagner. Are there any questions? Vice Chair Hughes.

HUGHES: You said it'll save Nebraska \$500 million? That's just based on the ready-to-made cocktails?

CHRIS WAGNER: No. So--

HUGHES: That's if you would--

CHRIS WAGNER: I, I mentioned-- yeah. So I mentioned just increasing taxes across the board.

HUGHES: --if you would increase on all.

CHRIS WAGNER: Right. I don't, I don't know what the--

HUGHES: That'd be hard.

CHRIS WAGNER: Obviously, it's a smaller fraction of that.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: I wondered that. I was like, oh, I wonder how he figured that out?

CHRIS WAGNER: So the benefits will be proportional to the tax increase on what it applies to.

HUGHES: OK. Thank you.

CHRIS WAGNER: Sure.

LOWE: Thank you, Senator Hughes. Any other questions? Seeing none, thank you.

CHRIS WAGNER: OK. Thanks.

LOWE: Are there any proponents? Seeing none, opponents?

ZAC TRIEMERT: Good afternoon, Chairman Lowe and senators of the General Affairs Committee. My name is Zac Triemert, Z-a-c T-r-i-e-m-e-r-t, and I'm president and head distiller at Brickway Brewery and Distillery in Omaha, Nebraska. I'm here today to speak on opposition of LB301, which would undo the tax decrease of canned cocktails from \$0.95 back up to \$3.75 a gallon. I'm here to represent Nebraska distillers. Prior to the passing of LB274, that legislation from 2001, there were zero canned cocktails sold and distributed from Nebraska distilleries. The reason Nebraska is behind other neighboring states is because the \$3.75 tax rate was not a viable business model to get quality beverages in the market at a price point that we could reasonably compete with. LB274 defined canned, canned cocktails on beverages up to 12.5 percent alcohol. Original ask was to get down to \$0.31 per gallon, same as beer. But we went out and we compromised with the opposition and with the Liquor Control Commission and settled at \$0.95 per gallon, which is still three times that of beer and other malted beverages. The average price for a six-pack of craft beer is \$9.99 to \$10.99. The average price for canned cocktails is now the same. However, we are generally selling them in a four-pack instead of a six-pack. And that's our way to afford that price point that the consumer wants, at currently three times the beer tax rate. So this illustrates that canned cocktails are still at a commercial disadvantage of beer. If LB301 were to pass, the result to our Nebraska distillers would be devastating. We collectively have spent hundreds of thousands of dollars on equipment, design, labels, marketing and labor. We have increased jobs, we have increased excise taxes. And it should all be, be noted that all these dollars we spent to develop our canned cocktail market were spent in the state of

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

Nebraska. If LB301 were to pass, the market for Nebraska-made canned cocktails would go most likely to zero. The market will not be paying \$9.99 to \$10.99 for a two-pack. If the case is being made that increasing the tax rate on canned cocktails will increase state excise tax revenue, I think the opposite will happen. The shelves will be emptied of products being charged \$0.95 per gallon and refilled with products making \$0.31 per gallon. The goal of the company asking for this bill to be introduced. More money for the largest brewery in the world and less for the state of Nebraska and the Nebraska distilleries. In closing, LB301 would destroy the business that Nebraska distillers have invested in since the passing of LB274 in 2001. I ask that you please don't pull the rug out from under us and let us keep increasing state excise taxes and growing Nebraska jobs. I ask that you please keep this bill in committee. I thank you for your time and I'm happy to answer any questions that you have.

LOWE: Thank you, Mr. Triemert. Are there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe and thank you, Mr. Triemert, for being here. Brickway's not in my district, but it's very close. And I see a lot of your products around town. I didn't realize that you guys weren't making them before the bill. So can you give us like, an idea of the growth? I mean, number of employees, that kind of stuff.

ZAC TRIEMERT: So, yes, we were making none beforehand because we couldn't afford to get it on there. With taxation, we'd be at probably \$20 a six-pack and now we're down half that in a four-pack because of the tax decrease. We've invested, tremendously, in the amount of equipment we have, the labels, the design and we've added one full time FTE with this.

J. CAVANAUGH: Do you know about the rest of the industry statewide or is it kind of still, still I mean, it's obviously, still pretty early. We just passed this a year and a half ago.

ZAC TRIEMERT: It is still early. But I, I know that-- talked with the Kinkaiders guys, they've-- themselves invested hundreds of thousands of dollars to get up and running and I know that they brought on people. So we're all working hard at this and working hard based on what we passed two years ago.

J. CAVANAUGH: And, you know, certainly, you've invested under the current structure. I mean, the price hurdles are a hurdle barrier to

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

entry. If the price were to go back up, are you saying you guys would have to cut off production or just nobody else would enter the market?

ZAC TRIEMERT: We would probably get as much out before the law changed and we would have to cease production because as I said in my testimony, people aren't going to spend \$9.99 for a two-pack of canned cocktails. And these are at-- ours are between 4.5 and 7.5 percent alcohol. This is the same concentration as beer. And so that's the customer we're going after is that person who's drinking beer, as well. And we're still paying three times the tax rate of beer.

J. CAVANAUGH: Thank you.

LOWE: Thank you, Senator Cavanaugh. Other questions? So one of your other main concerns is shelf space?

ZAC TRIEMERT: I guess I'm not concerned about my personal shelf space. Our distributor has done a great job. My concern is once the-- my product goes away, if this tax rate goes up, it's just going to be refilled with lower tax rate products and so the state of Nebraska loses. We, as Nebraska distillers, lose and the state of Nebraska loses.

LOWE: All right. Thank you.

ZAC TRIEMERT: Thank you.

LOWE: Any other questions? Seeing none, thank you, Mr. Triemert.

ZAC TRIEMERT: Thank you for your time.

VANESSA SILKE: He might ring his bell for you guys.

LOWE: You need a basket on your bike.

BARRY FOX: I got a little basket there. It's a little hard to carry.

VANESSA SILKE: There's no beer in it right now.

BARRY FOX: That's right. Good afternoon, Chairman Lowe, and, and senators on the General Affairs Committee. My name is Barry Fox, B-a-r-r-y F-o-x. I am with Sideshow Spirits and Kinkaider Brewing Company. I'm one of the partners there. Just a few comments that I'd like to make. Obviously opposed to this increase. Sideshow Spirits and Kinkaider Brewing Company developed and got into RTD cocktails specifically because of this decrease. To echo what Mr. Triemert said,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

we invested just in equipment alone about \$250,000 to get up and enter into this market. So that investment is a long-term investment. Obviously, that doesn't include all the marketing dollars that were spent, all of the dollars spent in-- for all the packaging and materials that, that we've, that we've had to get involved in. And so a few of the things that I'd like to share-- some of the comments made earlier is that-- referenced to go cocktails. And so one of the comments that I'd like to make to you there is that to-go cocktails that are made at a bar or restaurant and which are in-- which are currently allowed under law, those are taxed based on just the alcohol that goes into that product. So if a 40 percent by alcohol vodka, one ounce goes into that, taxed-- that is taxed at \$3.75, not the entirety of that product. So when that walks out with that 40 percent alcohol in there, that's taxed at roughly the equivalent of what we're talking about, a \$0.95. It's about, if you're at a 10 percent alcohol by volume RTD, which Mr. Triemert talked about lower. Ours are 8 percent, one-fourth of the \$3.75 tax rate, which would equate to 10 percent, is about 93.5 cents, I think. Something like that. So you would actually-- we would be still taxing to-go cocktails at somewhere around this \$0.95, but anything that's packaged and on the shelves would be paying a \$3.75 rate. So that you guys are aware, \$3.75 on a gallon, just the increase in that would be, it would equate to about \$0.26 in increase in taxes on a 12-ounce serving, which-- that's the taxes that we would pay. Then that product goes to the distributor. The distributor would mark up based on those taxes, the retailer would mark up based on that taxes. That \$0.26 would turn into \$0.50 by the time it gets to a consumer, \$0.50 a can, \$2 a four-pack, \$24 on a case-- sorry, \$12 on a case, just the increase. And I also would comment that although there's been some discussion about spirits having their own, their own rate, beer having their own rate and wine, there are 15, I believe, 15 states, including Nebraska, that have differential tax rates that depend on the, on the alcohol percentage. The feds are also taxed that way. So with that, I see my time's up. I'd gladly answer any questions.

LOWE: Thank you. Mr. Fox. Are there any questions? Seeing none.

BARRY FOX: All right.

LOWE: Thank you.

BARRY FOX: Thank you.

CODY SCHMICK: Thank you, Chairman Lowe and the members of the General Affairs Committee for hearing us out today. My name is Cody Schmick,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

C-o-d-y S-c-h-m-i-c-k. I am here today in opposition of LB301. I'm the co-owner of Kinkaid Brewing Company in Broken Bow and Sideshow Spirits here in Lincoln, Nebraska's first ever legal distillery. Our group employs around 130 people across six retail bar locations and two production facilities. We are very proud of the business we have grown in Nebraska and what we have added to our communities and state. Two years ago, my partners and I had a dream of helping bring a new category of alcohol products to the consumer in Nebraska. Canned cocktails were popping up all over the U.S., but Nebraska had very little to offer in this category. None that were being made locally. At the time, Nebraska taxes on these cocktails were at the same rate as a bottle of high proof spirits such as vodka or whiskey. Because of the exorbitant tax, one of the highest in the nation, nothing was being produced canned cocktail wise, locally, and national brands were skipping over Nebraska altogether. Working with the Liquor Control Commission, Nebraska Legislature and other craft distilleries, we helped fix this problem last session and got these canned cocktails down to a reasonable rate of \$0.95 a gallon. My partners and I decided that if the bill bringing canned cocktails' tax rate down to a reasonable rate didn't go through, we were going to pass on this category altogether, seeing that those four packs would land \$14 to \$18 at the grocery store shelves. It seemed like a nonstarter for us. It was so encouraging, encouraging to see the support we got from the bill last session. Unanimously, the folks in the General Affairs Committee pushed it to the floor and we got unanimous votes on the floor accepting the tax rate of \$0.95 a gallon. Keep in mind, that is still three times the tax rate of what beer is and, and they are in the same alcohol range, as the two guys before me have talked about. We spent over \$250,000, just our group, bringing these products to market. LB301 would undo all of this and stifle a newly emerging category on the liquor and grocery store shelves before it even gets a chance to start. If LB301 were to pass, it would kill tax revenue because local producers, such as Sideshow Spirits, would be forced to discontinue these products and national producers would start pulling out of Nebraska. I'll leave you with a couple of numbers that I think will put it in perspective. Beer is currently at the tax rate of just under \$0.70 per case, cocktails, as the law says today, is \$2.14 per case. And if LB301 were to pass, the new tax rate for canned cocktails would increase to \$8.44 per case. If I were-- if it were to pass, it would kill consumer choice, kill a chance for local producers to be a player on the national level and urge-- I urge you guys to oppose LB301. It's a job killer and a product killer. Thanks for your time. I'd be glad to answer any questions.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

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

CODY SCHMICK: Thanks.

JUSTIN BRADY: Chairman Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in opposition to LB301. A lot has been said that I was going to comment on. I will say, you know, those of you looking at this bill, you have to start with asking yourself, do you want to vote for a 394 percent tax increase? That's what this bill is asking. And with all due respect to Mr. Powers, who was one of the proponents when he said this isn't about market share, it is 100 percent about market share. Yes. If you look at just the ready-to-drink cocktails and say, is one made by Kinkaider going to get an advantage over one made by somebody else? No, if you tax them all the same. But when you start bringing in all the drinks that are a beer based, that also have a similar flavoring, that yes, Anheuser-Busch, I'm sure in their portfolio has some of these ready-to-drink cocktails. They also have a large share of those beer-based cocktails that are in the-- competing against them. So it is 100 percent about market share. You know, I'll give you one example. So there was-- it just came out in the news. I don't know if everybody's familiar with Fireball, but Fireball Whiskey is out there and has been for a long time. There are now shooters that do not say the word whiskey on them. They're called Fireball Cinnamon and they are a beer-based shot. So it is-- there-- so again, that's a market share. You're going to set out there and decide: do you buy the one that's cheaper that's made from beer or the one that's made from a distilled spirit? So I would say, as you heard from the people who are invested in Nebraska, who employ individuals in Nebraska, to sit there and say, the fact that a company or a product is successful isn't a reason to tax it more. I occasionally do like to drink a Busch Light. I can tell you, price went up probably 20-25 percent over the last 3- to 4-year period. I wouldn't come here and say, Hey, the price went up, therefore let's tax some more. And so I think the fact that something successful and demand's out there, of course, price goes up because of it. And with that, I'd stop and see if there are any questions.

LOWE: Thank you, Mr. Brady. Are there any questions? Seeing none, thank you.

