

Transcript Prepared by Clerk of the Legislature Transcribers Office

General Affairs Committee February 05, 2024

Rough Draft

**LOWE:** Welcome to the General Affairs Committee. My name is John Lowe, and I represent District 37. I am the Chair of this committee and will be conducting today's hearing. Today, we'll be hearing 5 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 located near the doors. If you are here and wish not to testify, but do wish to state your support or opposition of any of the matters before us, we ask you to fill in-- fill out in the sign-out sheet. If you do testify, please hand your sheet to the committee clerk 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 from the opponent-- or proponents, opponents, and neutral testimony for each bill. We ask that you listen very carefully and try not to be repetitive. We do use the light system in the General Affairs Committee, and we will be doing a 3-minute testimony today. The green light signifies your start. When the light changes to yellow, you will have 1 minute re-- remaining to conclude your remarks. When the light turns red, your time has expired, and we will open up the committee to any questions that they may have for you. At this time, I would like to encourage everyone to turn off or silence any cell phones or electronic devices, anything that makes noise. We are equipped for electronics, so you will see members referencing their iPads, iPhones or other electronic devices. I can assure you, they're just preparing for research on the matters before us. If you have a prepared statement, an example, or anything you would like to have distributed to the committee members, we ask that you provide 10 copies to our committee clerk. If you don't have 10 copies, don't worry. Collin will make the copies for you, then we can have the copies distributed out to the committee. With that, we will proceed to the introduction of our members, starting on my right, with John Cavanaugh.

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

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

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

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

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

**LOWE:** On my right is our RA, Laurie Holman. And our committee clerk is Andrew Shelburn. And we have Collin Bonnie, a criminal justice major, as our page today. With that, we will start with Senator Hughes's LB1296.

**HUGHES:** Thank you, Chairman Lowe, members of the General Affairs Committee. I am Jana Hughes, J-a-n-a H-u-g-h-e-s, and I represent Legislative District 24. I'm here before you today to discuss LB1296 and the many reasons why this legislation is necessary. I'd like to thank Chairman Lowe, Senators Brewer, Hardin and Holdcroft of this committee for being a co-sponsor. And I'd like to thank my other colleagues who have co-sponsored, Senators Albrecht, Ballard, Bosn, Brandt, DeKay, Ibach, Kauth, Lippincott, Meyer, Murman, and von Gillern. Colleagues, we have a serious problem on our hands that threatens to deter-- undermine the progress made over the past 40 years, in reducing the use of nicotine products by our kids. We grew up as kids, being around ashtrays, smoking sections in restaurants, cigarette vending machines, and the ever-present fog of smoke in many social settings. We learned some things during the last century and moved away from that to the benefit of public health. Our kids are growing up with sophisticated devices that look like highlighter pens, cool fluorescent toys, and other novel items. These devices give off scents of fruit, mint, and other flavors. They are often disposable and very easily hidden. In Item 1 in the packet handed out to you, you will find a list of the steps that Congress has taken in authorizing the U.S. Food and Drug Administration to regulate and enforce electronic nicotine delivery systems, or ENDS, as they are called. ENDS have been sold in the United States since 2007. The FDA has established a framework and pathway for all ENDS products that have been brought forward, whether they were on the market prior to Congress granting FDA the authority to regulate them, to those that use synthetic nicotine to apply for FDA approval. This is referenced to as the FDA Premarket Tobacco Marketing Authorization, and this includes all products that applied by the deadlines set forward by Congress and the FDA. You will note at the bottom of the document that I shared with you, that since July 13th, 2022, it has been unlawful to distribute ENDS products that have not received an FDA marketing order. You will hear testimony from those opposed to LB1296 that it will put them out of business because of the products they sell. Currently, as you will see in Item 2 of the handout, the FDA has approved only 23 products. The FDA also has well over 1,000 products pending FDA approval. These products, pending approval, along with the

23 approved products, would be allowed to be sold under LB1296. So you will-- what you will hear the opponents say is that LB1296 will put them out of business, because the products that they are selling currently are illegal under federal law. You will also hear that ENDS products, these nicotine vaping products, are used by adults to quit smoking. I'm certain that adults have used this to quit smoking. A friend of mine, in fact, has. For every adult that has done that hard task, my hat is off to them. There are many adults who have simply transitioned to using ENDS versus cigarettes. And I want to make it clear, as you can see in Item 3 of your packet, that the FDA has not approved any ENDS dev-- device as a cessation device, nor can any product claim that it presents less risk than any other nicotine product. Why does this matter? If you look in Item 4 on your packet, this shows that the University of Michigan's Institute for Social Research has been tracking substance abuse-- or substance use among 8th, 10th, and 12th graders for 49 years. For 48 years, alcohol use was the number 1 substance used by youth in these grade levels. The study added nicotine vaping in 2017. Guess what? By 2022, nicotine vaping had passed alcohol in the substance used by 8th graders and 10th graders. That's 5 years. Colleagues, it is unlawful for anyone under the age of 21 to be sold ENDS products. We are talking about kids as young as 12, and as one of the testifiers will present in her testimony in support of LB1296, kids as young as 4th grade are getting a hold of these products. Why do kids start vaping? According to an art, art-- article in the peer-reviewed international journal, Drug and Alcohol Dependence, one of the reasons is the taste or flavor. According to this study, nearly 40% of kids tried vaping because of the taste or flavor. This is Item 5 in your handout. I'd like to further point out that according to a study conducted by the University of Michigan's Institute for Social Research, which was published in the Journal of American Medical Association Pediatrics, 59.3% of the students reported using fruit-flavor vapes, 26.9 used mint flavor, and 7.2 use menthol-flavored. Only 2.9% used tobacco-flavored vape. This is Item 6. Please turn to Item 7. You will note that China, who sends 60% of their vape exports to the United States, has also banned the sale of all flavors of vape products except tobacco flavor within mainland China. So it's good enough for them to send to us, but not good enough for them to use at home. I find that extremely interesting. Item 8 shows that there is an entire industry dedicated to helping minors consume vape-- nicotine vaping products in secret. You can visit these websites and see these products for yourself. Type-- typing the phrase "stealth vaping" in your search box will quick-- quickly lead you down a disturbing rabbit

hole. As I've shared, LB1296 will restrict the nicotine vaping products to those either approved by the FDA or under review by the FDA. LB1296 will create a registry, whereby producers of these products will register their products with the state of Nebraska through the Tax Commissioner. This registry will be used for enforcement and taxation purposes. LB1296 will prohibit the online sales of these products, which, by the way, are already illegal to ship through the mail, but continue to be sent illegally through the U.S. Post Office. I've been asked the question of why we need to pass a law against these products if they are not legal at the federal level, and that is a great question. And for that, here's the great answer. The FDA was chosen by Congress to regulate and enforce all nicotine products. The FDA, however, has not been approved-- appropriated sufficiently to successfully perform both duties. Passing LB1296 will place the fees, fines, and criminal penal-- penalties included in this act on top of what the federal government has in place. This will allow us to carry a bigger stick to enforce that none of these products are sold to anyone under the age of 21. And second, that products with flavors and designs intended for the underage usage are taken off the market. Those willing to play by the rules will be allowed to stay in business in Nebraska, and those who do not can be shut down. LB1296 registry requires manufacturers of ENDS products, that have either been approved or sought approval by the FDA, to pay a \$500 fee per each different product they are applying to, to sell in Nebraska. These funds will be used by the Department of Revenue for enforcement of the Tobacco Products Tax Act. Colleagues, thank you for your time and consideration of this important bill. We know that kids are getting these products however it is occurring. We know that there are manufacturers that do not have any skin in the game here, in Nebraska. We know that some retailers, whether in-store or online, are selling products, which, by their design, are intended to be used by kids. LB1296 requires man-- manufacturers to have skin in the game, LB1296 stiffens penalties for selling illegal products at the retail level, and LB1296 makes online sales of these products illegal in Nebraska. I conclude my opening by thanking those who are directly involved in the business, whether they are manufacturers or retailers, and who agree that the status quo is unacceptable, and are here in support of LB1296. I am working on an amendment to LB1296 that addresses some issues raised by retailers about the timing of the product registry and the reporting required by LB1296. I am also willing to include in that amendment any legitimate concerns raised today at the hearing. I want to thank the Attorney General and his staff for all their work with me to craft LB1296.

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**LOWE:** Thank you, Senator Hughes. Are there any questions? So you said illegal many times. Where are they acquiring these illegal products?

**HUGHES:** Like kids?

**LOWE:** Yeah, like kids.

**HUGHES:** Well, I can speak to my son, who, as far as I know, has not acquired these, but his friends-- they-- you can send-- it's just like when we were growing up, with alcohol. You send older siblings in. Now, we have online. And there is no-- they're supposed to do age verification and signature veri-- verification on a receipt, and they don't. So you could do it that way, but I would say mostly from older friends. What's happening also, is that kids are paying older kid-- like, kids will pay a, a kid for a puff on their vape. Here, I'll give you a quarter for a hit. Things like that.

**LOWE:** Are they-- can you purchase them in the stores in Nebraska at this time?

**HUGHES:** Oh, yeah. Well, there's--

**LOWE:** Even though they're--

**HUGHES:** In my closing-- I mean, there's a drive-through run, what, 2 blocks from here?

**LOWE:** Even though they are--

**HUGHES:** You don't have to get out of your car.

**LOWE:** --even though they are illegal?

**HUGHES:** Yeah.

**LOWE:** OK.

**HUGHES:** There's no enforcement. So.

**LOWE:** Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. And thank you for bringing this bill, Senator Hughes. I was just curious about the big part of my takeaway was the flavored ones. And you gave us this list. Is this the exhaustive list of what's currently approved?

**HUGHES:** So that's the 23 that is approved. And then there's-- I think, I, I believe someone coming behind me will print off a list. Is it Arkansas or Ariz-- Arkansas did a bill like this, that shows their what's approved list. There's a list of, of products that are pending approval by the FDA. And that-- so in addition to the 23, those would be included. And I do not have that with this.

**J. CAVANAUGH:** I guess my question-- I, I don't know how to read it necessarily. Are none of the-- those sort of weird flavors or kid, kid-friendly flavors, then?

**HUGHES:** That was a good-- those are all tobacco flavors.

**J. CAVANAUGH:** OK. Just curious. Thanks.

**LOWE:** Thank you, Senator Cavanaugh. Any other questions? Will you be sticking around to close?

**HUGHES:** You betcha.

**LOWE:** All right.

**HUGHES:** See, now I should go sit up there, like the old days?

**LOWE:** The--- we'll have the Attorney General now come up. Welcome back to this great committee.

**MIKE HILGERS:** Thank you, Chairman Lowe. I don't think I ever testified in front of this committee before. This is my first time. So, Chairman Lowe, members of the General Affairs Committee, particularly you, Senator John Cavanaugh, good aft-- good afternoon. My name is Mike Hilgers, M-i-k-e H-i-l-g-e-r-s. I currently serve as Attorney General in Nebraska, and I am here to testify in support of LB1296. I'm grateful for Senator Hughes and her work, bringing this bill and all the work that she did with our office, putting it together. I want to give you just a little bit of context, as, as to how I got to the point where this was on our radar. Because when I ran for office, certainly there were some vaping bills that came through the Legislature, but vaping, tobacco products, things adjacent to that-- this particular industry, this-- types of products were not maybe very high on my radar. When I-- well, shortly after I was elected, I went-- or took office, I started a 93-county tour. My very first county that I went to was Colfax County. And when I asked them, what are the top issues that you are facing? The number one thing that they had was kids and vaping. And not just kids getting access to vape products,

but kids getting access to vape products that were very low quality, that had all sorts of unknown chemicals, that were causing sickness or addiction or things that maybe-- that were not good for them, but also were not good for grown-ups. That was a-- even though that was my first county when I went to counties around the state, that was one of the top 5 issues that I heard, was kids' access to vaping products, vaping in schools. We know, in Lincoln, it's been a huge issue, but frankly, I'm not sure there's a community that's been untouched. So we partnered with Senator Hughes to help think through language that would help-- not, as Senator Hughes said, not intended to put the industry out of business. But how do we draw a line to help ensure that we're trying to cut off the means of distribution to kids, and also trying to ensure that we are keeping the products that are out there safe. So on the latter, the-- we-- the line that we chose was to follow the FDA. As Senator Hughes mentioned, there's been a number of applications that have been submitted. Many, as I understand it, have been rejected. There's still over 1,000 pending, and maybe 23 have been approved. Seems like a sensible line, a logical line, a defensible line. Maybe that line should be adjusted. And I'm certainly open, I think, as Senator Hughes mentioned, to changing that line a little bit to allow safe products-- maybe a little broader-- but safe products to be provided to, to the public. So that's, that's the first part. Now the second part is, is the means by which kids, in particular, but others are getting these products. A lot of that is through online, it's through counterfeit products. This gives us-- give my office, the Department of Revenue, through the licensing system and our enforcement abilities, the ability to actually hold, hold stores accountable, and also, help with common carriers. You'll, you'll notice in the, in the bill there is some provision in there that allows us to at least work with common carriers to get this stuff from being delivered to children--- or, or, or others. But in particular, what has been motivating a lot of this conversation in the first instance is to protect kids. So I'm-- I will-- happy to answer any questions that the committee might have, but we encourage you to, to pass it to General-- to General File. And as Senator Hughes said, we're happy to work with her office and other, other members of the committee to address any of the concerns brought up by opponents.