JUSTIN BRADY: Thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

JOE KOHOUT: Chairman Lowe, members of the General Affairs Committee, my name is Joe Kohout, J-o-e K-o-h-o-u-t. I'm a registered lobbyist appearing today on behalf of our client, the Associated Beverage Distributors of Nebraska, the 17 family-owned beer distributorships across the state of Nebraska. We appear in opposition to LB301. I think Mr. Brady said it and everyone before us has said it and that is the bill represents a tax increase. And as many of you are aware, one of our basic principles is not to raise taxes on the products we distribute, period. And so, in that vein, I appear before you today. I do want to say that and, and Senator-- or Mr. Triemert mentioned this, And the two folks on this committee who were here when we did this, both Senator Lowe and Senator Cavanaugh, was that this was a negotiated agreement. There were plenty of views on both sides of this equation-- of the, of the bill. And ultimately, what the committee produced was the fruit of compromise. And that compromise that was said, you know, originally a bill was brought to this committee that reduced the tax rate to \$0.31. We did not support that provision. And so ultimately, the bill that emerged from committee took it to that \$0.95 or \$0.94 level. And so, so now what we're looking at is we're looking down a process whereby, essentially, that compromise is being undone. And I think that should cause pause to the committee about what that looks like. The other thing I would say is, you know, I think it's interesting because a year ago, Senator Lowe brought a, a brilliant piece of legislation that, that talked about vessel size. And, and-- because our concern was that the bill did not contain a vessel size. And we were told at that time that it was a tax increase and we stood alone on that issue as, as distributors. We took our lumps, we walked away and you don't see-- you won't see that bill back again. But I just want to say that, that at this time we oppose this bill. It represents a tax increase on products that we distribute. Our membership, anywhere between 2 percent and 10 percent of our volume, is going out in these products, so I-- just we wanted to make sure the committee was aware of that.

LOWE: Thank you, Mr. Kohout. Are there any questions? Yes, Senator Hardin.

HARDIN: Thanks, Mr. Kohout. May I ask a philosophical question?

JOE KOHOUT: Absolutely.

HARDIN: What happens to the career path of bootlegging when prohibition of any kind comes up in the realm of alcohol?

JOE KOHOUT: It increases.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HARDIN: It increases? And do you, therefore, think it would increase in a place like Nebraska?

JOE KOHOUT: I think if you're starting to talk about products that individuals like and they want to get access to and you're within close proximity to the border, I think, in your district, Senator Hardin, it's very close to the border. It's the border. That is a concern that, that we have is that you start to see these products and there has been and I-- we have seen times when those products end up moving across borders, start ending up on retail shelves. And they're products that maybe aren't available in the state of Nebraska, but they do end up in some, some retail accounts. And of course, any time you're, you're messing with the tax rate, that's a concern that we would have, is that you're going to see a preponderance of that.

HARDIN: I see. Thank you.

LOWE: Thank you, Senator Hardin. Are there any other questions? Seeing none, thank you.

JOE KOHOUT: Thank you.

RICH OTTO: Good afternoon, Chairman Lowe, members of the General Affairs Committee. My name is Rich Otto. R-i-c-h O-t-t-o. I'm here on behalf of the Nebraska Grocery Industry Association, the Nebraska Licensed Beverage Association, and the Nebraska Retail Federation, testifying in opposition to LB301. First of all, I want to acknowledge representing retailers, we do sell products that fall into all of the tax ranges that were mentioned today: beer, wine and spirits. And we're not asking the Legislature to favor one industry or product over another, we just support a level playing field, which we feel the current tax structure is. We oppose LB 301. The current tax rate on ready-made, ready-to-drink cocktails more accurately reflects the alcohol level, which is similar to beer, sometimes creeping up towards wine, but yet is taxed at the wine level, which we agree was a compromise. The alcohol would increase-- would be over 300 percent on these popular products. Such a change would result in choices that would be limited in distribution, hit retailers and then eventually hit consumers as well. With retailers and consumers battling record inflation, we don't think this is the appropriate time to increase taxes on anything. With that, I'm happy to answer any questions you may have.

LOWE: Thank you. Mr. Otto. Are there any questions? Seeing none, thank you.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

VANESSA SILKE: Good afternoon, members of the committee. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and lobbyist for Brickway and Sideshow Spirits. Business owners were just up here testifying earlier. A couple of things that I want to highlight and then I'm always happy to answer any questions that you might have, number one, this is one of those few bills we're going to see Joe Kohout and Justin Brady and I all on the same proponent or opponent spot. This is rare. This is a big day for the committee. So I want to highlight that support from the industry in opposition to this bill. And it speaks to the hard work that all of us did with our various clients, the, the committee and all the work you did with the legislators, who passed this 45-0 when it became law. My clients in particular, as they testified, did not make \$1 of investment or plans to do these types of drinks until that law passed. This is one of many examples of why I lobby for this industry. When we need to grow, we need a law to change. That's how heavily regulated this industry is and that's why we needed that law to pass. In a meeting I had, one senator asked me, well, is that why all these cocktails showed up on the shelves a couple of years ago? Yes, that is why the door opened. That's why you see this. And so we really don't have a legal issue here, which is awkward for me as an attorney to bat cleanup here on testimony. This is really about consumer choice and shelf space. And you've heard from a couple of folks who said it very, very well that this is all about making sure that there's shelf space for products to have a lower excise tax rate for the people who asked for this bill to be introduced. They pay \$0.30 a gallon, they've gone through inflation, they've increased their product prices, but they're here to tell you to increase our excise tax rate back to \$3.75 on one product. I'll give you one state as a, as a comparison and one that we used in 2021. Iowa has a definition for ready-to-drink cocktails. Their excise tax rate for those is only \$0.19 a gallon and their cap on ABV is 15 percent, so actually allowing much stronger drinks. Mr. Kohout mentioned one other item that we negotiated was vessel size. And the reason why we didn't pass a law here in Nebraska is because under TTB, any product involving spirits is capped at 1.8 liters. For the lawyers on the committee, that's 25 C.F.R. Part 5, and our ready to drink cocktails definition dovetails with that. So we can't have kegs of these items or options out there. You can't backdoor the ABV by putting straight alc-- vodka into a can. We have all of the guardrails in place that we learned from looking at other states and talking to our business owners to make sure that this is smart legislation that will increase opportunities for local business owners, market access for consumers who want these products and for the state to gain excise

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

tax revenue in a way that makes sense. So with that, I am happy to answer any questions you have.

LOWE: All right. Thank you. So are there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe. Thank you, Ms. Silke for being here. OK. So you said lawyers and then you said something that I have never-- I have no idea what you were saying.

VANESSA SILKE: Oh, great. OK, we'll back up.

J. CAVANAUGH: Let's see, what was the second part?

VANESSA SILKE: So TTB is the Tax and Trade Bureau. It's part of ATF-- ATF. It's the federal agency that regulates alcohol. And so I want to-- I'm so glad that you asked this, because in the, in the industry, TTB is just shorthand for federal law and we throw those, those, those initials around left and right. But it's really important for the committee to know this, especially when you have testifiers coming to say that there's no guardrails or there's a slippery slope, especially in the distilling industry. They're one of the most heavily regulated types of alcohol. And Hobie, if asked, can testify to this as well. If you make a bad beer, it tastes bad. If you make bad alcohol-- distilled spirits, you can kill someone. And so they're already under extremely heavy regulation at the federal and state level before we even get to making a mixed cocktail product. And so whenever there's a reference to TTB, that's federal law, usually it's the Federal Alcohol Act, but there's a couple other provisions in the regulations within TTB.

J. CAVANAUGH: Well, then you made a reference to some calculation on volume, it sounded like.

VANESSA SILKE: Yes. So 1.8 liters is the size that TTB caps for an original package. So think of like a, a margarita, like Cuervo margaritas that come in the little handle. That's right at 1.75. This is why you hear 1.75 left and right, because it's definitely below the 1.8 federal cap. And so on those, if they have alcohol in them and they're under our 12.5 percent, they get the \$0.95 tax rate. If it's above the ABV or more than the 1.8 liters, it's at \$3.75 a gallon.

J. CAVANAUGH: And you might be-- I should have probably asked one of the other guys this, but I'm going to ask you since you're here. In terms of increased costs in the last couple of years, I mean, just heard anecdotally, shortages in aluminum and those sorts of things, is

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

that contributing in part to these increases in costs we're seeing on the shelf?

VANESSA SILKE: For any of those factors, inflation, you name it, I would really prefer to have the business owner specifically answer those things. But I can tell you, all of my calls for people negotiating on contracts or worrying about supply chain directly, it's all directly impacted by this. And although they highlighted in their study, which I have not read yet to see where they pulled their data, that, you know, these prices have increased regardless of what the tax rate is, so have beer products because they're dealing with the same shortages. They're dealing with the same issues. So.

J. CAVANAUGH: Thank you.

LOWE: Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you, Ms. Silke.

VANESSA SILKE: Thanks, everyone.

RYAN HANZLICK: Chairman Lowe, committee, Ryan Hanzlick, R-y-a-n H-a-n-z-l-i-c-k with Long Dogs Distilling in Arapahoe, Nebraska. We don't make any ready-to-drink cocktails. We've only been in business two years. We are looking at it. If \$3.75 becomes the new excise tax on it, there's no point in us worrying about it. That's all I have to say.

LOWE: Short and sweet.

RYAN HANZLICK: Yeah.

LOWE: Thank you. Any questions? You did well. Are there any other proponents? Seeing none, those in the neutral? Seeing none-- Senator Linehan had to go testify in another hearing so this closes LB301.

HOLDCROFT: Online? Were there any online.

LOWE: Online, there were three proponents and one opponent. We will now begin on LB452. Senator Murman, welcome to the General Affairs Committee.

MURMAN: First time here. Good afternoon, Chairman Lowe and members of the General Affairs Committee. I'm Senator Dave Murman from Glenville, Legislative District 38. I introduce LB452, as amended by AM65, at the request of Long Dogs Distillery in Arapahoe, Nebraska, in the 38th District. This bill is very simple. It provides for a limited right of

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

self-distribution. Farm wineries and craft breweries each have self-distribution rights and we are only seeking a limited right here. I worked with Ryan Hanzlick in my district, Sideshow Spirits in Lincoln and the Liquor Control Commission to draft and amend this bill. AM65 utilizes language which is very similar to the Craft Brewery License statute. Specifically, it sets a limit on self-distribution and cannot be used if a microdistillery has a contract in place with a wholesaler. Like craft breweries, wholesalers do not often take on new small microdistilleries or only want to carry certain products to market. This bill will allow microdistilleries to reach the retail market and have a shot at success. AM65 is also easy for microdistilleries and wholesalers to follow and for the commission to enforce. I have testifiers who have micro distillery licenses here today and an attorney/lobbyist who will also answer specific questions you may have. Hobie [PHONETIC] Rupe of the commission is also here to answer questions. Microdistilleries have untapped potential in Nebraska, and we need to amend the microdistillery license statute to facilitate growth. I ask for your vote in favor of AM65, LB452. I am happy to answer any questions you might have and I'll stay for the close.

LOWE: Thank you, Senator Murman. Are there any questions for Senator Murman? Thank you.

MURMAN: Thank you.

LOWE: Proponents? Senator Ebke. Welcome back to General Affairs Committee.

LAURA EBKE: Thank you, Senator Lowe, members of the committee, my name is Laura Ebke. That's L-a-u-r-a E-b-k-e. I'm the senior fellow at the Platte Institute, which is a free-market think tank here in Nebraska. I'm here to testify in favor of LB452, as would be amended by AM65, which was brought to you by Senator Murman. With the amendment, holders of microdistillery licenses in the state would be able to directly sell for resale up to 5,000 gallons of their product per year to retail licensees in the state. This bill is a fine example of the opportunities of a free market. The distillery, a small business in most cases, would now have the opportunity to expand their market and brand to willing retailers who would then make it available to the consumer. The producer wins because their brand gets more exposure. The retailer wins because they can offer more options for sale to the consumers and the consumers win because of expanded choice. So we would encourage you to advance LB452 as amended with AM460-- or AM65

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

to General File. And if you have any questions, I'd be happy to try and answer them.

LOWE: Thank you very much. Are there any questions? Yes, Senator Hughes.

HUGHES: I think it's 2,000 gallons. Am I reading the bill correctly?

LAURA EBKE: That-- you have the amendment?

HUGHES: Oh, I don't have the amendment.

LAURA EBKE: I think, I think it was amended. It was changed with--

HUGHES: Oh, because he mentioned that. OK. I don't have it--

LAURA EBKE: OK.

HUGHES: --I guess. Sorry.

LAURA EBKE: That's OK.

LOWE: Thank you, Senator Hughes. Are there any other questions? Seeing none.

LAURA EBKE: Thank you very much.

CODY SCHMICK: Do you want me to spell my name again?

LOWE: Yes, please.

CODY SCHMICK: OK. My name is Cody Schmick. C-o-d-y S-c-h-m-i-c-k. Thank you, Chairman Lowe and the General Affairs Committee for hearing us out today. I am here today as a proponent for LB452. Thank you to Senator Murman for introducing this legislation for us. We are the only group in the top five producers of craft beer and spirits that specifically sold to Nebraska, so we're all invested in Nebraska. As all of you know, the craft beer industry in Nebraska has seen some nice growth over the past ten years plus. I believe that the growth is in large part due to bringing common sense legislation to the state of Nebraska, helping to cultivate and grow Nebraska craft brewers, which we have been a part of with Kinkaid Brewing Company. LB452 allows craft distilling a level of self-distribution to help incubate new products that are being brought to the market. We have found that even with our great relationships with our distributor partners, they cannot carry every product we want to bring to market and give it the focus it needs to grow and thrive. Because of the vast amounts of

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

products at the distribution level, a newly emerging product will very rarely make it on the priority list for distribution arm to market and push that product, that is, if it makes it into their warehouse--warehouses at all. We would like to have a path for these products to bring them to market. The distributor in no way is forced to carry all of our products and I don't think they should be, but I do think we need a path to bring these products to market for the retailers that want them. Both the wine and beer industries in Nebraska have a level of self-distribution and we would love to have that in craft distilling to help this new industry grow in our great state. I truly believe that if we do the right things at the legislative level, we can see craft distilling doing the next ten years what craft beer has done in the previous ten. I believe that Nebraska has the climate, the people and, of course, the corn to make great whiskey and other distilled products. Craft distilling, around a dozen of us in Nebraska, is a newer industry and if we want to give this industry a chance to do something-- be something great in Nebraska, we are going to have to help incubate it. Just to give you some perspective, all spirits sold in Nebraska averages out to about 400,000 gallons a month in sales. And Nebraska craft distilling is currently producing an average of about 3,000 gallons a month. We have not even hit 1 percent of all spirits sold in the state being locally produced. Sideshow Spirits, along with 11 other craft distilleries, are making big investments in this industry and hopes that our leadership will come alongside us in cultivating an emerging category that will grow jobs, tax revenue and Nebraska-made products. In conclusion, in conclusion, I ask for your support of LB452, allowing Nebraska-made spirits a chance to make it to the grocery and liquor store shelves. Thank you. I'd be glad to answer any questions.

LOWE: Thank you very much. Are there any questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe, and thanks for being here again.

CODY SCHMICK: You bet.

J. CAVANAUGH: So, I mean, first off, we just had the conversation about the ready-to-go cocktails.

CODY SCHMICK: Yes.

J. CAVANAUGH: That would be something that could be self-distributed under this?

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

CODY SCHMICK: It would be, yeah.

J. CAVANAUGH: How many microdistill licenses are there out there? Do you know?

CODY SCHMICK: So I think there's around 15. Three of those are, are kind of just getting started. I would say, kind of, 12 active ones. The majority of that is just being sold out of their own locations right now.

J. CAVANAUGH: Out of the tap rooms?

CODY SCHMICK: Correct. Yeah. Yep. And not all of them even have taprooms. Some are just production facilities, but they do have an element. And then the way the license is now, they can come in and you can buy a bottle of whiskey from them, so no.

J. CAVANAUGH: Thank you.

CODY SCHMICK: You bet.

LOWE: Thank you, Senator Cavanaugh. Any other questions? Seeing none, thanks. Next proponent. Welcome back.

RYAN HANZLICK: I'm back. Ryan Hanzlick, R-y-a-n H-a--z-l-i-c-k, with Long Dogs Distilling in Arapahoe, Nebraska. I asked Senator Murman to bring this to the floor and our reasoning was every week we have multiple calls, people calling, wanting to know where they can find our stuff-- people from Lincoln, people from Omaha, people from all over the state. I have yet to talk to anybody with any distribution, nobody's called. We've been in business two years and we have-- no distributors have contacted us. OK. The people want the stuff, we can deliver, we can ship direct to the consumer if everything works right; we can't get it into any retail locations. We're stifled. I'm glad he brought up the numbers. When I originally asked him to present the bill, I had it capped at 2,000 gallons. I, I have no idea what a, what a bigger distillery would run. When we started looking at the numbers, if every licensed microdistillery in the state maxed out the 5,000 gallons, it's still less than 2 percent of what the-- of what spirits are sold in this-- in the state, every year. Definitely, what sounds to me like a reasonable amount. Again, short. Any questions?

LOWE: Thank you, Mr. Hanzlick. Are there any questions? Seeing none--

RYAN HANZLICK: OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: --thank you.

ZAC TRIEMERT: Good afternoon, Chairman Lowe and senators of the General Affairs Committee, my name is Zack Triemert, Z-a-c T-r-i-e-m-e-r-t. I'm president and head distiller of Brickway Brewing Distillery in Omaha. I'm here today to speak in support of LB452, which would allow for microdistilleries to obtain access to retail markets where a contract with a Nebraska licensed wholesaler is not already in force. Brickway is fortunate because we launched nearly a decade ago. Access to distrib-- distribution partners was easier then than it is now. Distributors have huge books of commercial breweries, winemakers and distilleries. I have witnessed small producers' contracts being either terminated or not being in a contract from the start and I don't blame the wholesalers for that. I believe in the 80/20 rule, where 20 percent of your clients bring 80 percent of your revenue. It doesn't make great business sense to drastically extend that really long tail of small clients. While Brickway itself is not interested in self-distribution, we believe that a distribution law shouldn't keep a little manufacturer from getting their start. I imagine every one of these startups strive towards growing and becoming big enough to bring their successful brands to the distribution tier. Without distribution, Brickway wouldn't have ever reached the success that we've had so far. In closing, LB452 would benefit small startup distilleries that may not have another path to the commercial retail market. Thank you for your time and I'm happy to answer any questions that you have.

LOWE: Thank you, Mr. Triemert. Are there any questions? Yes.

HUGHES: Just a clarification. You have a wholesale-- you use a distributor.

ZAC TRIEMERT: Yes.

HUGHES: So you're just testifying on behalf of the smaller guys-- just let them-- give them a shot.

ZAC TRIEMERT: Correct.

HUGHES: That's your competition.

ZAC TRIEMERT: Well, we're friendly like that.

HUGHES: Thank you.

ZAC TRIEMERT: Yeah.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HOLDCROFT: Competition's good.

LOWE: Any other questions? Seeing none, thank you.

ZAC TRIEMERT: Thank you.

BARRY FOX: Ring the bell whether I want to or not.

LOWE: Thanks for waking me up.

BARRY FOX: Good afternoon again. My name is Barry Fox. B-a-r-r-y F-o-x. I'm here as a co-owner of Sideshow Spirits and Kinkaid Brewing Company testifying in support of LB452. Just a few comments that I'd like to add. We are asking for a limited distribution, as has been staked. I think this allows for great growth for our business and it also-- one of the things it allows is for innovation and for product choice for consumers. So a lot of times, we're, we're spending a lot of time testing new products, trying to decide what product's going to come to market and going to work. And one of the things that this allows us to do is to take those small batch products, take them to a retailer, test those markets and see if that's a product that we can reproduce. The distilling industry takes a long time to bring products, especially aged products, to market. One of the things that you heard earlier about was ready-to-drink cocktails. One of the reasons that's so important and when you, when you talk about the growth and the, and actually the being able to sustain businesses is our aged products take anywhere from-- to, to mature could take, you know, as little as two years but more than likely three and a half to five years or even longer for those products to take-- to come to market. As a, as a small distillery, we would call ourselves, maybe not in the realm of the microdistilleries that are in Nebraska, but I think you can look at it and see we're in our infancy. Our investment into, into this category is, it seems very small, but we put three barrels a week into, into, into production. That's what we put away. That amounts to about-- to somewhere around \$4,500 to \$5,000 a week in investment that we're hoping will, will work and that those products can come to market 3 to 5 years down the road. Some of the other things that I'd note on that you may hear later, I know several of you have had these discussions before. In regards to tax payments on, on these products, the distilleries, as well as, as wineries and breweries, if you manufacture it in Nebraska, the manufacturer pays those taxes. We're, we're-- there's no-- should be no tax issue, no tax concern on collection. We're very well-versed in that and, and do that already. So the other thing that I would add is on the winery side, we're looking for a playing-- for kind of evening the playing

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

field across. And one of the things that wineries are allowed to do, as well as breweries, they are allowed to do some level of distribution. But one of the things that I would tell you on the, on the distillery side, is we use a high percentage and in a lot of our products, 100 percent of the products that go into the product we make, that we distill are products grown and raised right here in Nebraska: corn, wheat and rye. Those are the main products that we use and those are all distilled in, in our final product. So with that, I'd be happy to take any questions.

LOWE: Thank you, Mr. Fox. Senator Holdcroft.

HOLDCROFT: So you mentioned taxes--

BARRY FOX: Yes, sir.

HOLDCROFT: So the current system, we have supplier, distributor, retailer, customer. And now we're going to go supplier to customer. And the supplier, the manufacturer, you said paid the taxes, but are there additional taxes paid by the distributor or the retailer that the state of Nebraska would miss out on?

BARRY FOX: No, no. So all of the excise taxes are paid at the, at the producer level. So all of those excise taxes are paid there. So any of the-- and we would go, we would go from wholesaler to retailer to, to then, to the consumer, so-- unless the consumer's coming to one of our direct locations.

HOLDCROFT: Thank you.

BARRY FOX: You bet.

LOWE: Thank you, Senator Holdcroft. Any other questions?

BARRY FOX: Thank you for your time.

LOWE: Thank you.

VANESSA SILKE: Good afternoon, members of the committee. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and registered lobbyist for Sideshow and for Brickway. You heard from both of those owners, three of the owners of those businesses here. First, I want to thank Senator Murman and his staff, Blake, for working with us and for Ryan Hanzlick at Long Dogs Distilling in his own district. Very different paths and business models among just those three distillers out of the dozen or so that have licenses in Nebraska.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

That's one thing I really want to emphasize. In all the years that I've been practicing in alcohol law, Nebraska is unique in that our licenses provide this bandwidth for people to figure out what business model works well for them. That's why when you see 70 craft breweries, when I first started working in this, there were less than a dozen. And because of changes in the law, that's how that industry was able to grow. And that's why you see craft brewers take on a distillery license or in some cases, a farm winery license and looking for those same or similar changes in their license statutes for farm wineries and distilleries to make sure that they still have that bandwidth and that pathway forward. You also heard a comment from Mr. Triemert at Brickway about, well, you're not going to use this. You know what-- why, why are you up here lobbying for everybody else? And that's really something unique in Nebraska in working with the Nebraska Craft Brewers Guild, with the farm wineries, working with distilleries now in the last few years, all of them share this goal of making sure the law allows them a playing field to move forward, to compete, and to have access to the retail market. They don't undercut each other. They certainly have competition, but they're not going to come here and ask you to shut another person down for their benefit. It's just not how we've grown this industry. So we're asking for you to do that again. I also want to thank Senator Lowe. This morning, you testified in favor of retail licenses for farm wineries and part of what you said was looking at those license rates across different types of statutes. Similar concept that we're asking for here. To do a little bit of math, 5,000 gallons. We had some math reference earlier. One other reference point: 250 barrels is the current cap for self-distribution under the craft beer license. Converted to gallons, that's about 7,000 gallons, so we're actually looking for a little bit less by total volume. It's also a number that when I talk to business owners, one key thing is what's a number that you could grow into over a number of years, that we're not coming back every single year for an incremental increase? And \$5,000 was that settled on, negotiated number. So with that, I am happy to answer any questions that you may have and thank you for your time.

LOWE: Thank you, Ms. Silke. Are there questions? Seeing none.

VANESSA SILKE: Thank you.

LOWE: Are there any proponents? Welcome back.

PAUL OETTINGER: Hello. Thank you, Commissioner-- Senator Lowe and other senators of the committee, I come as a proponent of this bill, not--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: Can you please state your name and spell it?

PAUL OETTINGER: Oh, sorry. Yes, Paul Oettinger, P-a-u-l O-e-t-t-i-n-g-e-r. I hold a retail liquor license at our brewery and there's nothing better than having someone who manufactures the product come and service your account because you can get varieties of product that you cannot get, sometimes, at the wholesale level. There are things called allocations, for example, where you request a brand and it's very high in demand and it's very hard to get. So there are certain products you're not able to sell. Working right with the producer directly allows you to hopefully develop that relationship where when they come out with that five-year, ten-year product that Kinkaider is investing in, for example-- sorry, Sideshow Spirits-- you're able to get that product and, and not have it get lost in the marketplace. So I think it's great that they should have the same rights to self-distribute as wineries and craft breweries. And I ask you to pass this bill onto the Legislature for a full vote.

LOWE: Thank you, Mr. Oettinger. Any questions? Seeing none, thank you.

PAUL OETTINGER: Thank you.

LOWE: Any other proponents? Seeing none, opponents?