**LOWE:** Thank you, Mr. Attorney General. Are there any questions?  
Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thanks for being here. Mr. Attorney General. Nice to see you.

**MIKE HILGERS:** It's good to see you, Senator Cavanaugh.

**J. CAVANAUGH:** It's always a risk to subject yourself to questioning. So I just wanted to touch on a little bit about this-- so there's the list of the 23.

**MIKE HILGERS:** Um-hum.

**J. CAVANAUGH:** And then there's this list of ones that are going through process?

**MIKE HILGERS:** Correct.

**J. CAVANAUGH:** And my understanding of what both you and Senator Hughes said, that the ones that are going through process remain legal while they are pending application?

**MIKE HILGERS:** Yeah. That's correct. That's correct. So that's-- if you look at page 8 of the bill, it's subsection (b), it's-- that's why it's got kind of an odd date. These are the dates that are currently being-- these are applications that are-- that can be sold. They haven't been-- they have not been rejected yet, so they can be sold. Now, as I understand it, Senator Cavanaugh, a large percentage of the applications that have been submitted to the FDA have been rejected. So it very well might be that when that process is over, that they will also be rejected, at which point they would not be able to be sold.

**J. CAVANAUGH:** OK. So that was kind of my next followup question, is-- well, I guess it's two parts. One is it seems to me like when we-- usually, when we pass a bill, it is static. Right. So it is-- we-- this is the list-- at the time we pass the bill, that's the list. And then if something changes, we are incumbent upon us to go back and amend what the list is. Does that seem normal to you or right?

**MIKE HILGERS:** Well, I can't think of a specific historical analog where we've done it in a more dynamic way, to use your phrasing. Our-- an initial version of this bill, Senator Cavanaugh, did not have this additional language. However, if you don't include all the applications, one, there could be some due process concerns, but also, then, you're only left with 23. And that, that, to me, at least, seemed like a pretty dramatic restriction to-- and do not allow those applications to go through. You could approach it in multiple other ways, and I'm open to-- at least I am. I don't speak for Senator Hughes, of course. You, you could have-- there's some challenges with



the-- with this FDA approval registry, in the first instance, in terms of knowing who's on it. You could have a-- you could have more registry here in Nebraska, maybe do it slightly differently. But, this is sort of the best way that we knew how to encompass-- to really match up with the FDA. And I think it's-- I think it's a good line to draw. We could maybe have a better line, though.

**J. CAVANAUGH:** OK. And then my other question, that you maybe hinted around, is it-- and correct me if I'm wrong. So it's page 8, line 21, evidence that the-- so then I think this is where it-- evidence where the premarket tobacco product application was submitted and either remains under review or final decision on the application has not otherwise taken effect as described in (1)(b). So is that (1)(b) reference that it has to be approved? Or is there a reading of this where it says, has to be under review and then once it's final, it's-- still would be-- if you get rejected, I guess. Is there a presumption that it is rejected?

**MIKE HILGERS:** So, OK. So let me-- if you go to lines 11-13--

**J. CAVANAUGH:** OK.

**MIKE HILGERS:** --you'll see "and the application," you'll see the-- sort of, the, the language is married. So it's "and the application either remains under review"-- same sim--similar language, as you pointed out. So if it's-- if it goes through-- I think the, the concern is if it's under-- it's under review, let's say it gets denied. You might have an appellate right. And so, I think it makes sense. The reason why the final decision is in there is to allow that appellate right to sort of-- to-- that appellate process to move forward. If it's-- if a final decision and it's approved, then I think you're under subsection (a).

**J. CAVANAUGH:** OK.

**MIKE HILGERS:** If you're subsect-- if it's-- you get a final decision and it's not approved, and that might be-- could be denial, but it also could be well, we have a final decision and we're just not, you know, we haven't approved it, but it's-- we're take-- you know, who knows what the FDA might do. Then, yes, it is presumed that it would be-- that it would be effectively denied. But really, the only way it falls into the exception to allow to be sold is if it has been approved. It's been authorized, under subsection (a).

**J. CAVANAUGH:** OK.

**MIKE HILGERS:** Does that make sense?

**J. CAVANAUGH:** It makes sense. I'm going to have to read it a little bit more closely before I agree with you, because I'm never-- I'm not going to agree with you publicly.

**MIKE HILGERS:** I think as a, as a matter of long-term consequences, the only way you can be sold is if you're subject-- subsection (a).

**J. CAVANAUGH:** OK.

**MIKE HILGERS:** And the near term, you could, in this application process, you could be sold under subsection (b). And assuming you get-- you-- that process leads to an approval, then you're back into-- in subsection (a). But if it doesn't, affirmatively, then eventually, that process will-- if you're not affirmatively approved by the FDA then you can't be sold.

**J. CAVANAUGH:** OK. And then, I guess, do you happen to know if any of these are fruit-flavored? You'd-- I wouldn't expect you to [INAUDIBLE].

**MIKE HILGERS:** The list that Senator Hughes had?

**LAURIE HOLMAN:** Those are not.

**MIKE HILGERS:** Yeah. I don't know if you have--

**HUGHES:** You mean on--

**MIKE HILGERS:** Sorry. The applicant-- I'm not sure if any of the application--

**J. CAVANAUGH:** OK.

**MIKE HILGERS:** --the applicants are.

**J. CAVANAUGH:** Oh. And, and I-- just to clarify your point about-- most of the jurisdiction we're talking about is brick and mortar, folks. We're not really going to be able to go after these companies in China or really, the stuff being sent through the mail. Is that right?

**MIKE HILGERS:** Yeah. I mean, you would not-- you would not-- you know, in general, it's hard to enforce our laws against a Chinese company

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with no direct nexus. But you can-- but depending on how they're being distributed, so for instance, through Amazon shipping services or FedEx or the others, if you know where these were coming from, there are, there are common carrier restrictions in here if they know. So if-- in other words, if we know that we've got Chinese companies using FedEx from these addresses, we can, we can coordinate with those common carriers to make sure that they're not delivering. So there is that element, yeah.

**J. CAVANAUGH:** OK. Thank you.

**MIKE HILGERS:** Thank you, Senator Cavanaugh.

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

**MIKE HILGERS:** Thank you, Mr. Chairman.

**LOWE:** Next, we will have proponents. Are there proponents for LB1296? Please come up and-- all right. Welcome.

**DAVID SYLVIA:** Thank you. Chairman Lowe, members of the committee, my name is David Sylvia, D-a-v-i-d S-y-l-v-i-a, and I work at Altria. I'm here in support of LB1296. The e-vapor marketplace is characterized by chaos and uncertainty today. For the past few years, illicit products with brands such-- names such as Elf Bar, Puff Bar, and Esco Bar have flooded the marketplace. The CDC estimates that about 50% of the e-vapor marketplace today in the United States consists of illicit products. The FDA has issued import bans, cease and desist letters, and fines in an attempt to bring an end to the illicit activity. But the proliferation of these products has overwhelmed the agency's ability to enforce. Responsible businesses, including wholesalers and retailers who work tirelessly to support their families and contribute to local economies, are losing out to marketplace actors making and selling these illicit e-vapor products. These products are sold in defiance of state and federal law, but it is often impossible for the wholesalers and retailers to know if they're breaking the law. There is no list of certified products available to verify the legality. This information gap exposes businesses to the risk of enforcement actions by federal agencies, oftentimes leading to significant fines. Now that is in sharp contrast to the rest of the tobacco market, where Nebraska keeps an up-to-date directory of certified products that can be legally sold in the state. A publicly available directory, like the existing tobacco directory, is a simple solution to this growing

problem. Manufacturers must register with the state and certify that their products are compliant with federal law. The establishment of a state directory for e-vapor products will bring much needed order and transparency to this marketplace. Several states, including Alabama, Louisiana, Oklahoma, and Wisconsin, have already passed laws requiring these types of directories. These directories provide a reliable resource for wholesalers and retailers to verify whether the products that they carry are certified to be sold. Additionally, they empower state agencies to enforce regulations effectively, ensuring that our communities are protected from illegal products. So in conclusion, by implementing a state directory, we can help ensure that only certified products are legally available and only to adult consumers. LB1296 will help us foster a regulated e-vapor marketplace, end the flood of illicit products, and help to limit youth access. I'm happy to answer any questions you may have.

**LOWE:** Thank you, Mr. Sylvia. And are there any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thanks for being here, Mr. Sylvia. Have you seen this list of the approved products?

**DAVID SYLVIA:** I have. Yes.

**J. CAVANAUGH:** Which ones are Altria ones? I guess I don't know.

**DAVID SYLVIA:** Altria owns NJOY.

**J. CAVANAUGH:** NJOY.

**DAVID SYLVIA:** I will say that most of those or about 15 of those products on there are e-vapor products. There are some other products that the FDA has authorized, that previously were not able to be sold. There's a heated tobacco product in there. There's Snus products. So when you reference 23, that's within the entire tobacco category, outside of cigarettes and smokeless and pipes.

**J. CAVANAUGH:** Oh, OK. So do you know of these-- any of these, are they all-- are any of them fruit-flavored or--

**DAVID SYLVIA:** Yeah. Of the vapor products that the FDA has authorized, they are all tobacco-flavored.

**J. CAVANAUGH:** Are you aware of the other list of 1,000 that we're talking about?

**DAVID SYLVIA:** There are-- one of the difficulties is that the applications in front of the FDA, they say-- they cannot, they cannot say what applications are pending. They have received applications for flavored products, whether it be menthol or fruit-flavored or things like that. But to date, they have not authorized any. I would presume that some of the pending applications are for products that are, you know, fruit, menthol, nontobacco-flavored.

**J. CAVANAUGH:** So that's interesting, what you just said. So there-- so there's no publicized list of what's pending?

**DAVID SYLVIA:** And that's one of the difficulties here. We would not be in this position in your state or the other 49 states around this country, is if the, if the FDA would publish and make public to wholesalers and retailers a list of pending applications that can still-- thus, those products can legally be sold. The agency refuses to do that, so it's up to the state of Nebraska to put this list together so that wholesalers and retailers know what products they can legally sell.

**J. CAVANAUGH:** And so our re-- my reading of this bill is then, we're adopting the list of pending applicants. So we're basically going to require somebody to certify to us that they have a pending application.

**DAVID SYLVIA:** Correct.

**J. CAVANAUGH:** So-- but as, but as we adopt it, we don't know what we're adopting. That's what it sounds like.

**DAVID SYLVIA:** Yeah. I think the best example, in Alabama, to give you a sense, there's about 1,400 products that are legally able to be sold in Alabama that are on their state registry.

**J. CAVANAUGH:** And they have a similar requirement?

**DAVID SYLVIA:** Very similar. It's in essence, the same requirements.

**J. CAVANAUGH:** So we could take a look at that and get an idea of what we're doing.

**DAVID SYLVIA:** Yes, sir.

**J. CAVANAUGH:** OK. Thank you.

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**LOWE:** Thank you, Senator Cavanaugh. Any other questions? Thank you, Mr. Sylvia.

**DAVID SYLVIA:** Thank you.

**ANTHONY CAROTHERS:** Good afternoon, everyone.

**LOWE:** Good afternoon.

**ANTHONY CAROTHERS:** My name is Anthony, A-n-t-h-o-n-y, Carothers, C-a-r-o-t-h-e-r-s. I'm here as a proponent of this bill. I'm a retired law enforcement officer. I spent 4 years as a Cook County deputy sheriff in Illinois. I spent 28 years with the Chicago Police Department, including patrol officer, detective, sergeant, lieutenant, commander, and executive officer to deputy chief. I can tell you from a level of now being retired and away from that, I've learned a lot about this type of work. And one of the problems and why this bill is helpful is because it is an FDA issue when it comes to what's regulated. But from the world of a street officer or a school resource officer, it's a nightmare. Because as it is, you have, God forbid, our mass shootings, you have drugs in the schools, you have knives and guns in schools, you have bullying in the schools. And so officers are running around, and then we tell them to task them with vapes, which is a bit beyond. This bill helps clear this up. The issue should not be to arrest some 12-year-old or 15-year-old, but to keep it out of their hands in the first place. And these are sold everywhere. They're sold in places that sell very legal products. In some cases, well, they keep them stored in the facility in a clandestine location within the building. So it's sold-- online, it's very easy. It's all promoted so much through social media. Understand that the problem is that it comes, it is made. And we have-- we do-- myself and a group of law, law officers like myself, we go all over the country. We've, we've done seminars on this. We've shown where it's being manufactured. It's a multi-billion dollar operation, in China, from China-- it funds many activities, many illegal activities. It's all-- it's criminal enterprise, pure, simple criminal enterprise. And it's targeted to children not only because of the fruit flavors. If you look at these and they're very defined, you'll see on the packaging, SpongeBob, Spider-Man, you'll see cartoon characters and bright colors, fruit flavors, and everything sweet is targeted to children. For any additional information, there's a website, [www.illegalvapes.com](http://www.illegalvapes.com). You can keep up. There's new information that's going in there all the time. Much more information, so you can be on top of it as it comes

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forward. But myself and my group always help it to come forward and, and, and, and get any additional help that we can.