JUSTIN BRADY: Chairman Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers in opposition of LB452. I'm going to take a step back and give a little premise. So back to Senator Holdcroft, you had talked about you've got the three tiers, you got the manufacturer, the wholesaler, the retailer, and yes-- in essence, a fourth tier, the customer. I mean, the premise that all liquor laws or at least the most of them you're going to have in front of your committee, I look at it-- come around is any rights you grant to one person in-state, you have to have a vested ins-- or vested state interest to not let an out-of-state person do it. So to take, for example, go back to the previous bill where you had Anheuser-Busch sitting here. If you start allowing the distillers or manufacturers to directly sell to customers, at what point will the out-of-state person go to court and say, we too, want that right and bypass the wholesaler. Now, where that tipping point is, I don't know. Obviously, in this bill, they put in a 51 percent threshold that says 51 percent of the product would have to come from Nebraska. That's them trying to get to that in-state interests . I could probably make the argument that Anheuser-Busch could say 51 percent of the corn for certain batches of beer comes from Nebraska. I mean, there are games

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

that can be played. And so when we approach it, it isn't that we're here saying these microdistillers or the craft brewers are bad business people or we shouldn't expand--help them expand. It's we start with that premise of what do we do to help them but not let the big boys and girls in, for lack of a better term. So with that, over the past few years we have done and this committee and this Legislature and the Governor has passed to expand opportunities for microdistillers. In 2021, they used to have a cap of 10,000 gallons. That went to 100,000 gallons to help them grow. In 2022, they came to this committee and then was passed to allow them to have, instead of one tasting room where they made it, they now could have five across the state. They also are allowed to go out and use catering licenses, SDLs. There's the promotional farmers market licenses that they all have access to to promote their product. You heard, we want to go out and market and give a path for our products to the market. Those are all available to them across the state and so it's going from that to jumping to, OK, we want to do self-distribution. And there's more to this bill than saying just like craft brewers. Craft brewers are limited to five locations. This bill would take microdistillers, too. They get to own ten locations. Craft brewers are limited to 1.25 percent of their production can be self distributed. This bill asks for 5 percent. So the premise may be the same, but what-- the craft beer one took about two, three year negotiation between the commission, the manufacturers, the wholesalers and the retailers to come up with what works in that. In this case, it was just a bill dropped and that discussion hasn't happened from the wholesale tier. I could go on, but I see my red light's on, so I'll stop, Senator, and see if there are any questions.

LOWE: Thank you, Mr. Brady. Are there any questions? Senator Hughes.

HUGHES: So I'm new to all this. So we-- craft brewers can do some of their own self-distribution. Did you oppose that at the time?

JUSTIN BRADY: Initially, yes.

HUGHES: But, but changed when you worked together to come with a percent amount and--

JUSTIN BRADY: Percent amount and then I'd also say one of the key pieces that went into the craft deal is also in here partly is it says that the craft brewers must use their own employees and trucks to deliver that. This bill says that, but with the amendment goes on to say, you can use a common carrier, i.e. you can dropship by UPS, FedEx or the Postal Service from your location to anywhere in the state.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

That's what common carry is. So, I mean, that piece is not in the craft deal. So, I mean, it's pieces like that that I-- that need to be addressed.

HUGHES: And then wineries can also do this to a certain extent? Yes?

JUSTIN BRADY: Yes, because they, too, also had, at the time and still do have, that threshold of a majority of their product come from Nebraska. And I will say a couple of years ago, it used to be a higher threshold and a couple of years ago there was a bill passed because they asked to have that threshold lowered to 51 percent. That-- they wanted to use more products from out of the state than in the state.

HUGHES: So, I mean, it seems to me that we want to be-- we don't want to pick winners and losers. Right. We want to be fair to all similar type of industry. And so that's-- sounds like what we're trying to accomplish with distilleries versus breweries versus--

JUSTIN BRADY: Um-hum.

HUGHES: --and just to try to get that on the same playing field, if you will, so OK. Thanks. Thanks for the clarification.

LOWE: Thank you. Are there any other questions? Long Dog's Aaron Hensley said he was looking for a distributor and no one has contacted him yet. Do you know why that might be the case or?

JUSTIN BRADY: I don't. But I guess, you know and I don't mean to come across as being a smart aleck, Senator. The phone does go two ways. The fact he hasn't heard from anybody does Care says he contacted has he picked up the phone and gone the other way and asked said hey, this you know I mean, I'm not going to hide it. I mean, my wholesalers that I represent are in business to make money. I mean, if there are products out there, whether that's, you know, local products, national products or international products, they want to sell it if there's, if there's a business opportunity. So this idea that there has to be butting heads between wholesalers and whether it's distillers or craft brewers, I've never understood, because if the market-- if there is a product people want, there are distribution channels, whether it's through the liquor wholesalers or the beer wholesalers, to get it to the people. So-- and maybe they just don't-- aren't-- know about it. They are-- I mean, it's not like their, their market shares-- I should back up. Beer wholesalers have territories. Liquor and wine wholesalers are licensed for the whole state and so it is a larger territory that they're covering. And I'm not just picking up products

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

from in the state, but from South Dakota, Missouri all over and so it could just be an unknown that they're unknown. And I've, I've-- in other cases when they've had issues like this, they'd put one in touch with it. Whether it would end up being somebody I represent or somebody Joe represents, eventually someone says, hey, if there's a market for it, we want to help you market it.

LOWE: All right. Thank you. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe. Thank you, Mr. Brady, for being here. First, I wanted to ask you about the common carrier part. Is that in the amendment?

JUSTIN BRADY: That's in the amendment, yes.

J. CAVANAUGH: OK. I was going to say, because I'm looking at the other one here and it looks pretty similar about the sole employees and, and the nonamended section has a lower amount, as well.

JUSTIN BRADY: Correct. It'll be closer, closer will be about--at 2 percent as opposed to 1.25.

J. CAVANAUGH: Are there any other substantive differences that you kind of, point-- criticisms you pointed out that are--

JUSTIN BRADY: I would say the-- again, in the amendment, they authorized the availability of offsite storage of their product, which again, from our-- from the wholesaler's experience with that, we have that right or ability to go to the commission and store offsite. And that's to help with the statewide distribution. I mean, that's the hey, if we need to have-- move some product from Omaha to a storage facility in Grand Island, Kearney, North Platte-- so to me, asking for offsite storage is also setting that up for wanting to truly do it all across the state. And so that would be another concern of it.

J. CAVANAUGH: And you pointed out that liquor distributors already have ten taprooms or whatever-- tasting rooms, whatever you want to call it and, and microbrews only have five. You know, we've got-- the next bill up, I think, is to go from. 5 to 10 for the breweries.

JUSTIN BRADY: Currently, distiller-- microdistillers have five.

J. CAVANAUGH: OK.

JUSTIN BRADY: This bill would move it to ten.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Not this one.

JUSTIN BRADY: Not-- that's the next one. OK.

J. CAVANAUGH: OK.

JUSTIN BRADY: Sorry.

J. CAVANAUGH: I'm just trying to-- yeah. So they're at five.

JUSTIN BRADY: Um-hum.

J. CAVANAUGH: And so the next bill is the one we're talking about.

JUSTIN BRADY: Right.

J. CAVANAUGH: OK. I'm, I'm sort of with you, I think. Maybe we're both confused.

JUSTIN BRADY: Probably. You know, the other thing I thought I could mention, more to Senator Holdcroft's question, for microdistillers in the state, yes, the producer pays the tax. For the wholesaler, so say you take something not produced in the state like, pick on something, Jack Daniels. When that product hits the docks at the wholesaler in Nebraska, that's then when the wholesaler is responsible for that. So it depends on what-- which way you're coming, whether or not it's being paid by the producer or paid at the wholesaler level.

J. CAVANAUGH: Thank you.

JUSTIN BRADY: Um-hum.

LOWE: All right. Thank you, Mr. Brady. Seeing no other questions.

JUSTIN BRADY: Thank you.

LOWE: Other opponents.

RICH OTTO: Thank you, Chairman Lowe and members of the General Affairs Committee, my name is Rich Otto, R-i-c-h O-t-t-o. I'm here on behalf of the Nebraska Grocery Industry Association, testifying in opposition to LB452. Also, we will be opposed to LB512, which is the one that, I think, Senator Cavanaugh was mentioning from the 5 to 10, both of the oppositional based on a lot of the same scenarios and reasons. In Nebraska, the three-tiered system, which alcohol is distributed by, is not perfect. But grocers and other alcohol retailers do appreciate the work that the Liquor Control Commission continues to do, working with

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

all impacted industries, including retailers, to make compliance very straightforward. While our association very much supports efforts to help grow Nebraska businesses and we do want-- do not want to stand in the way of growth, our retail and wholesale members are concerned about further changes to the existing system, which in almost every instance will create new or more work for the retailer and put them at a competitive disadvantage. We understand carving out room in law for small operators, which is why we did not oppose the self-distribution of beer passed by the Legislature and also the increase from 2 to 5 for beer and microdistillers. But with the current climate, we are often overwhelmed with the number of manufacturers, suppliers and distrib-- distribution deliveries. To some extent, the three-tier system reduces the number of deliveries which a retailer may receive and means less staff time, less paperwork, easier compliance. The retailer may even rely on the distributor's labor to help stock shelves. This is not to say proponents of these bills are off base. We know local and microproducts are in high demand and currently a win-win if grocers can figure out how to get them in their stores. We'd gladly work with Senator Murman, Senator Brewer on the increase the other bill to find a way to move forward with some of these. But it is continually putting more pressure on our grocers to get inundated with more and more people and businesses wanting our shelving space and the calls and the deliveries associated with those. Happy to answer any questions.

LOWE: All right. Thank you, Mr. Otto. Are there any questions? Senator Hughes.

HUGHES: I just want to clarify-- you're saying from a grocers standpoint, they just want to deal with one person on the alcohol side or whatever.

RICH OTTO: Yeah.

HUGHES: They don't want a distiller that, maybe, is producing something in their own hometown, coming in and bringing their stuff.

RICH OTTO: Currently, we find that would be a simpler process for our shelf space. As Mr. Brady basically said, there's kind of three for alcohol across the state and it does simplify that. Now we're open to this. Craft beer got very popular. We had a lot of demand. They got self-distribut-- distribution in the farm wineries. Now, most of the beer we still carry is through distributors. We are open to the-- you know, when customers favor one to, to bring that in--

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: [INAUDIBLE]

RICH OTTO: --but it is significant when we have to restock shelves, move things around, reallocate space. It all--

HUGHES: But couldn' t you just say no? I mean, if they--

RICH OTTO: It does, but we're still inundated with the calls, emails of-- I mean, until that gets to a no and a lot of times, it still takes significant labor costs from our people.

HUGHES: All right.

LOWE: Thanks, Vice-Chair. Any other questions? Seeing none, thank you, Mr. Otto. Just letting you know, we will take a ten-minute break after this bill is over with for everybody's convenience. Are there any other in opposition?

CHRIS WAGNER: Chris Wagner, C-h-r-i-s W-a-g-n-e-r, Project Extra Mile. Apologies. I think I've gone through your entire stack of green sheets over there, so sorry about that. No, seriously, I, I just kind of wanted to say that what-- look, we're-- Project Extra Mile, we're not prohibitionists, OK? We're really just focused on that excessive alcohol consumption, that underage binge, heavy drinking and drinking by pregnant women and we're trying to, you know, convince you all to follow the strategies that will work in reducing those. Now, one of the things that's out there that is really helpful is the three-tier system. The, the primary ways that it helps is that it, it protects the state in making sure that it gets the tax collection that, that it's due. But it also serves a public health role in that it keeps, you know, tainted products from reaching the marketplace. So it does protect public health. Earlier in the day, Senator Day asked another testifier why we have so many problems associated with alcohol in our state. And I just want to take this opportunity to say that it's, it's bills like this one and, and other ones that you've heard today. While on their face, they seem innocuous. They seem like it would just be a little, minor correction; they seem like common sense. But it's the fact that there are so many of those that come every year and it's just the chipping away at the regulatory system, the three-tier system that's in place to protect Nebraskans from, from the harm-- harms of excessive alcohol consumption. In these bills-- and I would also say that, you know, when Senator Lowe, when you introduced one of your bills today, you mentioned all of the bills that had been introduced over your tenure to kind of help the craft wineries. And, and that's kind of what we're seeing and, and this one is kind of like, well, we

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

just want to be like the craft brewers. Well, that's the problem is that the goalposts keep moving and we're, we're never going to reach parity, right? So we're going to continue to deregulate a product that can do a lot of harm when consumed in excess. So that's really what our focus is on. And, and so, so bottom line, we'd ask you to continue to support the three-tier system. Businesses are going to argue they-- and they have come up and they've said this is, this is a big deal for me in my business. They're talking to you about their bottom line. We're, we're trying to tell you that there's another side to this story. There-- we're talking about saving people's lives and, and, you know, innocent bystanders that don't even drink that are, that are being killed in our state every year and, and, and eight-month old babies, in the case of the Omaha area in recent months. Now I'm not saying this bill is, is going to lead to that, but I'm saying it's one in a series of bills that, that will lead us to the place where we are today. So I would ask you to oppose the bill.

LOWE: Thank you, Mr. Wagner.

CHRIS WAGNER: Yeah.

LOWE: Are there any questions? Senator Holdcroft.

HOLDCROFT: Yes. You mentioned that the three-tier system guarantees that the state gets this tax. Do-- what, what taxes do we lose by going [INAUDIBLE]?

CHRIS WAGNER: Well, when you have you know, when you have a producer that, that produces, distributes and, you know, sells at their own location, they're, they're responsible for that tax collection. They, they pay the taxes. They're on their own. Whereas with the wholesale tier, they're, they're the ones that are, are collecting those taxes, so you have some checks and balances within that three-tier system that serve to protect, you know, taxpayers and public health.

HOLDCROFT: I'm not sure I believe that, but OK.

LOWE: Thank you, Senator Holdcroft. Senator-- Vice Chair Hughes.

HUGHES: This is-- I just want clarification. To me, this is more a matter of which alcohol people are drinking, not that we're going to drink more alcohol because a local distillery has their product on the shelf brought by them. I mean, do you feel like having them do it themselves-- it, it kind of-- like you're alluding that people are drinking more, then, because of it, but I guess I'm not seeing that connection.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

CHRIS WAGNER: So what I-- and it--maybe this is the best-- not the best bill, but it's hard to, it's hard to cover all the bases when you've only got 3 minutes and you don't get questions asked on the other one. So, sorry, I didn't have any scripted testimony on this. I just thought this was an opportunity to say, this, this is an example of a bill that, when combined with all the bills that we've seen over decades in Nebraska, that, you know, kind of, erode those place-- those measures that are in place to protect taxpayers and, you know, the public, you know, that's, that's how we get to where we are. And so, I don't, I don't want to miss--

HUGHES: No, I just got-- I just want to--

CHRIS WAGNER: --mislead you that this--

HUGHES: Right.

CHRIS WAGNER: --this bill is going to result in extreme harms. I'm just saying this is an example of one that contributes.

LOWE: Any other questions? Seeing none, thank you, Mr. Wagner.

CHRIS WAGNER: Thanks.

LOWE: We now have the amendment in front of us. So-- others in opposition? Others in opposition? Seeing none, those in the neutral.

HOBERT RUPE: Good afternoon. [INAUDIBLE] now. Once again, senators, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I'm the executive director of the Nebraska Liquor Control Commission and we're very neutral on this position. In our legislative letter, we, sort of, brought the issue up that there maybe needed to be some, some limited self-distribution for the class Z, the microdistilleries, just to have it even across the board. Our concern was, with the original bill, was it seemed that there was a, a provision in there regarding-- there had to be a certain amount of Nebraska-produced products, which would have been a interesting conundrum for us to try to track that-- those inputs. I mean, it's hard enough for us to track the outputs, tracking the inputs gets even more problematic with my staff [INAUDIBLE] levels. And then, the amount. You know, it's funny when you talk about alcohol, you know, because people will start throwing out gallons, barrels, what are we talking about? OK. So you heard 250 barrels is what would this committee and the Legislature approved for self-distribution with craft breweries last year. All right. So yeah, that'd be about 7,500 gallons. But really-- and so, therefore, it would be less than the 5,000 gallons, I believe the amendment's asking

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

for 5,000. The original bill was 2,000. But really, it's a lot more because if you look at the, sort of, the drink equivalency, basically, a 12-ounce beer versus an ounce a half of product, it's about a thousand gallons equals 250 barrels, not 5,000 barrels. That's 5,000 gallons. The other thing that was concerning us is, that 5,000 gallons as proposed in the amendment is higher than every product-- than all the production of the craft distilleries except for three of them. So it's not a part of their production to get market share, to try to market, try to market their brand, it's most of their-- a lot of it's their entire production facility. So I think if you're looking for sort of a balancing between the, the tiers, I think you've got to make sure you look at the numbers, make sure the numbers are actually where you're at, where you think you're, you're, you're looking at. Conceptually, we think that a limited self-distribution for the Class Zs may be needed. You know, one of the problems that they're having is as a-- once again, it's, it's problematic when you, you start comparing things. Whereas everybody sees that there's a beer wholesaler in almost every part of the state, the liquor houses are all confined, confined to Omaha. And so, sometimes if you're-- especially if you're from a rural part of the state, you might not be getting the support or it's a great distance to deal with those houses. I'm not saying that it's bad, it's just the way the market's developed. There's not territory for them. They've got the whole state. So the-- conceptually, we're not opposed to it, but we just think the-- we have concerns regarding that if there are-- is an input, prior-- priority thing, that we need to really look at that and then also the amount probably needs to be looked at. So with that, I'd be happy to answer any technical questions.

LOWE: Senator Raybould.

RAYBOULD: Yes. I'm interested-- do you think it's more appropriate to stick to the original gallonage listed and would that give more craft breweries an opportunity?

HOBERT RUPE: Or the craft distilleries? You know, the, the, the 2,000 is still more than the 250 for the current for the beer. And I believe there may be a bill, I believe, coming up later in the session where you're going to be asked to look at that. And so I think you should probably have to look at those conceptually. So what, what is the purpose of self-distribution? The purpose of self-distribution is to help smaller retailer-- or smaller producers get some market shares so maybe a wholesaler will pick them up or is it to evade and to go around the wholesale tier? So I think that's where you had to look at. So 2,000 is better than 5,000, because this, this is not-- I just

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

really have, have the numbers. Of course, you know, at this point, we're just getting the annual numbers in because it's January so we're just finally getting the December numbers, production numbers in. But the, the 5,000 was, I think there were-- my, my guess, there were three distillers who made more than that. All the other ones who'd report made less than that. So, so 2,000 is better than 5,000, but I'm not sure that's the [INAUDIBLE] number. As I said, if you're looking to make it equal to the beer, a thousand gallons. If you're looking at a price as a, as a per drink unit, equals about the 250 barrels. So it's a rough quote.

LOWE: Yes.

RAYBOULD: And do you how-- know how many microdistilleries actually work with our-- the distributors in the state of Nebraska?

HOBERT RUPE: I'm not sure. Most of them who are-- if you're seeing any of them on the shelf space, they all have to, because right now they're all having to go through the wholesale tier. You've got a lot of smaller distrib-- dis-- distilleries who've just opened up and one of the problems-- not problems. One of the issues that, that they have to deal with, and as you heard one of the proponents state, is a lot of times it's longer to date, get your product to market than it is, say, for a beer, especially if you're looking for any of the aged spirits, any of the brown liquors, are going to take longer. That's one reason why almost always when you see a brand new distillery coming out, they're going to be offering some vodka of some sort because vodka can be readily produced and be out quickly. Whereas if you're looking for any, any of the whiskeys, you're, you're looking at, at a longer production cycle.

LOWE: Thank you, Senator Raybould. Any other questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman, and thank you again for being here, Mr. Rupe. So looking at the amendment, it doesn't have any of that, that 51 percent restriction in there. So is there a mechanism under which this, this addresses that issue that Mr. Brady brought up about the big out-of-state guys being able to do this? How is that addressed?

HOBERT RUPE: What, what Mr. Brady brought up is always a concern. You know, one of the biggest issues over the last 20 years in federal litigation on liquor has always been, are you doing something for a state entity that-- and I'll say entity can't do? You know, that goes,

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

you know, because, you know, because you bring in the dormant commerce clause gets brought into it. It is not a fun, fun thing to go down. Generally, you know, if you're doing production here, if, if Jim Beam wishes to open up a big distillery plant in Nebraska, maybe we'll have to give them some distribution agreements as well. You know, I'm pretty sure whatever community they decide to locate in would be happy for the big jobs. So I'm not sure where-- as Justin's right, you never know when somebody is going to go off on a lawsuit on this one here. Unfortunately, you see more litigation than even when it's probably rational because, of course, under the federal-- you go federal and you've got-- if you throw in a 1983 action and then you're looking at getting attorney's fees out of it and so some people make a cottage industry. There's a quasi-retired professor from the Law School of Indiana who made--has made a cottage industry of suing states, primarily just to get the, the attorneys fees, like in the hundreds of thousands of dollars.

LOWE: Thank you. Any other questions? Vice Chair Hughes.

HUGHES: I'm sorry. Yeah. So if there's-- if somebody is breaking the law or whatever and they are from out of state, can we-- can our-- because it's police that enforce this?

HOBERT RUPE: Yeah.

HUGHES: I mean, you do licensures and things like that, but.

HOBERT RUPE: We, we have police powers as well. Our division signed there's a division of the Nebraska State Patrol assigned to the commission--

HUGHES: OK.

HOBERT RUPE: --for enforcement. And there are parts of the act which are primarily just regulatory, where they can be suspended, canceled, revoked. There are also some criminal provisions, provisions. You know, bootlegging is real and it can be charged if you bring more than nine liters in in your car, you know, so they-- you be charged with that. It's a Class III misdemeanor, so it's not a big criminal act, but it's a criminal act. The more important part of it's a producer, you know, almost all your out-of-state producers have shipping licenses which allow them to ship into it. And so, if they're shipping outside that tier, we can sus-- suspend, cancel or revoke that liquor license. And they would lose aspect in the Nebraska market. Also, TTB gets really interested if producers' licenses start being revoked by

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

states because then they think they need to do something and they drop big, big hammers on them.

HUGHES: Do you feel like you have more power over in-state people versus out, or?

HOBERT RUPE: Yes. Oh, yes. In-state people, you know, you-- you know, they're, they're easier to get to where you touch out. I've got Mr. Davis, who's been back there sitting with me as my primary auditor on those. And so he visits all these in-state producers, hopefully not as often as we would like, but very frequently, to audit them, to make sure that they get the appropriate tax and all regulations are being followed. So, yes, do I have more control over in-state producers? By far.

HUGHES: OK. Thank you.

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

HOBERT RUPE: Thank you.

LOWE: Are there any more in the neutral? Any more in the neutral? Senator Murman, you're welcome to close.

MURMAN: Yes, Almost everyone wants to support small business and almost everyone wants to buy local. Almost everyone wants to market in Nebraska. And this is a bill that will enhance all of those things. It's been mentioned many times, farm wineries and craft breweries each have self-distribution rights and we're only seeking a limited right. And one thing wasn't brought up too much, probably, is that wholesalers do not always want to take on a small microdistillery. So this, this does allow for that for the microdistilleries to, to self-distribute a little bit. One thing, I think there was some confusion about the ten locations. That is in LB512. It's actually, isn't in this bill. And I think many, probably almost all local grocers really want to support their hometown also and their, their trade area. So they will probably go a little bit out of their way to market something and, and stock something on their shelves that's local. And then I just want to finish by emphasizing microdistillers do have "untapped" potential in Nebraska and we need to amend the microdistillery license to allow for the growth. Thank you very much.

LOWE: Thank you, Senator Murman, and keep your day job. [LAUGHTER]. Are there any questions for Senator Murman? Thank you very much.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

MURMAN: Thank you.

LOWE: There was one letter that was a proponent and one online proponent for LB452. We will now take a 15-minute break. Everyone, please be back at 3:40 and we will continue.

[BREAK]

LOWE: All right, let's get back under control here. All right. We are now going to start the hearing for LB512. Senator Brewer is not here today, so his legislative aide, Tony Baker, will be introducing the bill for him. Committee, we normally do not ask the aides a question and they will waive closing. So, Colonel Baker, would you like to tap into your testimony?

TONY BAKER: What's going on? I'm still going to use that word later. Thank you, Chairman Lowe, and good afternoon, senators of the General Affairs Committee. I am Tony Baker. That spelled T-o-n-y B-a-k-e-r, and I am Senator Brewer's legislative aide. He sends his regrets from the doctor's office. He had a medical procedure today. I'm here to introduce LB512. The purpose of this bill is to increase the amount of craft brewery and microdistillery licenses from five up to ten separate physical locations that may be described in each license. So this is a bill you've been hearing about all day. I introduced-- Senator Brewer introduced LB512 at the request of Kinkaider Brewing Company. Their original location is in Broken Bow, and after redistricting Custer County became one of Senator Brewer's counties in his district. And so we're running this bill on behalf of a constituent. This bill is very simple. It changes the word "five" to the word "ten." Today, Kinkaider has maxed out their statutory right to five satellite locations under their craft brewery license, and they intend to do the same with their microdistillery, Sideshow Spirits. If LB512 passes, Kinkaider will immediately pursue additional locations throughout the state. Testifiers will follow me who currently hold craft brewery and microdistillery licenses. And there will be an attorney-lobbyist who'll answer specific questions the committee may have about the bill. So subject to your questions, I am tapped out, Chairman Lowe.

LOWE: Thank you, Colonel Brewer.

_____ : Senator Murman [INAUDIBLE]

LOWE: You're already waiving closing?

TONY BAKER: I am waiving closing.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: All right. No questions so thank you very much. And give Colonel Brewer our best.