**LOWE:** Thank you, Mr. Carothers. And number one, thank you for your service to Cook County and to America. Are there any questions? Is-- in the other states that have gotten this bill passed or something very similar to that--

**ANTHONY CAROTHERS:** Um-hum.

**LOWE:** --is it easy to tell the difference between the illegal drugs or the illegal vaping or-- and the legal vaping?

**ANTHONY CAROTHERS:** A person like--

**LOWE:** As, as far as law enforcement?

**ANTHONY CAROTHERS:** For those of us who-- not only in law enforcement, but who have the luxury of the time to, to, to know these type of things, respectfully, in a lot of places. Again, with the mass shootings, with, with, with the drugs, with the fentanyl, it's hard for people to focus on this relatively new issue for them. But we have gone throughout-- I've been in several cities and states. And people like yourselves who are getting ahead of it, who are putting a standard, putting, basically rules in place so you know the direction. Because if you don't, there are going to be children arrested for vaping, which, yes, they shouldn't. But is that the desire that you actually want? But yes, we've taught this all over the country.

**LOWE:** Thank you very much.

**ANTHONY CAROTHERS:** Thank you, sir.

**LOWE:** I'm going to go around one more time. Any questions? Seeing, seeing none. Thank you.

**ANTHONY CAROTHERS:** Of course.

**LOWE:** Other proponents.

**RICH OTTO:** Chairman Lowe, members of the committee, my name is Rich Otto, R-i-c-h O-t-t-o. And I'm here testifying on behalf of the Nebraska Grocery Industry Association, testifying in support of LB1296. Senator Hughes's bill to establish a state level directory to specify which vapor products are permitted and sold in Nebraska is

needed. Similar to other tobacco products, our retail and wholesale members are in lockstep with us on a credo-- with our credible tobacco manufacturers who support a mechanism for the state to ban the sale of products which are not FDA-authorized. This is a good faith effort to reduce the spread of illicit and in some cases, dangerous products, which is the primary goal for distributors and grocers, sellers of these products. We support Senator Hughes's amendment to more clearly outline compliance timelines, and we appreciate the senator and the rest of the industry, industry working with us for those concerns. She mentioned it in her opening that that amendment would come forward. With that, we just ask the committee to advance LB1296, and happy to answer any questions you may have.

**LOWE:** Thank you, Mr. Otto. Are there any questions? Seeing none, thank you very much. Good afternoon.

**STACY LOSTROH:** Good afternoon, Senator Lowe, General, General Affairs Committee. Thank you for the opportunity to speak with you today. My name is Stacy Lostroh, S-t-a-c-y L-o-s-t-r-o-h, and I'm here today on behalf of Whitehead Oil Company and the Nebraska Petroleum Marketers Association to urge you to support LB1296. Whitehead Oil Company operates the U-Stop convenience stores here in Lincoln. We have been around since 1959, and we currently employ about 400 employees in 27, soon to be 28 locations in Lincoln and the surrounding communities. In the interest of time, I'm going to limit my testimony to the 3 main reasons we believe LB1296 should implement an e-vapor product directory. First, it will help ensure that retailers, like me, know what products can be sold. Secondly, it will help remove illicit products from the market. And last but certainly not least, it will help support underage tobacco prevention efforts. An e-vapor product directory would help me know what products can be sold. As a retailer, I have many tools at my disposal to help me be successful and support me with my strong desire to comply with federal, state, and local laws. However, when it comes to e-vapor, the second largest tobacco category in the United States, I lack a simple but necessary tool that would enable me to ensure I am in compliance with FDA guidelines. I lack a list of which e-vapor products are authorized to be sold. I am here today to employer-- implore you to require e-vapor manufacturers to create such a list by registering with the state and certifying that their products comply with federal regulation. Creating such a list would help remove illicit products from the market. The U.S. has been flooded in recent years with e-vapor products that are in flagrant violation of federal law. Currently, the FDA has been unable to bring the e-vapor market into compliance. Product directories are



an effective tool to ensure not-- ensure only compliant products are sold. All 50 states had cigarette directories for decades, and it is time for Nebraska to implement something similar for e-vapor products, as well. Retailers like us are the first line of defense when it comes to preventing kids from purchasing tobacco products. We take this responsibility very seriously. I'm proud of the work that retailers have done to support underage tobacco prevention efforts. While underage vaping rates have declined significantly since 2019, there is still more to be done. Directory legislation has an important role in supporting underage to-- tobacco prevention efforts. E-vapor directories will support underage prevention efforts by removing these and other illicit e-cigarette devices that youth are most commonly using from the market. These are just 3 of my-- the many reasons I'm here today, urging you to support LB1296. Thank you.

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

**STACY LOSTROH:** Thank you.

**LOWE:** Good afternoon.

**KATHY GUNLOCK:** Hello, Chair and members. My name is Kathy Gunlock. It's K-a-t-h-y G-u-n-l-o-c-k, and I am here today on behalf of Core-Mark to urge you to support LB1296, the product directory in Nebraska. Core-Mark has sales offices in Omaha and cross stocks in Omaha and Grand Island, employs over 60 Nebraskans and distributes nearly 10,000 products to more than 400 retail locations in the state of Nebraska. Although vaping e-cigarettes have been shown to be less harmful than traditional combustible cigarettes, consumers continue to face unnecessary risks, due to the confusing landscape of the approval process. In addition, the complexities and lack of enforcement has created a competitive disadvantage for law-abiding corporate [INAUDIBLE] by allowing the demand to funnel into noncompliant products serviced by small distributors who lack the resources to validate legality. Currently, many vapor and alternative products in the Nebraska market are in violation of FDA law. These products are hard to discern for retailers and consumers, due to the sheer number that have been rejected and still remain under review today. The adoption of the product directory in Nebraska will allow responsible distributors and retailers to know what's compliant and what's not. In addition to protecting consumers, a product directory would facilitate an equal playing field for all in the state, and protect Nebraska businesses from possible federal enforcement of selling unknown

legal-- illegal products. The proposal is good for Nebraska, because most distributors in the state want to abide by the rules. We just need a mechanism to understand what products are legal for distribution and sale. The product directory would provide wholesalers and retailers with that much-needed information so that they can comply. The proposed product directory will also help fund equitable enforcement across the state. Registry fees and violation fines will help support the enforcement efforts needed to ensure that all distributors are compliant. The only way to ensure consumers are buying approved products. In conclusion, I urge you to support LB1296. A product directory in Nebraska will create an equal playing field for all, provide industry members with the information needed to distribute and sell only compliant products, and help fund equitable enforcement efforts. Thank you very much for your time and consideration.

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

**KATHY GUNLOCK:** Thank you.

**LOWE:** Go ahead.

**KATHRYN BURGER:** Good afternoon. My name is Kathryn Burger, K-a-t-h-r-y-n B-u-r-g-e-r, and I am the pre-K-5 elementary principal in York, Nebraska. I'm here today representing York Public Schools, and we are proponents of LB1296 due to the restrictions that it places on vape devices. I have the unique experience of working in both a high school and elementary setting. As a high school teacher, vapes were a topic of concern quite frequently. We talked about them frequently, as a staff, and we know that our students were-- had a lot of peer pressure to join what others were doing with vape devices. At the elementary level, I was very disappointed when vapes became a topic of concern in our building on 2 separate occasions last school year. So my experience with vapes is limited, but from the 2 experiences I will share with you, I feel strongly that taking steps, steps to restrict devices will help protect children. Several elementary schools have experienced vape devices in their buildings, and York Elementary School is unfortunately one of them. Our instances did occur last year. So our first instance was a more traditional instance, I would call it. The vape device was a student's parents' vape device that they took from them without their parents' permission. It was on a school bus. It was passed around the school bus, and it landed at York Elementary School. The student who had the

vape had no idea what the contents of the vape were and did not understand any potential dangers. This vape was a more traditional-looking vape. When our staff saw the device, they understood what it was. And students were just simply fascinated by something that they weren't supposed to have, and they had to sneak around the school building. Our second incident was more frightening to me. This incident included a vape being brought to school. And this one looked like a toy, so that was the picture that was handed out to you. Our staff commented that it looked like something that belonged in a McDonald's Happy Meal. It was orange, it was bright, it was fun. It was a silicone, silicone, so it was kind of fun to play. With as well. Again, students had no idea what the content-- contents of the vape were. The student that brought the vape to school said that they acquired it from an older sibling. This incident had several more students involved, and this was the scary part: It looked fun, so more students wanted to be a part of it. So we had to talk to a lot more students about the dangers that could be in there. In both of these situations, students just simply did not understand the dangers or consequences of having a vape. And while the-- neither vape had anything dangerous, or like a THC project [SIC] and they were nicotine, they were the fruity contents that we've been talking about today. Kids will be attracted to items that are dangerous, and this is nothing new. And as I watch parents struggle to keep their kids kids as long as possible, I hate that something like a vape has become something that we would find in a Happy Meal. Even if we're not directly marketing these to children, they will find them and they will be attracted to them. So I urge you to move forward with LB1296.

**LOWE:** Thank you, Ms. Burger. Are there any questions? Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Chairman. Thanks for being here. Ms. Burger. How big was this? I mean--

**KATHRYN BURGER:** I would, I would say like this. It would fit in your hand. It'd be, it'd be--

**J. CAVANAUGH:** About the size it looks--

**KATHRYN BURGER:** Um-hum.

**J. CAVANAUGH:** --in the picture? OK.

**KATHRYN BURGER:** Yes. Yeah. Um-hum.

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**J. CAVANAUGH:** Yeah. That's pretty scary. Can I ask how old-- what grade was the kid that brought it?

**KATHRYN BURGER:** The kid that brought it to school was a third grader, which would be 9-years-old, and then found some fourth graders at recess.

**J. CAVANAUGH:** I have a fourth grader, and a third grader, and a second grader, so.

**KATHRYN BURGER:** It's terrifying.

**J. CAVANAUGH:** Yeah. Thank you.

**LOWE:** Thank you, Senator Cavanaugh. Any other question? What happened to our committee? Any other questions?

**J. CAVANAUGH:** Well, I'm here.

**LOWE:** Thank you very much, Ms. Burger.

**KATHRYN BURGER:** Thank you.

**LOWE:** Are there any other-- oh. Yes.

**NICOLE FOX:** Nicole Fox, N-i-c-o-l-e F-o-x, representing the Platte Institute. Electronic nicotine delivery systems, also known as e-vapor products, are part of a highly regulated industry. We want consumers to have choices in what they consume, especially the choice to switch to a less harmful nicotine product. In 2020, the FDA issued guidance banning any flavors other than tobacco and menthol for cartridge-based products. They exempted single use, disposable e-vapor products from this flavor regulation. Shortly thereafter, foreign manufacturers took advantage of this exclusion, introducing thousands of new products. These illicit products have made their way into the United States, and they are displayed on shelves right next to legal ones. There are no mech-- there's no mechanism for the consumer, the retailer or the wholesaler to know the difference, and these illicit products appear legitimate. As of 2022, these products made up over 50% of the marketplace, and this percentage is likely growing. Many of these products are being purchased by those who are underage. All 50 states require any cigarette product available for sale in a state to be listed in a public directory enforced by the state. At a time when flavored e-vapor products are widely being used by those who are underage, why not have the same standard? Like prescription and

over-the-counter medications, foreign e-vapor products should not be exported for sale in the U.S., when they have not been formulated and manufactured without FDA oversight. LB1296 would prohibit the sale of electronic nicotine delivery systems in Nebraska if they have not received approval or have not applied for such approval by the FDA. It would also pro-- prohibit their online sale and create a directory for manufacturers of these products. This bill is needed because the FDA has not publicly released a list of products currently under their review that are allowed to remain on the market, despite requests from domestic, domestic manufacturers, distributors and retailers for them to do so. Three states have passed similar legislation: Alabama, Louisiana and Oklahoma. And 11 states have introduced legislation, so far, in 2024, including our neighbors Iowa, Missouri, and South Dakota. Without LB1296, consumers risk negative health consequences from using non-FDA compliant products. E-vapor products serve as an alternative to those who are trying to stop smoking, and these products cannot succeed unless we protect the integrity of the market. Without LB1296, the availability of licit-- of illicit products for underage use will continue to increase. LB1296 makes sense, because responsible manufacturers want to compete in marketplaces where reduced harm products are per-- are appropriately regulated. Further, this policy will allow manufacturers, distributors, and retailers to know which products may be sold in the state, where today, there is ambiguity.