TONY BAKER: I will.

LOWE: Senator Ebke.

LAURA EBKE: Chairman Lowe, members of the General Affairs Committee, my name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm a senior fellow at the Platte Institute, which is a free market think tank here in Nebraska. I'm here to testify in favor of LB512, which was introduced by Senator Brewer. And I want to thank Colonel Baker for tapping in. This bill makes a relatively minor change to licensing provisions for microbreweries and microdistilleries here in Nebraska. It changes the number of retail locations that can be put on the license from five separate physical locations to ten. Of course, we know that all of these additional locations will be here in the state. Those who have followed the trajectory of these craft breweries and small distilleries know that while they are popular throughout the state, they have become destination locations in many of our rural areas. They bring people and businesses to their communities and they provide jobs. Giving these established businesses the opportunity to open up new markets for their product is good for business and it spurs economic activity. It's also good for our local communities and for our state. So with that, we encourage your advancement of LB512 to General File and we'll tap out.

LOWE: Thank you, Ms. Ebke. Are there any questions? Senator Raybould.

RAYBOULD: Hi, Senator Ebke. Good to see you again. So I have a question for you. So if they increase it up to ten retail locations, will that take them over the 250 barrels per calendar year limit?

LAURA EBKE: Might. Well, I don't know if there's a limit. My understanding is it's just-- this just deals with where they can have their retail locations so they can open up a satellite facility. So if they have a taproom in one place, it moves-- that they can use under the same license. Somebody else might be better qualified to answer that other question.

RAYBOULD: So yeah, it just says "A holder of a craft brewery license may directly sell for resale."

LAURA EBKE: For resale. That would be a retail. That would-- that would be if they were selling it to, to a retailer of some sort rather than in their business.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

RAYBOULD: So when you say they can still be a craft brewery if they increase from five of their retail locations.

LAURA EBKE: Five of their own retail--

RAYBOULD: Their own retail.

LAURA EBKE: to, to ten, yes, to ten retail locations so they can have new, new taprooms, new whatever they want to call them.

RAYBOULD: OK. All right. Thank you.

LOWE: Thank you very much, Senator Raybould. Any other questions? Seeing none,--

LAURA EBKE: Thank you very much.

LOWE: --thank you.

CODY SCHMICK: Thank you, Chairman Lowe and the General Affairs Committee, for hearing us out today. My name is Cody Schmick, C-o-d-y S-c-h-m-i-c-k. Hopefully this will be the last time that you hear from me today, but I am here today as a proponent of LB512. Thank you to Senator Brewer for bringing it to the committee. I'm with Kinkaidier Brewing and Sideshow Spirits. LB512 is a very simple change in legislation that allows craft brewers and distillers the chance to expand their reach by opening and distributing to five additional licenses within the state. We get at least one to two calls a week wanting us to put, just our company, wanting us to put a taproom in different communities throughout the state. If we were able to do this, we will add from 30 to 50 jobs. These, just so you guys know, these have to be owned 100 percent the same. So I can't give a percent to Senator Hardin, he opens a bar, and then we self-distribute. To answer your question too, Senator Raybould, the, the 250-barrel limit does not count in this provision. This is completely separate from that. And that's only going to retailers and, or sorry, distributors. Because of the five-license provision, we have seen other brewers such as Kros Strain, Infusion, Zipline, Empyrean, and more expand into new taprooms and new cities and new neighborhoods. It has created jobs and community hubs where people can join together and have a beer or a cocktail. Our group, Kinkaidier Brewing, has maxed out the five licenses in Broken Bow, Grand Island, Lincoln, and Omaha. And we are before you today to ask that we jump that number to ten so that we can have the chance to continue growing our business with a plan that fits us and other breweries, distilleries best by opening additional locations fully owned and operated by us, the brewer and distiller. If

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

this bill passes, we, Kinkaidler Brewing, Sideshow Spirits, are looking and ready to expand in communities across Nebraska. We love handing our beer we made to our customers in our taprooms. Nothing is more rewarding. We get to see that from grain to glass all the way through. We get to tell the stories and we get to build the relationships and build our communities. We are ready to make this large investment in these communities, but are currently capped in the business model by legislation. We ask for your support of LB512 and help breweries and distilleries continue to grow across the state of Nebraska. I'd be glad to answer any questions. Thank you for listening.

LOWE: Thank you very much. Senator Holdcroft.

HOLDCROFT: There's something-- besides a tap, what else comes with the taproom?

CODY SCHMICK: So in our taprooms, we have a few different models. Some are restaurant based so our one in Grand Island and our one in Broken Bow are restaurant. So we have a restaurant. We actually do have a full retail license or a, a, a full license there as well, so I can buy outside products. But our products we can take directly to without going through a wholesaler. We still buy a lot of products through a wholesaler for those locations, but, but our products get to go from license to license without a distributor.

HOLDCROFT: OK.

CODY SCHMICK: Question.

LOWE: Thank you. Senator Cavanaugh.

J. CAVANAUGH: Thank you, Mr. Chairman. Thanks again for being here. So you guys only open up in the finest communities. Just, just for the record, where are the five places where you have [INAUDIBLE]?

CODY SCHMICK: Yeah. So we're in-- our main location is in Broken Bow. We have a restaurant in Grand Island. We have actually three locations in Lincoln, different concepts. And then we have one in Aksarben Village in Omaha,

J. CAVANAUGH: Which would be in District 9.

CODY SCHMICK: There we go. It's a great spot. It's a great spot. We've been there a year.

J. CAVANAUGH: Only the finest communities.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

CODY SCHMICK: We'd like to do more. We'd like to do more, no question.

LOWE: Thank you, Senator Cavanaugh. Vice Chair Hughes.

HUGHES: Mine is a quick question. Are there other distilleries because you guys are maxed out?

CODY SCHMICK: Yes.

HUGHES: Are there-- who is the next biggest distillery that has multiple locations?

CODY SCHMICK: Zipline would be-- the next big brewery would be Zipline. Distilleries--

HUGHES: [INAUDIBLE]

CODY SCHMICK: Right. Distillery, this would be for both. We aligned distillery last session with breweries. Zipline has three, I'm sorry, four that they are in right now, but there's several that have two and three as well. So it is a model that seems to be working.

HUGHES: Thank you.

LOWE: Thank you very much, Vice Chair Hughes. Any other questions? You have five now.

CODY SCHMICK: Yes, sir.

LOWE: You're asking for ten.

CODY SCHMICK: Yes, sir.

LOWE: And you're getting one to two requests a week.

CODY SCHMICK: Yes.

LOWE: Are you going to be coming back next year for 20?

CODY SCHMICK: So for us, I honestly believe, Senator Lowe, if this would get pushed through, we're very patient with where we go. And it's worked out so far. I would say very, very quickly for us would be one a year. You probably won't see me for at least five or six years.

LOWE: All right. Thank you very much.

CODY SCHMICK: Yes, sir.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LOWE: Any other questions? Seeing none, thank you.

CODY SCHMICK: Thank you.

ZAC TRIEMERT: Good afternoon, Chairman Lowe and senators of the General Affairs Committee. My name again is Zac Triemert, president of Brickway BreweryDistillery. I'm here today to speak in support of LB512.

LOWE: Zac, will you please spell your name?

ZAC TRIEMERT: Yes. Zac Triemert, Z-a-c T-r-i-e-m-e-r-t. Amateur mistake. All right. I'm here today to speak in support of LB512 which will allow brewery and distillery licensees to establish up to ten satellite locations. I love Brickway's taproom, the warmth of our space, the guests that come in to enjoy what we do, and I'm proud of my team. But I don't want another one to manage. Our core competency is producing high-quality beverage that fill the distribution and retail pipeline. We are, however, aware that other brewery distillery operations have embraced running bars and restaurants and that has become the core of their business model. I don't believe that an arbitrary number within the law today of five locations should prevent local Nebraska businesses from growing. Using Kincaider as an example, they have generated over five times more jobs than Brickway has because they have a different focus on their business model. In closing, LB512 would benefit local beer and spirits companies that use their hard work and core competencies to keep adding Nebraska jobs and all the increased taxes that go along with that. I thank you for your time and I'm happy to answer any questions.

LOWE: Thank you very much. Are there any questions? Seeing none, it's great that Nebraska businesses work together.

ZAC TRIEMERT: Thank you.

VANESSA SILKE: Hello again. My name is Vanessa Silke, V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney and lobbyist for Kincaider Sideshow, who has specifically asked Senator Brewer-- I want to thank Senator Brewer and Tony for their assistance in bringing this bill. I have been involved long enough that I actually helped draft the original license provisions as they are in law right now for microdistilleries and for craft breweries. The craft beer license statute was the model for-- much of that language is similar. When we negotiated the craft beer stature-- statute, one big thing that we all compromised on were guardrails, and those guardrails remain in this bill, LB512. The only

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

words we're changing are "five" to "ten." The guardrails at the top, though, are you're bound by your production cap. And so craft beer, that's 20,000 barrels; microdistilleries, that's 100,000 gallons. And the way that works is, as a producer, if you were at, let's say this bill passes and you get to satellite location number seven and you hit 20,000 barrels on your brewery license, you can no longer open additional locations. And you can't drop your production for the purpose of opening more locations. We're capped at seven. Same thing with microdistillery. So we still have those guardrails in place along with the remainder of the license language. I think it's important to support Kinkaider Brewing Company. Again, when I first started out representing folks in the craft beer industry and microdistillery industry, there were less than a dozen, and now there's more than 70. And because of the Legislature and our past Governor's support, hopefully current Governor's support, we've been able to implement license provisions that provide that opportunity to grow in whatever direction might make the most sense. And that's what you've just heard from Zac Triemert at Brickway, who wants nothing to do with running a restaurant, and with Kinkaider, Cody Schmick and his partners, in very much wanting to open those additional locations. And among the different licensees, they may have thoughts on that and they may have plans in the future. They may not be there yet to have an opinion. And that's why this bill was brought solely by Kinkaider because they're there. If you pass this bill, they will grow those locations. And that's really the biggest proponent testimony that I can give you is that promise that there will be economic development and jobs directly because of this bill. So with that, I'm happy to answer any questions that you may have.

LOWE: Thank you, Ms. Silke. Are there any questions? Seeing none, thank you.

VANESSA SILKE: Thank you.

LOWE: Any other proponents? Seeing none, opponents? Don't be shy.

JUSTIN BRADY: Senator Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers Association in opposition to LB512. I apologize for the confusion I created on the last bill by molding this one into that one. I was so excited to oppose this and I started jumping the gun. Now, as you heard, moving from five locations to ten, we look at it, if you go back in history again, the request from the craft brewers and the microdistillers to go to five locations would help us market our product, help us get it

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

out there across the state. Understood that. As you heard, you've got one, one company that's at six locations now. I presume the way they get to six is they're allowed at their production facility plus five. But when you put three of them in Lincoln, that's not marketing across the state. That is just trying to operate on that retail tier, like go back to the three-tiered system of manufacturer, wholesaler, retailer. It's one thing, like I said, if they came to you and said, we want to put one out in Scottsbluff or we want to put one in, in Gering, the same city I know. That depends. But to sit there and say we burned three of our licenses to put them in Lincoln is not using it, and from the wholesaler standpoint, in a marketing way. Nothing stops these businesses from growing. All it does is say, if you want to grow, go play by the same rules that were there when you got into business, play by the same rules that everybody else in business is operating. They can continue to grow until they hit their production cap, which depending on, you know, at least from microdistillers in 2021, went from 10,000 to 100,000. So they were given a huge chance to grow their companies. But from the wholesalers' standpoint, that would be their, their deal is to say, hey, please continue to grow and then use the businesses that are in Nebraska like everybody else to help distribute, distribute your product across the state. With that, I'll try to answer any questions.

LOWE: Thank you, Mr. Brady. Are there any questions? Yes, Senator Raybould.

RAYBOULD: Mr. Brady, I was thinking. Do you distribute any of the Kinkaider products or the--

JUSTIN BRADY: There are products, local products that they do distribute. I wouldn't be able to tell you as their lobbyist on which ones they do, but I can get that for you, Senator.

RAYBOULD: OK. Thank you.

LOWE: Thank you, Senator Raybould. Senator Cavanaugh is thinking. Do you have a question?

J. CAVANAUGH: Not at the moment, thank you.

LOWE: OK. Any other questions? Seeing none, thank you.

JUSTIN BRADY: Thank you.

LOWE: Good afternoon.