**LOWE:** Thank you very much. Are there any questions? So you would say this is a highly-regulated industry, the tobacco industry, the liquor industry--

**NICOLE FOX:** Correct.

**LOWE:** --and everything else. So.

**NICOLE FOX:** Yep.

**LOWE:** All right.

**NICOLE FOX:** All right.

**LOWE:** Thank you very much. Are there any other proponents? Any other proponents? All right. Opponents now. And if the opponents would move up so we kind of have an idea how many of you there are.

**SARAH LINDEN:** Good afternoon, Chairman Lowe and members of the General Affairs Committee. My name is Sarah Linden, S-a-r-a-h L-i-n-d-e-n, and

I am the president of Nebraska Vape Vendors Association and owner of Generation V, with 15 vape shops in Nebraska. I was born and raised in Nebraska, graduated from UNL, and returned to Nebraska to start my business here. This bill will dest-- will destroy my business. Although I support stricter penalties for bad actors, LB1296 has grave consequences. Sections 9 to 19 propose the state of Nebraska to use their scarce resources to enforce a failed FDA regulatory scheme, declared illegal by the courts, to shut down hundreds of Nebraska small businesses. Passing this bill would eliminate 99.9% of all vapor products on the market. Since 2018, the FDA received 26 million applications. The FDA only approved 23 products from 3 brands: all tobacco-flavored products produced by Big Tobacco and manufactured in China. Please see the blue tab in your packets, and Senator Hughes also passed out the exact same document. R.J. Reynolds' Vuse brand is one of the 3 brands. So is Altria, so it's no surprise they would be lobbying for this bill in multiple states across the country. This bill would hand the entire vape industry over to Big Tobacco, which kills 480,000 people per year. Big Tobacco should not be permitted to use regulations to create a near monopoly by stifling competition from innovative vaping products. Over the past 2 years, over 30 vape manufacturers have sued the FDA. Two of the cases have concluded so far, with both the Eleventh Circuit and Fifth Circuit Court of Appeals ruling in favor of vape manufacturers, calling FDA's review of PMTAs arbitrary and capricious. The court said FDA sent manufacturers on a wild goose chase by changing the PMTA requirements more than a year after applications were due for submission, and not giving manufacturers fair notice of the rules. Additionally, the courts ruled that the FDA ignored the science submitted by manufacturers and refused to review it, acting unlawfully to implement its de facto flavor ban. This will be devastating for the local economy and small businesses like mine. Generation V alone provides 135 jobs in Nebraska, \$4.3 million in wages, and collects \$947,000 and sales tax for the state. We pay an additional \$51,000 property taxes, and \$769,000 to rent space in Nebraska. We would immediately lay off our entire workforce and close all of our stores when this bill goes into effect. I, along with many other small business owners in Nebraska, would lose everything. In conclusion, PMTA registries, while seemingly equitable, are reliant on a regulatory strategy deemed illegal by 2 U.S. appeals courts. Registries will only cost Nebraska taxpayers millions and lead to the closure of small businesses, burgeoning illicit markets, and increased cigarette sales. I have already met with the bill's sponsor and Attorney General to discuss alternative regulations and stricter penalties for bad actors. I kindly ask the

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committee to oppose LB1296 and allow us time to collaborate on reasonable regulations. Thank you for your time, and I'm happy to answer any questions that you may have.

**LOWE:** Thank you very much, [INAUDIBLE]. Are there any questions?  
Senator Cavanaugh.

**J. CAVANAUGH:** I know it's hard to see me over here. Thank you, Chairman. And thank you for being here, Ms., is it Linden? Did I write it down right?

**SARAH LINDEN:** Yes.

**J. CAVANAUGH:** All right. OK. Thank you for being here, Ms. Linden. Thanks for the information, and I'll take a look at it for sure. But can you, I guess, clarify my, my understanding? So you-- why, why would the registry drive you out of business?

**SARAH LINDEN:** Because the registry allows me to sell 3 brands of products, all from Big Tobacco, 23 products. And like 75% of my business is selling vapor products. I cannot maintain a business selling only 23 products. There's no need for a vape specialty retailer if there's no product-- like there's no variety of products to be sold. Every gas station and why-- U-Stop was up here-- would love this bill because, you know, they only have to stock 3 brands on their shelves and they get-- they wipe out the entire , like, small vape retail industry.

**J. CAVANAUGH:** So we heard about, you know, these-- and I think Alabama was the example, where they have the list. And it looks like this bill would require-- or would allow for folks who are in the queue still, currently--

**SARAH LINDEN:** Yeah.

**J. CAVANAUGH:** --have, have you looked at the Alabama analog?

**SARAH LINDEN:** I have not, but there's-- the 1,000-- if there's 1,000 left, they've reviewed 99%. In your packet, I included a article that shows that the FDA has reviewed 99% of the applications that they received. They received 26 million and only approved 23. If they have a 1,000 left, I'm not sure what that number is. It's whatever 1% would be, of 26 million. I don't have any confidence there going to be approving any others or any flavored nicotine products.

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**J. CAVANAUGH:** OK. Well, and you, and you said something about the de facto ban on flavored products. I mean, I guess, one of the things we're hearing today is that maybe we disfavor, as a public policy, flavored products. So, I guess, do you have a response to that?

**SARAH LINDEN:** Right. Well, I think that-- you will hear further testimony as well about this, but although, you know, only 2.6, I think it was, percent of kids use tobacco flavors, only 2% of adults also use tobacco flavors. So yes, it will make it less appealing to children. It will also make it less appealing to adults. And adults will then continue smoking or doing something else. I don't know. But there's 15 million Americans in the United States, hundreds of thousands of Nebraskans that have used vapor products to quit smoking, and they didn't do it on tobacco-flavored products.

**J. CAVANAUGH:** OK.

**SARAH LINDEN:** Peop-- smokers generally-- like we know, at Generation V, because we did a survey of our customers, that 10% quit smoking because they don't like the taste of tobacco and the smell. So why would they want to vape tobacco? And for other customers of ours, it's actually a trigger. Like, it reminds them about smoking and it makes it harder for them to, like, quit smoking cigarettes.

**J. CAVANAUGH:** I guess that makes sense. And you said you spoke with Senator Hughes and the Attorney General. Can you just give us the broad strokes of what it is that would-- maybe what your, what your proposal is?

**SARAH LINDEN:** I-- personally, I don't think that a registry works because the FDA doesn't know, like, doesn't even know what those thousand more products are to be able to provide a list. And then there's 30 injunctions happening right now, where like vape manufacturers have received stays within the courts to continue selling and marketing their products across the country while their cases are being heard. Only 2 of the 30-plus cases have been heard. I don't even know what all products are in those cases. And this bill, in particular, doesn't even reflect the injunctions by the courts and allow for like those products to be continued being sold here. So I don't know how we can actually create a registry when the FDA itself doesn't even know what all products are legal, according to them. But I do agree with stricter penalties. I would agree with other things to keep them out of the hands of children. If they want to-- I mean, I



don't sell to children. I don't also carry products that look like highlighters, like Senator Hughes described. But I would be OK with regulations that you can't sell products that mimic candy, use candy names or anything like that, or look like other normal household items like highlighters, so that kids can't hide them as easily. I'm OK with all of that. I'm just not OK with, like, completely obliterating the industry and handing it over to Big Tobacco.

**J. CAVANAUGH:** Thank you.

**LOWE:** Thank you, Senator Cavanaugh. Do you sell the products, it was mentioned before, like there are products with SpongeBob on them, things like that? Do you carry those things?

**SARAH LINDEN:** To be honest, I've never even seen or heard-- and I've been in this industry for a decade. I've never seen a vape product that had a kid's character on it. Like over the years, this has been a common thing that vape companies have been under attack for is , like, the marketing to youth. And so, many of the vape companies have like cleaned up, even if they had, like, an-- a animated apple on their packaging, they've taken it off. So I, I don't have anything like that in my store. Senator Hughes did mention the highlighter to me, so I looked it up. And I was surprised that it does exist. I've never seen it. So, I mean, most good actors in the industry are not selling those things because they know that it's wrong. And they know that selling to minors and minors using these products is only going to hurt us in the long run. And we don't-- I have kids of my own, and I don't want my kids vaping. I don't want kids vaping. You know? But I do want these products to be available for adults.

**LOWE:** OK. And so you don't sell anything that looks like this that was distributed?

**SARAH LINDEN:** I've never seen that before. But I will say, you know, vaping has been under attack for years. I went to the convenience store with my daughter the other day. And there was like this little display on the counter that had, like, emoji with smiley faces and stuff. And it was vodka. And my daughter asked me for an emoji vodka. So this is not the only industry where that is happening. It is the only one that's under attack, and has been for the last decade.

**LOWE:** No, we're also taking a look at those little vodka bottles, too.

**SARAH LINDEN:** OK, good. But I do disagree with that. I would just never, as a responsible retailer, I would never carry that. And like the vendors that I use, that are responsible vendors, they don't sell that. So I'm not sure where that particular thing is coming from.

**LOWE:** And do you sell other products to help people get off cigarettes, nicotine gum or things like that?

**SARAH LINDEN:** I do not.

**LOWE:** Or, or just, just vaping?

**SARAH LINDEN:** Um-hum.

**LOWE:** OK. All right. Thank you very much.

**SARAH LINDEN:** Yeah. No problem. Thank you.

**CHRISTINE VANDERFORD:** Hello.

**LOWE:** Good afternoon.

\_\_\_\_\_ : Hello, Christine. How can I help?

**CHRISTINE VANDERFORD:** My phone is going to talk to me. My name is Christine Vanderford. Good afternoon, Chairman Lowe and members of the General Affairs Committee. I worked for Kure CBD & Vape. We're high quality--

**LOWE:** Christine?

**CHRISTINE VANDERFORD:** Yes.

**LOWE:** Could you please spell your name for the transcribers?

**CHRISTINE VANDERFORD:** Sure. C-h-r-i-s-t-i-n-e V-a-n-d-e-r-f-o-r-d as in dog. I'm a long name, penalized. I work for Kure CBD & Vape. We sell high-quality vape products and represent-- that represent over 75% of our sales. We operate 12 stores in Nebraska and a total of 75 store locations across 14 different states. We oppose, we oppose LB1296. This bill will further destroy Nebraska's retail economy, causing the state to lose millions of irreplaceable tax dollars. We employ 51 people in Nebraska, paying out more than \$1.4 million in wages. We pay an additional \$430,000 in sales and occupational taxes. We strive to be good actors in our industry, and we believe that our products can do good. And we work, in all of our states, under federal

and state regulations and with our lawmakers, so that there's a safe environment for adults to use these products responsibly. During last year's session, the Nebraska Legislature passed a bill that imposed a 10% tax on vapor products. Our company, as a result of that, will pay \$80,000 from January sales alone. That's additional tax revenue you did not have last year. If LB1299, which is a bill you have in front of you this year potentially, is passed and introduced into session-- after this session, and this bill would fail, our tax would double. And in that same month, we would provide \$160,000 of additional tax dollars to the state of Nebraska on a monthly basis, let alone take that times 12, over the course of a year. The Legislature, we hope you will decide. Do you want to gather more tax dollars by passing something like LB1299, raising excise tax to 20%, or do you want to create a larger burden by banning 99% of the products that are sold and wiping out an entire industry in our state? An impact study that I've passed out to all of you, John Dunham and Associates, in 2021, showed that the vape industry provides \$175 million in our state's economy, providing 1,200 jobs and \$53 million in wages to Nebraskans, generating \$14 million in state and local taxes for the state. Again, that was 2021. So think about what would happen today, offsetting it by 20% with your LB1299 proposed. Taking the good actors out of the industry, we will deter-- we will not deter the bad actors. We experienced this firsthand in other states like Illinois. We closed 6 retail locations there. We saw our competitors ignore the laws, and they started selling out of their trunks without no taxes, no employees, and no expertise to ensure proper care or age verification. One of the individuals bragged to us about selling \$8,000 worth of products to minors in just one week. When the trunk is open and there's a free for all, that becomes the norm, the norm. A band of flavors results in a booming black market, boosting online sales, which this bill does not ban, and the social media hype will continue. The illicit market provides even more access to minors, further undermining, undermining the legitimate taxpaying businesses like us who pay taxes. Consumers turn to nearby states or online stores to purchase these products, and over 80% of Nebraskans live within 1 hour's drive from one of our many borders, which these products would still be illegal.

**HOLDCROFT:** Christine, can you kind of wrap it up?

**CHRISTINE VANDERFORD:** OK. So we're weary from being punished, and we ask that the committee oppose LB1296.

**HOLDCROFT:** Thank you, Christine. We can open it up. Are there any questions from the committee? The single man committee. No? OK. Are there any other proponents-- or opponents? I'm sorry. We're on opponents. They're all recorded. It's all recorded.

**STACY ALEXANDER:** Hello. My name is Stacy Alexander, S-t-a-c-y A-l-e-x-a-n-d-e-r, and I'm the owner of e-TITAN Vapors and currently own and operate 4 stores in Nebraska. Passing LB1296 would ban 99% of flavored vapor products, including menthol. Menthol cigarettes are legal and approved by the FDA, even though smoking remains the leading cause of preventable death, with 480,000 deaths a year. That's 1,315 Americans who die every day. In contrast, zero deaths have been attributed, attributed to nicotine vapor products in the 20 years that they have been on the market. Again, to reiterate, in the past 20 years, 9.6 million Americans have died from smoking traditional cigarettes during the same time frame. A study performed by the Royal College of Physicians in 2016 concluded that vaping is at least 95% safer than analog cigarettes. Banning flavored vaping products will be damaging to adults trying to quit and public health overall. The only products which would be legal under this bill are tobacco-flavored products. Only 14% of adults who made the switch from smoking to vaping did so with tobacco-flavored products, and only 4.6% of adults continue to use those products after initiation. Most smokers do not like the taste or smell of cigarettes and therefore do not want to vape tobacco products. A national study, conducted by J.C. Chen in April 2018, found that smokers who use vapor products with one or more nontobacco, nonmenthol flavors were significantly more likely to have reduced or quit smoking over time. The FDA has acknowledged that e-cigarettes need to stay on the market to help smokers quit. The statement published in the New England Journal of Medicine was showed that e-cigarettes are nearly twice as effective at helping smokers quit than traditional cessation pro-- pro-- products, including nicotine gum, patches, lodges--lozenges, and pharmaceuticals, all combined. That's all of those combined. I agree that restricting access to minors is of the most importance. Raising the minimum age to purchase vapor products has led to a 60% decrease in youth vaping since 2019, down to pre-2014 levels. The 2023 National Tobacco Survey shows that only 10% of high school students are vaping at least once a month, and only 3.5% are vaping with any frequency at all. Other solutions should be considered to reduce underage use. In 2019, former commissioner of the FDA, Scott Gottlieb, posed a solution, limiting the sale of e-cigarettes to adult-only stores, and they were found to be much less likely to sell to minors, based on their attempts to

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perform sting operations conducted throughout the nations. C-Stores, on the other hand, were the number one proliferator of selling vapes to minors. This solution will restrict access or attractiveness to minors while maintaining access to the lifesaving products of adults. I have also submitted supplemental information in the packet provided for senators present here today, showing that over 26 million vaping products were submitted to the FDA for approval, and that the PMTA process-- and only 23 of them were approved. I am bringing this up to point and highlight the fact that the only e-cigarettes that are currently-- have FDA approval, are all owned by Big Tobacco. In fact--

**HOLDCROFT:** I'll ask, ask you to wrap up, please.

**STACY ALEXANDER:** I will tighten it up. In fact, as recently as June of 2023, Altria, the world's largest cigarette manufacturer, just purchased IJOY [SIC], an e-cigarette company. This acquisition is now pressuring legislators to pass laws that would only benefit them. That's the same companies who have FDA approval for cigarettes, arguably one of the biggest public health concerns now monopolizing the e-cigarette industry. I would be happy to answer any questions.

**HOLDCROFT:** Are there any questions from the committee? Thank you very much, sir.

**STACY ALEXANDER:** Thank you very much.

**HOLDCROFT:** Next opponent.

**JACOB MARTIKAINEN:** Good afternoon. My name is Jacob Martikainen, J-a-c-o-b M-a-r-t-i-k-a-i-n-e-n, and I'm the co-owner of e-TITAN Vapors, with 4 stores in Nebraska. LB1296 seeks to ban 99.9% of e-cigarettes on the market under the guise of public safety, protecting our youth, and enforcing laws. Unfortunately, this bill will do more harm than good, and currently fails to meet those standards. Taking these products off the market would and will create an uncontrollable black market. Several states have taken action to ban flavored tobacco products and take them off the market. And yet, these products still remain available through online chat rooms and black market dealers, who do not enforce age verification policies, as well as a simple Google search on where to get flavored e-cigarettes in any of the banned states, will quickly reply with chat rooms that have access to these products, and websites that clearly state they have the flavored products your state won't allow and will ship to you. The public health risk is not the threat the media and proponents

of the bill would have you believe. There are zero e-cigarette deaths. Vaping has been out since 2003 and marketed since 2008. In the last year, there were 480,000 smoking-related deaths. To date, in the last 21 years, there have been zero e-cigarette deaths. The FDA's website itself says that vaping is safer than smoking traditional cigarettes. By passing LB1296, you would take away the flavors that people use to stay off traditional cigarettes, thus returning them back to the arms of Big Tobacco, and adding to the already overwhelming death count. Protecting our youth has always been at the forefront of our industry. In recent years, the nation went to a 21 and over policy. Because of this, youth vaping has decreased dramatically. Age-gating these products has shown to be a successful tactic that allows the legitimate consumer continued access to their products. Banning flavors outright would not solve the issue. It would just punish the good citizens who rely on these products. The same products it would ban would still be available from our neighboring states and black market sellers, as well as the internet. LB1296 is premature in nature. It is trying to battle a problem that is being mitigated and fixed as we speak. Regulating the marketing and accessibility of e-cigarettes would be a far better choice. The simple solution of restricting the visibility of e-cigarettes and confining them to age-gated premises, would curb and almost eliminate the passive marketing that is happening now. Many in the industry, as well as consumers, are very open to this. We are currently jumping the gun on an issue that the FDA is currently still dealing with. Thank you.

**HOLDCROFT:** Thank you for your testimony. Is there any questions from the committee? Thank you very much. Next opponent.

**DAWN SANFORD:** Good afternoon. I'm Dawn Sanford, D-a-w-n S-a-n-f-o-r-d. I have no stake in the game other than my life. I was one of those kids who started smoking young, cigarettes, because that's the example that I had around. And I tried everything that the market offered to quit smoking. I, I tried prescription medications, nicotine gum, patches. I, I tried everything. And the only time after 30 years of smoking that I was successful was by switching to a vapor product. That ,that is huge. It immediately provided physical relief from coughing and sleep issues, and I don't want that same relief to be taken away from others. I applaud the efforts to protect our children. And, and I think everybody who has spoken here wants that for our children, and I think they're following all the legislation that's proposed that's reasonable and rational. I don't vape tobacco-flavored juice. I didn't enjoy tobacco-flavored cigarettes. I enjoyed the nicotine component. And if that's what you put back out there and I'm

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going to have to just go back to tobacco, I'm just going to go back to cigarettes. Not if I can help it. That's not my intent. But, I just think that there's other ways to get the same end result, and a number of suggestions have been made, I think until the FDA figures out how it can manage this, I don't think you can enact legislation that is based on a broken system. So I just-- I'm strongly opposed to bill-- LB1296 because I don't want the one success I finally had at quitting tobacco to be taken away from me as an adult. And I do get ID'd at the, the stores, even though-- I mean, at my age, I'm excited about that. Thank you.

**HOLDCROFT:** Thank you for your testimony. Is there any questions from the committee? Yes, sir. Senator Cavanaugh.

**J. CAVANAUGH:** Thank you, Vice Vice Chair.

**HOLDCROFT:** Vice Vice Vice Chair.

**J. CAVANAUGH:** And thank you for being here, Ms. Sanford. Is there such a thing as , like, no flavor?

**DAWN SANFORD:** Well, I think that's-- isn't that like a humidifier or something? I've not-- I, I enjoy-- I prefer the, the fruit flavored juices. And if it had-- and it's not packaged-- I, I use a big old tank thing that is not attractive or appealing to children. And my juice is not fluffy and intent-- it's just a basic juice container. I have not yet tried a no-flavor vape product. I have tried the no-nicotine vape products, and those, those fill in that gap, as well.

**J. CAVANAUGH:** OK. Thank you.

**HOLDCROFT:** Thank you, Senator Cavanaugh. Are there any-- I guess there are no other questions. Thank you. Next opponent. Next opponent. Is there anyone testifying in the neutral? Senator Hughes, would you like to close?

**HUGHES:** Yes, sir. Yes, Vice Vice.

\_\_\_\_\_: Vice.

**HUGHES:** All right. Members-- 2 lone members of the community-- or community-- committee. Thanks for your time and consideration of LB1296. Before I begin on my closing remarks, I'm having the page handout some photos. And these are pictures of 2 products that were purchased by an adult at the drive-in vape store just today, north of

the Capitol. And there's a photo of them on the front, and then the second photo is the back side, and just to show that those products are from China and are currently illegal under the federal law, purchased today. I believe that the testimony shared today by the proponents of this bill illustrate that we need to take steps to create a better environment for regulating vaping products. Through the-- this regulation and with the creation of the registry that aligns with what is fed-- legal at the federal level with what is being sold here in the state, through stiffened penalties for selling illegal products and ending the online sale of these products in Nebraska, will allow us better to enforce keeping these products out of the hands of anyone under the age of 21. The bottom line is our current enforcement is largely being done in our schools, whether it's installing vape detectors in high schools-- LPS just spent \$200,000 on this, which, by the way, adds to the burden of our property taxes-- or whether it is in our elementary schools, this should not be our first line of defense. There are retailers who are doing the right thing. However, there are many who simply put profit over people, and we need to level the playing field for the good actors. We need to protect kids. We need to ensure the safety of the adults who use these products and instill trust in the products that they are using, that they are legal and not something created in some fly-by-night factory overseas. We need to advance LB1296 so that discussion can continue, and we can make this industry less of the wild, wild west and more accountable. Thank you for your time and consideration, and I welcome any questions.

**HOLDCROFT:** Any questions, Senator Cavanaugh? I have one question. It was mentioned earlier that some of the opponents have been talking to you and the AG about--

**HUGHES:** Yes, .

**HOLDCROFT:** --some kind of compromise.

**HUGHES:** Yes.

**HOLDCROFT:** Do you have-- can you fill us in on any-- anything you might be thinking of?

**HUGHES:** We-- that meeting was just late, late last week. And so, we will continue that on and possibly then, have an amendment before we come out of committee. So.



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**HOLDCROFT:** OK. Thank you.

**HUGHES:** We want to make it that the right people that are doing the right things can stay in the business. And we don't want to, you know, hurt adults that are using this in the right way. But there is-- it is the wild, wild west, if you haven't noticed. So-- and in an industry that typically, alcohol, tobacco is highly regulated, this is just not.

**HOLDCROFT:** OK. Thank you. Do we have the number of letters you received and--

**LAURIE HOLMAN:** Let me check. Yes. There were 7 proponents and 6 opponents online.

**HOLDCROFT:** Thank you. And that closes--

**HUGHES:** All right.

**HOLDCROFT:** --the hearing on LB1296.

**HUGHES:** Thank you.

**HOLDCROFT:** Thank you very much. Now you can come and assume chairmanship.

**HUGHES:** Do I need to sit there or just do it here?

**HOLDCROFT:** Here. Catch, Catch.

**HUGHES:** No, don't you throw that at me. I'm sitting in Brewer's-- apparently, I think I'm Senator Brewer. Are you trying to knock me out, Holdcroft? Pass the gavel. All right. [INAUDIBLE]. All right. Thank you, Senator Cavanaugh. Are we ready for LB1204?

**J. CAVANAUGH:** Yes.

**HUGHES:** Let's go.

**J. CAVANAUGH:** Thank you, Vice Chair Hughes and members of the General Affairs Committee. My name is Senator John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h, and I represent the 9th Legislative District in midtown Omaha. I'm here to introduce LB1204, which defines rickhouse under the Nebraska Liquor Control Act and allows holders of a microdistillery or manufacturer license to operate a rickhouse. I brought this bill as a way to help Nebraska distilleries. To put it

briefly, and those behind me will be able to go into more detail on the subject, but this simply allows for barrels of distilled spirits to be stored in a separate facility for the purpose of aging, provided they meet certain requirements under federal law, receive authorization from the Liquor Control Commission and notify the Commission of the location of the rickhouse, as prescribed by the Commission. I won't take up too much of your time so you can hear from the experts, but I ask the committee's support for LB1204, and be happy to take any questions. No? Good. All right.