LANETTE RICHARDS: Good afternoon. My name is Lanette Richards, L-a-n-e-t-t-e R-i-c-h-a-r-d-s, and I'm from Scottsbluff. I also traveled here as a part of vacation. However, I am the executive director of Monument Prevention Scottsbluff and I have come here to speak because I feel passionately about some of the laws that we pass when it comes to alcohol, how that affects our young people. LB512 is a bill to change the number of locations allowed for craft brewers or microdistiller-- distilleries under the Nebraska Liquor Control Act. These businesses are unique businesses because they are small businesses, and as Nebraskans, we want to support small businesses. However, if this bill is passed, these small businesses can have ten locations with one application fee rather than ten fees. This is quite a cost savings for them and the state misses out on revenue. Also we know with more liquor establishes, [SIC] the more problems can arise. These businesses have already been given a pass over other liquor licenses by bypassing the three-tier system. With this three-tier system, you have the manufacturers, distributors, and retailers. This is needed for regulation, economy, commercial and public health. Under this system, each tier becomes responsible for ensuring that the laws and regulations set by the government are executed. You are not only give them-- giving them a free pass, but you are also letting them have more locations so the small business is now a big business with little regulation. I see serious issues with raising the number of craft breweries and/or microdistilleries. Those important issues are loss of revenue to the state, loss of the three-tier system, and fair playing table for all licensed establishments and the health and safety of our Nebraskans. I ask the committee to indefinitely postpone LB512.

LOWE: Thank you, Ms. Richards. Are there any questions? Yes, Senator.

HOLDCROFT: Were there any specific regulations, laws set by the government that are not being executed through a two-tier system, or is a three?

LANETTE RICHARDS: Well, with the three-tier system, you know, you have-- the way it was set up, you have the three tiers. And not one business could be in all three tiers. And now with this, that's bypassed because they can grow the product, they can manufacture the product, and then they can sell it.

HOLDCROFT: Yeah, but there's still laws and regulations in place that they have to follow, just like they would if they were in a three-tier system.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

LANETTE RICHARDS: What-- yes, they do that. But what I'm saying is the system, the three-tier system was important, has been set up. That's important that you have three different establishments I guess I want to say, rather than have all three in every level.

HOLDCROFT: OK. Thank you.

LOWE: Thank you, Senator Holdcroft. Any other questions? Seeing none, thank you, Ms. Richards. Is there any other opponents to LB512? Seeing none, those in the neutral.

HOBERT RUPE: Good afternoon, Chairman Lowe and members of the General Affairs Committee. Unfortunately, you get to see me again. Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director Nebraska Liquor Control Commission. In a lot of ways this is an interesting bill. People have to remember why we did the five retail bills first. If you read the statute, it was designed to stop what we call the Maryland situation from affecting Nebraska producers. In Maryland, they had their production-- they had their producers go over the limit where they were no longer craft breweries and had to receive manufacturing licenses. Under Maryland law, and the judge who interpreted it said, basically, you either got to stay underneath the cap or you got to divest yourselves of your restaurants. If you read the bill here, when this bill was originally designed when the five was put in there was to allow them to keep those five so they didn't have to kill the goose which laid the golden egg, which got them to get to that production cap. Now, one of the things we've done internally is and also I'm not sure-- I don't think it's in this language, in none of the language. To answer Senator Raybould's question, the 250 is to basically produ-- retailers not part of their chain. We allow them to go to their own-- to deliver to their own chains because even we thought regulators that to pay somebody else to deliver your own beer that you own didn't make a whole lot of sense back at the time. But remember that the other reason we did that was back then, a lot of these other retail chains would have held production licenses. They weren't producing anything. They were just doing a bond-to-bond transfer from one L to the other and then pay the tax on that one. And so for tax productions-- from tax collecting became very messy, to say the least, when you only really had one main-- major production location. So right now you've got some that are at the five additional retail licenses and now they're asking for more. The way I read the bill and nothing says you can't have more, but if you get over that and then have to divest, you'd have to divest down to five as, as the language is right now. So by changing the ten is they would be able to have ten there. Now, the argument, of course, would be we're not going to do the investment

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

into those. Then if we get even more successful, we just have to sell half of our restaurants. That's a decision that you guys will have to look at. But you have to remember what the purpose of the original change in the statute to allow those additional retail sales was so they would not have to divest themselves of their business just because it became successful. So with that, I'd be happy to answer any questions regarding-- and unfortunately, I was around when that bill passed, and I have to say about almost all the bills lately. So any questions?

LOWE: Thank you, Director Rupe. Senator Hughes.

HUGHES: Let's see. Lanette alluded to the licensing. What is the licensing fee and is it they, like, if Kinkaidler has five separate, they have five separate licenses or one license that has five?

HOBERT RUPE: What they would have is they would have an L license. Let's just use the Kinkaidler side. Let's not go into the Sideshow [INAUDIBLE] they're both. They'll have an L license I think their L license is in Broken Bow I think--

CODY SCHMICK: Correct.

HOBERT RUPE: --and that's where the production is at. I don't know if they have an L at one of the other locations or not. The other ones would have a retail license, should have a retail license. So if they're an I retail license for just on premise or let's say they are a C license for beer, wine, spirits on and off sale, because they want to be full, well, full on. Let's look at their Lincoln locations. That's \$300 per year for the state fee. The local governing bodies can charge up to twice that amount. So there's 900-- so each of those locations in Lincoln is paying \$900 if they're a C. They're paying \$750 if they're an I, 250 and then 500 twice, the occupation tax. So there is no loss of licensing fee here. License, I mean, there's-- all those places are licensed retail establishments which means they have to meet the fire code, the electrical code, the health and safety code. They're open to inspection by the commission and the Patrol and other law enforcement anytime. So there really isn't a-- they're not unlicensed and they're not getting all these locations just through their-- through their L license. Their L license and if their L license, I'm not sure I'd have to ask them, they might have an additional retail license on top there, too, if they're selling anything other than what they're producing there. I'm not sure if they are or not. I haven't looked at their license structure for a while.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HUGHES: Thank you.

LOWE: All right. Thank you, Senator Hughes. Any other questions? Seeing none, it must be after 4:00. Thank you.

HOBERT RUPE: That's past my bedtime.

LOWE: Yeah.

HOBERT RUPE: Thank you.

LOWE: Are there any other in the neutral? Any other in the neutral? Senator Brewer is not here and his LA waives closing. There was one proponent letter and one online proponent for LB512. And this closes the hearing on LB512. And finally, we will move to LB667. Welcome, Vice-Chair Hughes, to your General Affairs Committee.

HUGHES: The end. OK, Mr. Chairman and members of the committee, I am Senator Jana Hughes, J-a-n-a H-u-g-h-e-s, representing Legislative District 24. I am here to introduce LB667, a bill intended to update our laws in order to ensure that wholesalers of alcohol liquor are best able to comply within the Nebraska Liquor Control Act. Presently, wholesalers in Nebraska are able to sell alcohol at different prices to a restaurant than they do to a bar, than they do to a grocery store as long as they treat every similar-- similarly situated business within each category the same. For example, a wholesaler can sell a case of a name brand vodka at a different price to a bar in Seward than to a grocery store in York. However, that same wholesaler must offer that vodka at the same price to each bar in Seward and the surrounding area. The same goes for a similar-- similarly situated grocery store. The current law was adopted prior to the existence of new hybrid retailers of alcohol, where you can have a bar inside a liquor store where a customer can have a cocktail in the store while they shop for their favorite beverage. We have taprooms and tasting rooms in grocery stores that also sell alcohol that you can then purchase and put in your cart to take home. LB667 updates the law to allow our wholesalers to adapt their pricing in response to these hybrid facilities while ensuring that they are in compliance with the Nebraska Liquor Control Act. LB667 will allow wholesalers to implement channel pricing, which I had to learn what channel pricing was, which allows them to charge for a product based upon the type of license held by the retailer and the primary use of the premises on which the retailer operates. There will be testimony by those representing the wholesalers who can speak to more specifics on how LB667 will be an improvement of current law to reflect what is going on, on the retail

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

sector. I appreciate your time and consideration and I-- I can try to answer any questions that you might have.

LOWE: Thank you, Senator Hughes, for your opening. Are there any questions? Senator Cavanaugh.

J. CAVANAUGH: Thank you, Chairman Lowe.

HUGHES: I'm sure I cannot answer this, but thank you. Great. Go, John.

J. CAVANAUGH: I just want to know where are some of these places where you can drink while you shop?

HUGHES: Dude, the-- can I say the Toys R Us liquor store on North 27th.

J. CAVANAUGH: Did you say Toys R Us?

HUGHES: It used to be Toys R Us. What is it? Don't laugh at me. Beer, Wine, and Spirits [SIC]. Sorry. OK. It used to be Toys R Us. And now it is-- it used to be a kids store and now it's an adult store. Yeah.

J. CAVANAUGH: Oh, this is, again, I've learned so much by being on this committee. This is another thing I did not know existed.

HUGHES: We should do a field trip, clearly.

J. CAVANAUGH: Thank you.

HUGHES: You're welcome. I could answer that question. Great. Give me another one.

LOWE: Are there any other questions for eager Ms. Hughes, Senator Hughes? Seeing none, thank you. Will you stay for closing?

HUGHES: I'll be here.

LOWE: All right.

JUSTIN BRADY: Chairman Lowe and members of the committee, my name is Justin Brady, J-u-s-t-i-n B-r-a-d-y. I appear before you today as the registered lobbyist for the Nebraska Liquor Wholesalers and proof that we can come in favor of something. We don't always just say no. Now, Senator Hughes explained the, the concept that LB667 is trying to get to and that is for years we've had the standard and the laws in this state that say a similarly situated retailer or restaurant or bar, grocery store that orders a similar quantity of a product from us gets

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

the similar price. That way there isn't favorites picked. There was a concern of, well, would you sell a product cheaper to Senator Lowe because I like him and not to Senator Cavanaugh because I don't know him. I mean, and so they came through and they said, if you're similarly situated and are ordering the similar quantity, you get the same price. And over the years as that, those channels, if you will, it's never been put into law like this, but those channels have typically been you've got the retail, grocery, restaurant and just a straight bar. The question has come up, as Senator Hughes pointed out, what do we do now that you have places that do have-- historically been a retail establishment go off the one that Senator Hughes referenced, Beer, Wine, and Spirits [SIC], but now has a bar that's more than a taste. I mean, it's a-- I think it's-- couple times I've been in there, it's probably 25 to 30 people could go there and stand at the bar or the tables they have and they have products you can buy and drink. And so do we sell our-- do we sell our products to them as though-- now they have one license that operates under this wholesale they don't have because they would have-- Hobie can tell you better than I can-- but the C license which allows them to sell both on and off sale under one license. So the question we have as a wholesaler is to not offend the law that says similarly situated people, do we sell it to them as a retailer or do we sell it to them as a bar or restaurant? And the thing I've had to learn over the last few months is, yes, you do sell or over the years you do have different prices. And I'll give you an example. Sometimes a new product will hit the market or you'll go to a-- to steakhouses or whatever that have high-end wine and you will sell it at a lower price than you would sell to a retailer to have people order a glass and try it. Or if it's a new product to help with the marketing of it. So our concern was when we decide to sell it to a retailer that has a bar, are we supposed to follow the channel that it be a bar of which then anybody similar situated we have to sell it to? We're fine with that. Or is it a retailer of which we have to sell it similarly to? And we're fine with that. We just don't know what to do with now that you've got two things happening in the same establishment. And with that, I'll try to answer any questions.

LOWE: Thank you, Mr. Brady. Are there any questions? So you brought up the wine and they would kind of sample it out or have a glass. Why was that sold at a discount then?

JUSTIN BRADY: It was sold as a discount, one, like I said, partly marketing and, well, some of it, a lot of it, if you think of restaurants especially, they open a bottle of wine and they may only sell one or two glasses of wine. And then after two or three days when

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

that bottle of wine is no longer in its prime, have to pour it out. I mean, they, they are taking a risk. Plus they are increasing the-- I'd say their servers. I mean, you have servers compared to not that there aren't many people that work in grocery stores and retail. You don't have that one on one necessarily in those establishments. So trying to recognize the costs that some of those restaurants have if you're talking about the wine case and knowing that there's a chance that they'll end up pouring half of it out.

LOWE: So with-- without this law, could every liquor store in the state change their license to a Class C license and basic-- basically take over the bar business of the small community?

JUSTIN BRADY: I think that would--

LOWE: [INAUDIBLE] community?

JUSTIN BRADY: Without remembering all the restrictions of who can or can't get a C, but presuming they all can, then yes. And then I think you see the other example that was shared with me, is you do have here in Lincoln, I forget the name of it, but a bar that's been there, established a long time, but now has put in a retail front to the bar. So you walk through the retail part to get to the bar in the back. Now, are they buying as a retailer or are they buying as a bar? And so the concept again is saying, okay, what's, what, what is their predominant business? Where are they? And I do have to say we are working on an amendment people have brought up. I can't say that anybody has necessarily brought to my attention that they're opposed to this. But it's still like anything, making sure you don't have the unintended consequences. Predom-- like, and I'll use the grocers. They said, OK, predominant what? You know, are you going to look at-- you shouldn't look at all our food sales to determine. It's basically predominantly are you selling your wine through the grocery store or through this bar? Not everything in there because you'd never, I mean, so just some of that we need this. We're still working on trying to clean up that language to make sure that it's, it's truly after what do we do in these hybrid cases?