**HUGHES:** OK. And be-- before we start with any proponents, we're going to invite Hobie up to his testimony first.

**HOBERT RUPE:** I'm a proponent, so that works.

**HUGHES:** OK. Perfect.

**HOBERT RUPE:** Good afternoon, Vice Chair Hughes and members of the General Affairs Committee. My name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently have the privilege of serving as the executive director of the Nebraska Liquor Control Commission. This is a very simple bill. This is a-- an issue that's been percolating within the industry for a little while. Unfortunately, it came to a head recently, after we had already submitted our legislative letter. So I was able to talk with Chairman Lowe and Senator Cavanaugh about it, and Senator Cavanaugh brought the bill forward for us. What it does, under existing Nebraska law is when you would remove your alcohol from your bonded warehouse, the tax attaches, and so then you have to pay the full tax at that point in time. The problem is, when you get to the aging of certain distilled spirits, you'll want to create what's called a rickhouse. And a rickhouse would be-- you would take that distilled spirit, you would place it into a barrel, normally a charred, oaken barrel if you're going to make a bourbon or a bourbon analog, and then store it in a facility to allow it to age. What happens is that clear liquid that you put into that barrel, as, as the barrels contract and move-- they move that liquid in and out through the wood, the charred wood, adding its flavor, its smokiness, the, the color. And that can take many, many years. Well, also, the other problem under our existing law, you would be paying taxes now for something you might not see for 5, 10, 15 years, and you'd also be paying for 100% of the volume. And if anybody who understands the way the system works, there's what's called the angels portion, which means as those barrels are contracting and expanding, they're losing a percentage. Often, you know, depending upon how long it is and-- or

all the weather avenues, you could be losing up to 50%, if you're going for something old. I know that sometimes, some of the really old bourbons, you know, like a 23-year-old Pappy's, they'll try-- they'll load up the, the barrel and there's nothing left. It's all evaporated. And so sometimes-- because that's how long it would go. And so, what this purpose does is brings Nebraska laws into alignment with the federal law. The federal laws came out in the 1950s, to allow this. So by sort of linking it to the federal, what's called a DSP, we would be able to keep track of the product. It's going to be covered under the existing bond. So if somebody comes out there, for tax liability purposes, it's, it's covered by the bonded warehouse. This is a very technical bill. I think this is needed to help, as we've had an explosion in both of our-- in our Z licenses, to allow them to take the next step. You know, because a lot of the times, these products will take many, many years to get to the final status, where you want. These facilities would be only used for aging. The only probably consumption that would take place on any of those would be the brew-- the, the master distiller doing the checks, you know, testing it to make sure it's where it's at, where it's getting to, as they're doing the testing. So once they-- once he says this barrel's good, now then, they would move that problem-- that product back to their facility for bottling and everything else at that point-- like, at that point in time. And then when it leaves, that's when Nebraska would get its tax on it. This is a very simple bill. I really want to thank Senator Cavanaugh for bringing the bill. And I'd be happy to answer any questions. I'm sure there might be a couple more people even more technical than I am. I tried to give you distilling 101 in about 35-45 seconds there, but I'd be happy to answer any questions.

**HUGHES:** Oh, God. That's me. So sorry.

**HOBERT RUPE:** It's all right.

**HUGHES:** Any questions from our two-- oh, yeah. Because John's over there. No questions. All right. You got off easy. Thank you.

**HOBERT RUPE:** Well, it should be an easy enough bill, hopefully. I mean, hopefully we might have a-- the rarest of unicorns. And this session, have 2 bills, where there's no opposition out of the-- on liquor bills. That'd be the first in my 20-plus years as director. So thank you.

**HUGHES:** All right. Any-- you're going to waive. OK. First proponent. We're just dropping like flies around here.

**VANESSA SILKE:** Good afternoon, copious members of the committee. My name is Vanessa Silke. It's spelled V-a-n-e-s-s-a S-i-l-k-e. I'm the attorney for Kinkaidier Brewing Company and Sideshow Spirits, which is their distillery. They are the first company to test this issue that created the need for this bill. And as Hobie noted, this is the first time in my 10-- well, 12 or 15 years now, of really contentious legislation, typically, in this highly-regulated industry, where this truly is a technical cleanup bill. It helps businesses in Nebraska. It's based on the fantastic growth of this industry, and it's really commonsense legislation. We're not going to lose tax dollars over this. Ultimately, the products that companies here make under their production licenses are going to be subject to excise tax and sales tax and everything else. So with that, I'm happy to answer any questions. And of course, I ask for your vote in favor of LB1204.

**HUGHES:** All right. Any questions for Ms. Silke?

**VANESSA SILKE:** Thank you.

**HUGHES:** You got off easy, too.

**VANESSA SILKE:** Thanks.

**HUGHES:** Next proponent. Seeing nada, do we have an opponent? How about neutral? And Senator Cavanaugh is gone, so we are done.

**BREWER:** And you're up.

**HOLDCROFT:** Any letters?

**HUGHES:** Oh, yes. You gave me the sticky. There's no letters. So this is-- wow. I think that was , like, what, 4 minutes, maybe? John shouldn't have talked so long, Senator Cavanaugh. OK, now I'm back up and-- Holdcroft.

**HOLDCROFT:** You're kidding me? You're up again?

**HUGHES:** Quiet.

**HOLDCROFT:** [INAUDIBLE].

**HUGHES:** I'm going to hit you with that [INAUDIBLE].

**HOLDCROFT:** Senator Brewer.

**BREWER:** I got a bill.

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**HUGHES:** No, he's later.

**HOLDCROFT:** Oh, for Pete's sake.

**HUGHES:** I know. OK. It's like, it's like the 3-ring circus. We're just--

**HOLDCROFT:** Ready when you are.

**HUGHES:** All right. Ready?

**HOLDCROFT:** Yes.

**HUGHES:** OK. Vice Vice Chair Holdcroft, mem-- member of the committee, my name is Jana Hughes, J-a-n-a H-u-g-h-e-s, and I represent Legislative District 24. I'm bringing before you today LB875. And I'd like to thank Chairman Lowe for being a co-sponsor. LB875 is a very straightforward bill. LB825 would prohibit off-sale liquor-- or off-sale alcohol from being sold at a loss. Why is this important? For two reasons. First, we should not incentivize overconsumption. And second, we should ensure a level playing field for all retailers. You cannot sell cigarettes at a loss. You cannot sell 2 for 1 shots at a bar or a restaurant. We should do the same for all retailers of alcohol, not just some. Our neighboring states in Colorado, Kansas, Missouri and South Dakota do not allow out-- do not allow alcohol for off-sale at a loss. I've listened to the objections from the retail commit-- community and filed AM2205, which you should have in front of you. This amendment would limit this restriction to the first 6 months after the retailer is invoiced for that product. This is meant to address the concerns from industry about specialty or holiday drinks, and I think it's a fair compromise. So if there's, I don't know, pumpkin spice vodka or something, and now it's 6 months later, they can go ahead and sell that at less than what they purchased for. Other testifiers behind me can share their diverse interests in supporting the bill, including the Liquor Con-- Control Commission. Thank you for listening, and I'm happy to answer any questions.

**HOLDCROFT:** Senator Brewer, do you have any questions?

**BREWER:** I'm good.

**HOLDCROFT:** Thank you very much. First proponent, please.

**HOBERT RUPE:** I guess nobody else wants to go first [INAUDIBLE].

**HUGHES:** Hobie's always first.

**HOBERT RUPE:** [INAUDIBLE] try to go last so I can clean up. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e. I currently have the privilege of serving as the executive director of the Nebraska Liquor Control Commission, testifying in support of the pending bill. The Commission has always-- has long been in support of these type of legislations, the last time, I believe, was Senator Karpisek brought a, brought a bill many years ago. We testified in support of it. The issue, of course, is, you know, where people would use alcohol is what's called a loss leader. You know, they'll go ahead and they lose the money on it just to get [INAUDIBLE] to buy other products. Of course, we always get complaints because-- we, we, we get complaints that, oh, no, they're showing favoritism because they're selling it for less than I can buy it, because nobody would do that. Well, some people would. It's-- if you look at the purpose of-- one of the main purposes of the act is to promote public health, safety and welfare. Alcohol is like no other product that's regulated in the, in the nation. It's the only product that's listed not once, but twice, actually, in the United States Constitution, in 2 different amendments. One is trying to get rid of it, then realizing that that was a mistake, trying to regulate it. The Supreme Court, on multiple occasions, have said alcohol is-- it's not tires, it's not diapers, it's not soda pop. It is a distinctly different product that needs to be regulated, because-- to sort of get that balance between accessibility and, and a well-ordered market, but also to promote health, safety and welfare. And for those main purposes, the Commission would be in support of the pending legislation, especially with the amendment that Senator Hughes mentioned, which would then allow for a sort of discounting of seasonal products after a certain amount of time. So with that, I would be happy to answer any questions that you may have.

**HOLDCROFT:** Thank you. Senator Brewer? Thank you very much. Proponents?

**BEAU STARKEL:** Chairman Lowe, member of the committee, my name is Beau Starkel, spelled B-e-a-u S-t-a-r-k-e-l. I appear before you today in support of LB875 for Chase Marketing, a coalition of liquor retailers in the state. I want to express my appreciation for Senator Hughes, Senator Lowe, for bringing this legislation forward. They basically said everything I was going to say. So, if anyone has questions, I have local retail stores in the liquor space. A lot of people are concerned about big boxes coming in with more capital, more resources, making it difficult for us to compete. It levels the playing field. We

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can promote other things like service, selection, experience, etcetera. Happy to ask any questions anyone has.

**HOLDCROFT:** Thank you very much.

**BEAU STARKEL:** Thanks.

**HOLDCROFT:** Next proponent.

**TYLER RUDD:** Good afternoon, committee, what's left of you. My name is Tyler Rudd. That's T-y-l-e-r R-u-d-d. I am central states counsel for the Wine Institute. Wine Institute supports this legislation. We are a trade association of about a thousand California wineries and affiliated businesses. And in many states around the country where legislation like this has been brought up, we have been there in support. We-- I don't want to repeat everything that was just said, because I think Hobie did a great job of telling you all everything that I would have said, except that Wine Institute is in full support. So, happy to answer any questions.

**HOLDCROFT:** Thank you. Thank you very much. Next proponent, proponent. How about opponents?

**RICH OTTO:** Thank you, Senators Brewer and Holdcroft. My name is Rich Otto. That's spelled R-i-c-h O-t-t-o, and I'm here on behalf of the Nebraska Retail Federation, the Nebraska Grocery Industry Association, and the Nebraska Petroleum Marketers and Convenience Store Association, testifying in opposition to LB875, which would prohibit alcohol or beer, beer from being sold below cost for off-sale consumption. We also appreciate AM2205 to give some flexibility for retailers when they have seasonal or other products that have not sold and need to move this inventory at a below cost price. At its core, LB875 wants to outlaw the practice of loss leader marketing for alcohol and beer. Retailers in Nebraska use the loss leader strategy on a variety of products on a daily basis, daily basis, and that includes alcohol and beer. You might have seen a case of beer on sale with a limit of one. This is a great example of a loss leader. The retailer uses the sale to get the customer in the door, but limits the quantity in order to provide the sale to as many customers as possible. We understand the intent of LB875, but feel it will not produce, produce any desirable measures and outcomes that the supporters suggest. In the end, the big loser of this type of bill is the consumer being forced to pay more. Also, Neb-- Nebraska currently has laws on the books that makes it illegal to sell below cost if the

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purpose is to drive out competition. With that, happy to answer any questions you may have.

**HOLDCROFT:** Senator Brewer, any questions? Thank you very much. Next opponent, opponent. Anyone testifying in the neutral? Neutral? Senator Hughes, close?

**HUGHES:** Dang. All right. Thank you, Senator Holdcroft. I appreciate all those who testified today. And I want to just, again, state the purpose is to level the playing field for all retailers, and in doing so, remove an existing disparity in our statutes that cannot incentivize overconsumption of alcohol. The prior-- Mr. Otto was speaking that they used that sometimes as a loss leader. Well, they could still just sell it at the price that they paid for it, and be-- it's just putting a bottom in there. So I think that's still an option for those grocery stores and things like that. To me, this is a common sense and double win for Nebraska. And I encourage you to support LB875 moving forward. And I will gladly take any questions.

**HOLDCROFT:** Senator Brewer.

**BREWER:** Good.

**HOLDCROFT:** Thank you very much. There were--

**HUGHES:** Oh, yeah.

**HOLDCROFT:** --looks like 3 emails, 2 proponents and 1 neutral.

**HUGHES:** All right. Thank you.

**HOLDCROFT:** This ends LB875.

**HUGHES:** Is this the last bill?

**LAURIE HOLMAN:** No. There's Senator Lowe's. [INAUDIBLE].

**HUGHES:** Oh, right. OK. So what do we do if he's not here yet?

**LAURIE HOLMAN:** We might have to just--

**HUGHES:** Take a little break?

**LAURIE HOLMAN:** --take a little break.

**HUGHES:** All right. Guys, sorry. Hold on. Give me--



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**BREWER:** It's all right.

**HUGHES:** --a minute. Just give me one minute.

**BREWER:** No worries.

**HUGHES:** One minute to find this bill, LB1276.

**BREWER:** [INAUDIBLE].

**HUGHES:** All right. Senator Brewer, are you ready to roll with LB1296 [SIC]?

**BREWER:** Thank you. Vice Chair Hughes. And good afternoon, fellow member of the General Affairs Committee. I'm Senator Tom Brewer. For the record, that is spelled T-o-m B-r-e-w-e-r, and I represent 11 counties of the 43rd Legislative District of western and central Nebraska. I'm here today to introduce LB1276. If the previous bill was a simple bill, this one will be even simpler. It's more or less an economic development tool. This bill creates a pathway for providers of a future, a future of establishments in cities of less than 5,000 people to submit plans to the Liquor Commission to find out whether or not, with some degree of certainty, the potential for the proposed location that they are seeking would be able to get a liquor license. This gives potential proprietors an opportunity to know, ahead of a large investment, whether or not the planned location would be granted a license and therefore, the opportunity to invest in the given facility. So, in layman's terms, there's been a couple of towns where they have looked at proposed locations, and because of a question of whether or not they would be granted a liquor license, they were not able to find the resources in order to be able to go ahead and, and build and establish that facility. So that is what generated this bill. With that, I will be open to any questions you have.

**HUGHES:** Do we have questions for Senator Brewer? OK. I kind of do. I just want to make sure I understand. So are you saying-- so what? I'm in a town smaller than 5,000--

**BREWER:** Right.

**HUGHES:** --which I've got multiple of. And I wanted to start, maybe, a bar or restaurant.

**BREWER:** Right.

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**HUGHES:** And I would apply for my liquor license now, before I have-- no.

**BREWER:** As I understand it, talking with Hobie, what you would do is you would bring your proposal to the Liquor Commission and say, if I was to construct on this footprint--

**HUGHES:** OK.

**BREWER:** --would there be a reason to think that there would be a restriction on being able to build there? Say, there's a school nearby, there's a church nearby, there's something that would cause a, a limit on whether or not you can build there or not. And then that way, you didn't build and then find out that all of that was for naught.

**HUGHES:** So you're not getting it ahead of time. You're just kind of getting the-- if you have it right here and it's this big and doing this, yes, we will grant it for you a few years later.

**BREWER:** They look through the restrictions and limitations so that you don't find out the hard way that this investment [INAUDIBLE].

**HUGHES:** You've all-- yeah. You've built it all out of wire and now you don't get it.

**BREWER:** Correct.

**HUGHES:** OK. Thank you. All right. Any other questions? All right. First--

**BREWER:** I'll stick around for close, providing they don't yank me out to Appropriations.

**HUGHES:** OK. First proponent, please.

**SHAWN WENSTROM:** Good afternoon, honorable members of small business community group. And I'd like to take this time to also thank Senator Brewer. My name is Shawn Wenstrom, S-h-a-w-n W-e-n-s-t-r-o-m. I am co-owner and co-founder of 1515 Brewing. My family and I are here today as proponents of LB1276. I stand before you today as a proud resident of Tekamah, Nebraska, a town that embodies a spirit in community, resilience, and a promising future. My family and I relocated to Tekamah in 2021, with a shared vision to contribute to the community's growth and vitality. Tekamah, with its population of

1,800 people, holds a very special place in our heart, especially for my wife, who grew up in the close-knit community. We are here today not just as residents, but entrepreneurs with a deep commitment and love of shaping Tekamah's future. Our goal is to open a brewery and taproom, a venture inspired by each of us and fueled by my father-in-law's profound love for this community, county, and state of Nebraska. Our decision to invest in Tekamah is rooted in the belief that this town possesses a unique atmosphere and growing potential. The warmth and togetherness of the people of Tekamah have welcomed us into their community, and we are eager to reciprocate by contributing to its economic and cultural development. However, like many aspiring small business owners, we face challenges in navigating the complexities of obtaining a liquor license. The uncertainty surrounding the approval process poses a significant obstacle, especially when considering the substantial financial investment required to establish our brewery and taproom. This is where B 1276 becomes instrumental in shaping the future, not only for us, but also fellow entrepreneurs facing similar challenges. LB1276 with its provisions to seek the opinion of the Nebraska Liquor Control Commission before making significant investments aligns perfectly with the aspirations of small business owners and towns like Tekamah. The legislation not only streamlines the licensing process, but also empowers entrepreneurs to make sure-- to make informed decisions, fostering economic growth and creating a more vibrant community. For the past 18 months, my family and I have diligently followed through every step of the liquor license application process. We've encountered setbacks, including the realization that our proposed locations pose complications. This uncertainty, coupled with financial and personal investments, has left us in a precarious situation. Alternative paths, such as temporary locations, have proven impractical, leaving us in limbo. That hinders progress. In closing, I urge you to consider the positive impact LB1276 could have on small businesses like ours and the broader community of Tekamah. By supporting this legislation, you are not just endorsing a bill, you're endorsing the dreams, aspirations and the bright future of communities like Tekamah. Thank you for your time and consideration.

**HUGHES:** All right. Thank you for coming in and sharing your story.

**SHAWN WENSTROM:** You're welcome.

**HUGHES:** Questions from the committee? All right. Thank you very much. Appreciate it. Next proponent.

**CINDY CHATT:** Hello. I was here last year, so I feel a little less nervous this year. Anyway, my name is Cindy Chatt, C-i-n-d-y C-h-a-t-t, and I would like to thank Senator Lowe and the committee for hearing what I have to say today. I'm representing 2 different aspects of this legislation. I have-- I'm a business owner and have been through the liquor license process a couple times in Tekamah-- for establishments in Tekamah. And I'm also currently the Burt County economic development director for our area, and I'm here to advocate for changes that can significantly benefit our rural communities. Streamlining the liquor license application process, as proposed by this bill, is crucial for fostering economic growth and community revitalization. By facilitating early approval for liquor license, we're not, we're not going around the process. It's just helping the-- mitigating the risk for the new business owners, so they have a path forward, and you're keeping all the safeguards in place. So you still have to go through all the process in terms of fire marshal approval, all of those same steps that you have to go to for your liquor license. It just helps mitigate the risks and encourage investment in the long run. The initiative holds imm-- immense potential for revitalization of abandoned buildings. The location that the Wenstroms are looking at is a building that's been abandoned for at least 10 years, without any investment in that building. It hasn't been on the tax rolls. So it's something that will-- it encourages community pride by-- it's going to advance the looks of our main street. The economic impact of these developments cannot be overstated. Properties-- this property will be brought onto the tax draw, will increase the revenue through sales tax. It also will help businesses, like the ones that I have in Tekamah, by generating additional tourists and patrons into our town. So the positive ripple effect will be across neighboring businesses across the area. In conclusion, I urge you to consider the signif-- significant benefits that LB1276 can bring to rural communities, particularly in attracting investments from businesses like breweries, other restaurants, and things of that nature. By embracing this initiative, we have the opportunity to drive economic growth, enhance community pride, and fist-- and foster a brighter future for all. And I thank you for your time today.

**HUGHES:** Great. Thank you for coming in, Ms. Chatt.

**CINDY CHATT:** Yeah.

**HUGHES:** Questions? All right. Very good. Thank you.

**CINDY CHATT:** Yeah.

**HUGHES:** Next proponent. OK. Seeing none, next opponent. No opponents. All right. Oh, yep. No, neutral coming up. I was like whoa.

**HOBERT RUPE:** Good afternoon, members of the General Affairs Committee. Once again, my name is Hobert Rupe, H-o-b-e-r-t R-u-p-e, and I have the privilege of serving as the executive director of the Nebraska Liquor Control Commission. We're testifying neutral in this capacity. I understand what the senator and what they're trying to do with it, but that's not really what they're doing if you read this statute. The statute is using specific terms of art. For instance, it says issuance, which means that they get a liquor license before they build a liq-- before they build a building, before the Fire Marshal signed off on it. The, the drafting of this bill is woefully inadequate, because-- as the way it's drafted. Because they're-- what they're trying to do is get a pre-approval. And we know that. We've done-- we have a sort of a-- an informal process for that. As-- if you're aware, we do what's called public presentation, which means during our-- the hearings, anybody can come to the hearing. And so long as it's not on our, our, our hearing schedule, so it's not an ex parte communication, they can testify-- they can ask us questions or testify about anything. And oftentimes, and I believe in this case in particular, the applicants were-- suggested coming and talking to the Commission at a public presentation. Because the-- that way you could go through, what are you trying to build, what are you trying to do? And you can sort of test the water to see if you're going to meet the requirements. In this case here, that has not yet happened. I know that there-- we were-- my staff has been working with the, with the proponents of the bill. I believe the first location was going to be inside the home, which by state law, you can't have a liquor license inside a home. And so, therefore, that one was withdrawn. And so they're looking at this location here. If I understand the concern about this location, is there's at least 3 churches which might be within the 150 foot bubble. You'll remember, it was probably 10 years ago, the Legislature changed it. It used to be a hard and fast-- you could not have a liquor license within 150 feet of a church. What had happened as you had the proliferation of, what I call storefront churches in certain communities, and, and the one I remember specifically was Grand Island. You basically had shut off the entirety of the downtown Grand Island business district to any development by a bar or restaurant who wanted a liquor license. So therefore, now it's just the, the church may object and be heard before the Commission before there's an issuance. And so I understand that there's concerns that there's 3 potential churches within this proposed location which

may be affected. However, I'm also aware that this is right in downtown Tekamah, right in the business district. It's, it's been licensed-- the location has been licensed before in the past. I think in a past life, it was a bowling alley, and a supermarket at one point in time. So it has-- that location has been licensed before. So we understand the concept of wanting to come forward for some sort of pre-approval or at least a green light, if nothing else. But the way this is drafted raises serious concerns to the Commission. And therefore, I thought it was appropriate that we testify in a neutral capacity. The stat-- the proposed language uses the words issuance, and that's a term of art. That, that means you have a liquor license in your hand. And the idea of issuing a license on just plans, those plans change all the time. But we can also understand what they're trying to do here, so that's why we're not in opposition, but neutral. With that, I'd be happy to answer any questions.

**HUGHES:** All right. We have mis-- yes. Go ahead, Senator Holdcroft.

**HOLDCROFT:** Go ahead. Thanks for coming, Hobie. So what are the most common reasons for denying a li-- a liquor license for these kind of cases?

**HOBERT RUPE:** In these kind of cases, there's a whole host of reasons why a license would be-- if you're looking at location, it's-- you can't be within 150 foot of a church. I mean, church is a discretionary; 150 foot of a school is a no-go. If you're within 150 foot of a school, you can't do it. And the courts have been-- have, in a case called Christ versus the intercessors-- Christ-- the Intercessors of the Lamb v. The Nebraska Liquor Control Commission, said that we measure that from nearest external wall to nearest external wall. So it's not property line, it's from wall to wall. So that is one reason why. You can also deny if-- under the existing procedure, the citizens can file a protest. And, you know, let's say you may be trying to put a, a big bar into a-- right next to a residential neighborhood. You know, you might get some protest on that because of the nature of the business, you know, the na-- you know, they might not oppose a grocery store or a convenience store, but they might be opposed to a big, you know, you know, stand up, you know, honky tonk-type bar, just because of the different issues. Not all lic-- liquor licenses are created equal. The most rea-- the most reason why we deny liquor licenses are failed background checks. And we don't see those until much later in the process than they're talking about right now. Because that's after the application would be filed. When a liquor license's applic-- is filed with the Commission

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and it's complete, we do what we call we spread it upon the water. We send it to multiple agencies who also have a role in it. The Nebraska State Patrol will do the background check, and they will get the fingerprints. The local governing body will be able to make a recommendation-- held a hearing and make a recommendation. The Fire Marshal gets it, so they can make sure that it, it meets fire code. And Department of Health, foods and dairies, the Ag Department, gets it for sanitation issues. And so, we get-- have to get reports back from all of those 4 entities prior to we issuing a license. I have been adamant in my tenure that we will never issue a liquor license until there has been Fire Marshal approval. You know, sometimes I'll give a conditional approval, which we'll issue, but you know, until the Fire Marshal signs off on it, we never do it. And the Fire Marshal will never approve on plans, I can tell you that. So-- but in this [INAUDIBLE] situation, historically, there's been no-- we've issued licenses like this, that-- "as described" before. Because this is a downtown business district, it's been licensed before, it's-- especially if it's supported by the community.

**HOLDCROFT:** OK. You mentioned a failed background test. What would constitute a failed background test?

**HOBERT RUPE:** If you don't list certain things. But there are also, in 53-125, there are certain crimes that are violative. Any felony on your record is an automatic bar. You can't have a liquor license. Certain Class I misdemeanors as enumerated. You know, not every Class I misdemeanor but certain Class I's are also automatic bars. And oftentimes, you know, you're supposed to list them when you apply. A lot of people fail to list-- do a full listing. And, you know, they must think we ask for the fingerprints to wallpaper my office and not actually run them as checks. So a lot of times-- I actually had one gentleman who was trying to get a liquor license, and we found out he was guilty of child molestation in Colorado. And his response was, I didn't think you'd find it. And I'm like, well, that's why we have fingerprints. So, those are the most common reasons. The other reasons would be for character and reputation. They might not be bars. If you've got multiple DUIs, you're maybe not at the felony DUI level yet but you've had 3 DUIs in the last 5 years, you're probably not going to get a liquor license, only because the Commission doesn't believe that you're going to be able to show the type of character to-- you know, if you've had this much problem dealing with alcohol yourself, how are we going to trust you behind the bar, selling that alcohol?