LOWE: All right. Thank you. Are there any other questions? Senator Cavanaugh.

J. CAVANAUGH: OK. Thank you, Chairman Lowe. Thank you [INAUDIBLE] So I'm just trying to-- so a liquor store would get a cheaper rate from a wholesaler than a retail, like a restaurant or something or?

JUSTIN BRADY: I would say it's probably more the opposite, Senator, that a restaurant has the potential to get a-- buy a case of wine, I'll use wine, cheaper than, say, a grocery store or a retailer for that same case with the understanding that they are serving it by the glass, that they are, I mean, that it is-- they're not-- not. Yes, you can go to a restaurant and buy a bottle of wine, but a lot of this is on the premise that you're serving it by the glass. And I use it. This is how I equate it in my mind. A lot of people aren't necessarily going to walk in and say, hey, I've never had that \$200 bottle of wine before. I'm just going to pick one up off the shelf and see what the heck it tastes like. But you go to a restaurant where maybe you can get it for \$25 a glass. You may try it and then decide whether you want to go to the retail. That was the original idea of it.

J. CAVANAUGH: So I'm just trying to understand what the-- how-- what the problem is, I guess. And so, so in this scenario, this hypothetical one that's a former toy store. So there's the potentiality that the wholesaler or the retail portion, the liquor store would be getting a much lower rate overall if they were in the current system, but getting their, I don't know, bar rate for the purchase of everything.

JUSTIN BRADY: As it was explained to me, what-- what's happened a couple of times that they're at least aware of is this hybrid or a hybrid. It's not just the one,--

J. CAVANAUGH: Right.

JUSTIN BRADY: They come in and they say, oh, it's cheaper to buy Justin Brady's red wine through the bar and they'll order 50 cases of it--

J. CAVANAUGH: --and put it on the shelf.

JUSTIN BRADY: --and then put 49 of them over here, where then you have another retailer grocery store in town going, wait a minute, we want to buy the same 50 cases. And we say, well, you're in the retailer grocery business, so your price is this.

J. CAVANAUGH: OK.

JUSTIN BRADY: And that's what's happening. And so or they'll do it the other way. They'll say, OK, you're running a promotion. It's my understanding during like tailgate season, they run promotion on certain things that people buy and take to tailgates. Well, that's going to be more on the retail side. So then they'll say, wait a

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

minute, we want to buy it under our retail side and then move it to the bar side. And then the other bars out there said, we can't buy it at that. You violated the similarly situated, similarly priced, similarly quantity.

J. CAVANAUGH: And so you guys are just looking for some clarification on how to deal with those.

JUSTIN BRADY: Well, yes. When you order, what do we determine what license or not license, but what channel to sell to? And it would be the same. You aren't going to be able to say on Tuesday, I'm a restaurant; on Wednesday, I'm a grocery store. That's what's happening now. We want it to look at what's predominately your business. And in this case of the Toys R Us, is that what you called it?

HUGHES: Yeah.

J. CAVANAUGH: And so is that determined by which license they apply to first, or is it which one they do the most business through?

JUSTIN BRADY: That's what this is saying, what do they do the most business in? And so you look at this place or any lot of and say that's a bar or that's a restaurant or that's a retailer.

J. CAVANAUGH: I think I'm with you now. Thank you.

JUSTIN BRADY: Yeah.

LOWE: Thank you, Senator Cavanaugh. Any other questions? Seeing none, thank you.

JUSTIN BRADY: Thank you.

TYLER RUDD: Hi.

LOWE: And welcome back.

TYLER RUDD: Mr. Chairman. Thank you. Good to be here again. I'm Tyler Rudd, T-y-l-e-r R-u-d-d. I'm central states counsel with the Wine Institute. I brought this up here thinking I would use it, but I think Mr. Brady said everything that I was basically going to say, so I'm not going to repeat it. I just wanted to say that Wine Institute is in support of channel processing, in support of Senator Hughes's bill, and specifically for the clarity that it seeks. For our members, having the ability to, with our wholesale partners, to price things in accordance to where they are is significant for us, not only because

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

of the quantities that are purchased, but also for the interaction that the restaurant or bar may have with the customer. That's important to us. We get feedback from that. For high-end restaurants, oftentimes our members will come in and talk to the waitstaff about the wines and describe it, things like that. So that's their ability then to share what we know about the wine with the customers. And they obviously don't have as big of an inventory. So we like the ability and the freedom to work with our wholesalers to find out the best price for those different channels. So that's pretty much what we have to say about that. Thank you very much.

LOWE: Thank you, Mr. Rudd. Are there any questions? Yes, Senator Cavanaugh.

J. CAVANAUGH: Just one more that's kind of hopefully you'll be able to answer this one. So at, at what point is the primary business determined and when-- how often are you going to change?

TYLER RUDD: Sorry, say that again.

J. CAVANAUGH: I guess and so the channel pricing is probably and hopefully I'm not going off your area but so it's established based off of what the primary business is.

TYLER RUDD: Yes, sir.

J. CAVANAUGH: That's got to be evaluated at some point, right, the volume?

TYLER RUDD: Yes.

J. CAVANAUGH: Is it-- do you know when that would be evaluated? Is it annually or--

TYLER RUDD: That's probably a better question for the wholesalers, simply because they're the ones that are selling to them. I would expect it's definitely more often than annually, more like monthly, even weekly, depending on the venue.

J. CAVANAUGH: All right. Thanks.

LOWE: Thank you, Senator Cavanaugh. Any other questions? Thank you for coming to Nebraska.

RICH OTTO: Thank you, Chairman Lowe, members of the General Affairs Committee. My name is Rich Otto, R-i-c-h O-t-t-o, and I'm here on

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

behalf of the Nebraska Grocery Industry Association and the Nebraska Licensed Beverage Association in support of the concept of LB667. It's our understanding this bill would codify the terms of the channel pricing for alcohol distribution and close specific loopholes for retailers with on and off premise licenses other than true bars and restaurants are benefiting from channel pricing discounts. This means, in essence, competitors of our member retailers are getting better prices on wine and liquor. Given questions we have about channel pricing might impact-- given-- impact retailers on various sizes, we'd like to see continued work on clarifying language in this bill. We do believe it's important to tie the use of channel pricing to the primary use of the premise. For instance, a discounted channel price may be offered to a certain percentage of the licensee's revenue if derived from taxable food sales and not retail alcohol sales. We appreciate Senator Hughes's trying-- working to address this issue. We're happy to work with the senator and stakeholders to make sure everyone's working on the same playing field. And just to kind of go where you are, Senator Cavanaugh, I don't know if Hobie and the commission will have additional things on channel pricing in which bucket you fall in. We just want to be consistent that you fall under one, and that's the pricing. And then maybe you could, you know, if you've drastically changed your model, you could appeal that or show different revenues or, or ways, criteria to fall into a different channel if, if you feel that's the appropriate channel for your business.

LOWE: Thank you, Mr. Otto. Are there any questions? Seeing none, are there any other proponents?

HOBERT RUPE: Thank you, Chairman Lowe, members of the committee. The last time you get to see me today, at least. Hobert Rupe, H-o-b-e-r-t R-u-p-e, executive director of Nebraska Liquor Control Commission. This bill does give clarity. This bill is very much actually a codification of the administrative position the commission has taken for the last quarter century. As you're aware, we have five general retail types and although they very clearly state what kind of alcohol sales you can do, they don't say what kind of business you are. Although some of them have sort of been called that. So the D license, which is on beer, wine, spirits on and off sale, is usually called the liquor store license because that was primarily what it was. It was an off-sale liquor license. You also had a lot of your supermarkets acquired those licenses as well back in the days. You had the I, beer, wine, spirits on-sale, traditionally called a restaurant license. Then you've got the beer, the B, which is beer off-sale only; A, on-sale only. Yeah, there's a few of those still out. Mostly, those are Pizza

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

Huts. [INAUDIBLE] The issue is the C. The C is beer, wine, spirits on and off-sale. And what's happened as markets have changed and models have changed, for instance, a lot of your grocery stores now have we call a limited C because of the agreement we cut with Department of Revenue to allow them to do wine tastings? They don't have to do a SDL every time they want to do a wine tasting, but at the same time they weren't full-on retailers like bars, so they weren't putting their ability to sell lottery tickets in jeopardy. It's an interesting deal. So the C allows you to do both. But we've always taken the position administratively, they could-- remember this is where we're wearing our black and white uniforms, which is that you've got to be fair and equitable to the similarly situated individuals. So you can't do a promotion that only Walmart can qualify for. You know, HyVee, Russ's, the local grocery store would all have to qualify for the same. So you can't [INAUDIBLE] it just so-- you can't just so one person can get it. All right. And so we've always been allowed that for similarly situated licenses. And that's always been our administrative position, because at that point you're not showing favoritism. And a lot of times those are coming from the national suppliers because there's certain marketing things are going to go. One of the first things that I had to deal with shortly after I became director was when MillerCoors rolled out the aluminum cans, the bottles, aluminum bottles. Well, they didn't have a lot of them. They wanted those all to go to primary bars. You know, if they could have said sports bars, they would have done it for that way, but they had to go to bars. Well, of course, they were very popular so all of the off-sale places were kibitzing about it because they couldn't get them. Well, it was, you know, it was a marketing for just one channel in this. But same time, every bar could get it, have access to it. So in a lot of ways what this bill does I think there might be some amendments, and I haven't seen those yet, it sort of codifies a position which we make in town to deal with these class E liquor licenses, because where an I, I can pretty much tell you if I see an I liquor license that's a restaurant or a bar. You know, a B, I can tell you that is an off-sale convenience store probably. Cs can be a whole mishmash of the two. And so what this does is add some clarity to that. I see I'm now into my red so I would be happy to answer any questions.

LOWE: Thank you, Director Rupe. Senator Holdcroft.

HOLDCROFT: Back to Senator Cavanaugh's question, how do you make this call? How often do you make the call and how long does it apply?

HOBERT RUPE: We don't-- we make the call when we get a complaint. Remember, if we get a complaint from a retailer, we will do an

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

investigation whether they are showing-- whether that wholesaler is doing preferential pricing towards a retailer or and we have had some citations issued from it. We've also then looked at it and oftentimes what we'll do is we will ask the wholesaler-- and the good thing about us if we ask them for records, they have to give it to us. Generally, they'll have parameters set out in writing policies of who sits where. Recently, we're actually-- I can't really say much-- we're investigating one which was not doing that. And so there might be some issues, but generally what they'll do is they'll have a, a sale sheet and how-- who all-- who all received the sales sheet in that specific area to show there wasn't any preferential treat-- you know, picking winners, winners and losers. So we just deal with it on a complaint basis. How the wholesalers do it, you'd have to ask the wholesaler representative how they actually would make those decisions.

HOLDCROFT: And then it would apply until there's another complaint?

HOBERT RUPE: Well, for us, it might be a complaint. For them, it might be-- I mean, it's pretty clear that you know what you mostly are. You know, every-- you know, downtown, most of the downtown bars in Lincoln have C licenses because they want to be able to sell you a six pack at 1:00 when you're leaving. But 98 percent of their sales are going across there-- they're going through their tabs across the bars. They're a bar. They're not an off-sale location. Conversely, Moran's Liquor, I'll just use them as example here on A Street, you know, they're primarily, although they have a taste room, they're primarily an off-sale location because, you know, 85, 90 percent of their product is going for off-- for people to take home with them to consume at their home. So really, that's not really a close call. I mean, it's pretty clearly what you are. I've never seen anybody close to being a 50/50. You're either on or off-sale with a C. Which are you?

HOLDCROFT: OK. Thank you.

LOWE: Thank you, Senator Holdcroft. Any other questions? Seeing none, you may go home.

HOBERT RUPE: My dog will appreciate that. Thank you very much.

LOWE: Any other in the neutral?

HOBERT RUPE: I was proponent on that--

LOWE: Oh, OK.

Transcript Prepared by Clerk of the Legislature Transcribers Office
General Affairs Committee January 30, 2023

HOBERT RUPE: --because we actually [INAUDIBLE].

LOWE: Excuse me. Any other proponents? Are there any opponents? Hobie, would you like to come back in the neutral?

HOBERT RUPE: No, I'm fine--

LOWE: OK.

HOBERT RUPE: --unless you have any specific questions.

LOWE: No. Any neutral? Seeing none, Senator Hughes, would you like to close?

HUGHES: I think we should change it to tapping out OK. Mr. Chairman, members of the committee, thanks for your time today. I believe that LB667 will reconcile some current law with current business practices for the reasons I have shared. It sounds like we need to work together with some of the parties involved to come up with a little language clarification of what determines what channel you fall under. But once we have done that amendment, I will look forward to your favorable approval of LB667. Thank you.

LOWE: Thank you, Senator Hughes. There were no comments submitted, proponent or opponent.

HUGHES: All right.

LOWE: And this ends the General Affairs Committee. We will go into a short Exec Session.