**HOLDCROFT:** OK. Thank you.

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**HUGHES:** Senator Lowe.

**LOWE:** Thank you, Vice Chair. So you don't issue the license until you've seen the other 4--

**HOBERT RUPE:** Yeah.

**LOWE:** What-- the State Patrol, the Fire Marshal, the health inspector. How often do plans change, the blueprint-- print plans change--

**HOBERT RUPE:** Often.

**LOWE:** --[INAUDIBLE] construction? [INAUDIBLE].

**HOBERT RUPE:** They often will change. Actually, I see that happen a lot on new constructions is after they're [INAUDIBLE] talking to the Fire Marshal's office. You know, because if you're, if you're aware, the Fire Marshal has different criteria for the size of your business. And sometimes, you know, if you're just going to-- if you, if you can reduce the size of your business and have 25 less people, you're going to reduce the cost of fire prevention equipment by, you know, 30, \$40,000. Another big one would be if you're going to, you know-- if the original plans [INAUDIBLE] for a full restaurant, and then you-- after you do the plans, you price what a hood system will cost, which are getting absolutely crazy, so you might then change that. So we do see changes all the time from, from originals plans.

**LOWE:** All right. Thank you very much.

**HUGHES:** Any other questions? I have one. So do you, do you see any kind of, I don't know-- to thread the needle, that would give someone in this situation-- I mean, I know you clearly can't say, yup, you're good to go, because you can't issue a license until you've--

**HOBERT RUPE:** Yep.

**HUGHES:** --gotten these other things back. Like, I guess, what-- are we looking for , like, just a little certificate that says, well, these checkpoints are good? I, I don't know.

**HOBERT RUPE:** Well, you know, the, the issue, of course, is, you know, you know, the citizens can always protest. And if 3 or more citizens protest a liquor license, a license-- a hearing must be had in front of the Commission. It's by statute. Doesn't mean they're going to win. A lot of times they don't. But it must be had, must be had. Where also



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a hearing must be had in front of the Commission, if we receive a recommendation of denial from the local governing body. Where we can do is, you know, currently, could-- because we know that-- the situation as I described, where we don't know whether we'll make the investment till we get some idea of what's going on here. I, I applaud them for doing their due diligence and seeing that there may be potential issues within the location. So in the past, we've recommended asking-- coming in during public presentation and saying, here's my proposal. Do you guys see a problem, given where it's located with this, absent something that might come up later on during the process?

**HUGHES:** And you can-- they can do that today.

**HOBERT RUPE:** We've done that today. Yeah. Yeah. We-- we've-- we--

**HUGHES:** You don't need legislation.

**HOBERT RUPE:** No, we don't give preapproval. We continue to say, hey, we're not approving it because we can't approve it until everything comes in.

**HUGHES:** Um-hum.

**HOBERT RUPE:** But we're saying, right now, we're not-- this is not giving us any heartburn.

**HUGHES:** OK.

**HOBERT RUPE:** And, you know, so-- especially, you know, given the, the recent, as what I described earlier, where we're trying to look at, you know, you know-- especially how well-- how much church is going to affect downtown business districts. We're try-- we're, we're very cognizant of that, that-- of, of why we changed that law.

**HUGHES:** OK. Thank you. Anything else? All right. Thank you for your testimony.

**HOBERT RUPE:** Thank you very much.

**HUGHES:** Anyone else in the neutral? Senator Brewer, you're back. You can close.

**BREWER:** Appropriations is more challenging than--

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**HUGHES:** Better run?

**BREWER:** --General Affairs.

**HUGHES:** Better run. That's what you mean.

**BREWER:** All right. Just so you guys know, I had the conversation with Hobie just before we kicked off here. So he had provided some valuable information to better understand the process. Just to share a little with you, on my brother, who's a county sheriff. Some of those restrictions on individual limitations are also true with deputies that you're hiring. He recently had 10 applicants. Wasn't necessarily happy with any of them, but 2 of them were unique in that they were-- both had felony warrants. So he went ahead and invited them in for the interview and then arrested them. So, sometimes you have to be careful on, you know, what you ask for, because you might actually get it. On, on this, because of how the Liquor Commission is set up and how flexible they are-- I thought-- you had a-- you had a good question in. OK. If it's that way, is it necessary? And, and I guess why we pushed through with the bill was that currently, if, if I knew Hobie was going to be there forever, I probably would have less concern. But as personalities change with leadership positions, sometimes things are not as user friendly as they might be now. So that's what generated it. If you have questions, I'll try and answer them. Otherwise, I'm operations complete.

**HUGHES:** All right. Any questions for Senator Brewer? OK. LB1276 had 3 online letters of opposition. That's it, concludes that. And now, our Chair has his bill, the last bill of the day.

**LOWE:** Last bill.

**HUGHES:** Last bill of the day.

**LOWE:** Watch everybody leave.

**HUGHES:** It's been a-- it's been a scant group today.

**BREWER:** The love, the love of the Chairman.

**HOLDCROFT:** One of these relatives that you're having back here?

**BREWER:** [INAUDIBLE] online. [INAUDIBLE].

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**HUGHES:** I don't know. I don't have it. All right. [INAUDIBLE]. Yep, yep. Senator Lowe, LB838.

**LOWE:** Good afternoon, Vice Chair Hughes and members of the General Affairs Committee. My name is John Lowe. That's J-o-h-n L-o-w-e, and I represent District 37, which is Kearney, Gibbon, and Shelton. I am here today to introduce LB838, a bill to remove the requirement that the Arts Council members who are appointed by the Governor also be confirmed by the Legislature. The reason why I'm bringing this bill is simple. Time. And it's not daylight or standard.

**HUGHES:** Darn it.

**LOWE:** I want to make it clear that I wholeheartedly support the Arts Council. I think they are doing a wonderful job at advancing the arts across the state. The concern I have is simply-- that-- with the amount of committee hearing time these appointments require. In 2023, we had only 5 hearing days, and one of these hearing days was used for 13 gubernatorial appointments, 6 of which were the Art Council. This year, we only have 3 Mondays on which to schedule our hearings, and are having to use a Tuesday later in February to schedule our confirmation. I'm glad the other committees didn't have more bills or we would not get this Tuesday. We would be here very late at night for these confirmations. But again, we have 6 Arts Council appointees this year. For a little background, there are many councils and commissions that have appointed members who are not approved by the Legislature. The Commission on Law Enforcement and Criminal Justice or the Crime Commission, which is a code agency, and its commissioner is appointed by the Governor without the approval of the Legislature. Other boards and commissions who are not subject to the legislative confirmation include the State Claims Board, the Economic Forecasting Advisory Board, the State Board of Nursing. Whether a commissioner or a commission has their appointment confirmed by the Legislature is simply a matter of who drafted the bill that created the commission and whether they thought to include the language for the Legislature to confirm. There are no rules or statutes governing this. And just to be clear, if this bill goes through, it will be passed long after our hearing dates, so they still have to come in for their confirmation this year. We trust the Governor's process and the discretion in appointing the members of the Nebraska Arts Council. And I think this bill will free up increasingly reduced committee hearing time. We trust the members of the Arts Council to continue doing their wonderful work, and I feel that they can do so without the additional oversight of the Legislature and freeing up their time also, because

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you'll notice many of them are done remotely anymore anyway. I'd be happy to answer any questions you might have.

**HUGHES:** All right. Questions? Senator Holdcroft.

**HOLDCROFT:** This sounds like a good bill. What-- I mean, how many people are on the council?

**LOWE:** I believe there's 12.

**LAURIE HOLMAN:** 13.

**LOWE:** 13.

**HOLDCROFT:** 13. And what's their tenure?

**HUGHES:** It says 15.

**LOWE:** 2 years?

**HUGHES:** Arts Council?

**LAURIE HOLMAN:** Oh. 15.

**HUGHES:** 15, 15 members.

**HOLDCROFT:** 15 members.

**LAURIE HOLMAN:** They serve 3-year terms.

**HOLDCROFT:** And 3-year terms. OK. Well, that's probably part of the issue. I mean, if we just extended their terms to 10 years, you probably wouldn't, wouldn't show up very often.

**LOWE:** You may not have any Arts Council members.

**HUGHES:** I think the term should be on-- to death.

**HOLDCROFT:** So you think we'll get-- I mean, it was-- 6 then, wasn't really an aberration. I mean, if you got 15 and they're only in 3-year terms, it-- you're probably going to see that kind of numbers every year.

**LOWE:** Yeah.

**HOLDCROFT:** Thank you.

**HUGHES:** OK. Other questions? So I-- I'm not going to lie, I have-- I make notes on a sheet before I come in here. And I have "brilliant" written on the top of this one. I do recall last year, being first year on the-- on this committee, and we had the-- people came in for the Arts Council. And I was kind of like, do you have a pulse? And you've agreed to do it? You're in. So I am all for this. Anybody else?

**LOWE:** These are all wonderful people.

**HUGHES:** They are wonderful people. And it's-- I mean, if they're willing to do it--

**LOWE:** Yeah.

**HUGHES:** --God bless them. So, OK.

**LOWE:** They'll never ask me.

**HUGHES:** No, I will-- I guarantee I will not be on that either. So. OK. Anybody else? That's it.

**LOWE:** I will stay for close.

**HUGHES:** OK, great. Do we have any proponents for this, please? Any opponents? Anyone neutral? OK, we got a neutral. All right. Thank you for coming in.

**MIKE MARKEY:** Oh. Thank you. Thank you, Senator. And thank you, members of the committee. My name is Mike Markey, M-i-k-e M-a-r-k-e-y. I'm the executive director of the Arts Council. And I just thought I'd take this opportunity to come before you today and thank you for the role that you've played in the past, in confirming the Governor's appointments to the Arts Council. The council serves an important role for the arts and for the people of Nebraska, and we place great and-- great importance on the appointment and confirmation process. Members of the Arts Council not only serve a fiduciary function for the people of the state, but they are also the eyes and ears for the agency, providing perspective of and support for the arts in their communities throughout the state. To that end, I wanted to take this opportunity to put in a good word for the appointees and reappointees that will be coming before you this spring. Jon Gross and James Wright are new appointees. John is a leader in the arts community here in Lincoln. His background in banking will be of great value to me and to the agency. And James Wright has years of experience in public service and public administration. He knows the value to be had by developing the

state's cultural assets to improve livabilities-- livability in our communities. And he is also a fine actor. Now, you will also be reappointing 4 wonderful current members of the council: Brian Botsford of Kearney, Zachary Cheek of Omaha, Jana Goranson of Gordon, and Clark Roush of York. Please send them back to us. They've served well, and we have more important work for them to do. You see, the Arts Council is still in the early stages of a number of exciting programs already making a successful impact for the people of the state. The Creative Districts Program, for one, spurs economic growth by developing a community's creative industries, developing jobs, and improving live-- livability in the community. I provided you with a quick thumbnail sketch of the success of the program to date. The program has 28 certified communities across the state, and there are 20 more working through the certification process. That process is important because it engenders community asset mapping, collective discussion, and strategic planning for a future of growth by developing projects and programs that increase tourism, develop new jobs, refurbish historic buildings and downtown districts, and broaden the tax brate-- the tax base. A number of those creative districts reside in legislative districts that are represented here today, and so you're probably already aware of the good that they're-- that's being done by the program. I don't have time, time to tout all the other programs at the agency, but let's just say there's a lot of work to be done by our little staff, and we couldn't do it without the help of the council or you. I'm happy to answer any questions that you might have.

**HUGHES:** All right. Do we have any questions for Mr. Mike Markey? That's kind of a fun name.

**MIKE MARKEY:** My parents had a sense of humor.

**HUGHES:** Nothing? All right. Well, thank you. Appreciate it.

**MIKE MARKEY:** Thank you, all.

**HUGHES:** And we have at-- my district has 2 of those creative art districts, so that's great. Neutral, anyone else? All right, Senator Lowe, to close.

**LOWE:** Well, I wanted to waive closing, but Mr. Markey deserves this because he came to testify.

**HUGHES:** I was going to say Marky Mark.

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**LOWE:** No, it's not.

**HUGHES:** Aw.

**LOWE:** And, you know, when the Governor appoints somebody, I think he does a good job, or she, whoever the Governor is at the time. And it shouldn't be up to us, because they review these applications also. And I believe that the executive director, Markey, does a great job with our arts. And the people in Nebraska do a great job with our arts. Kearney is famous for the, the plays that they put on, and the musicals and things like that, and, and the Museum of Nebraska Art. Art is all around us, and it's, it's good for our, our tourism, as Mr. Markey said. But I, I believe that it's time. And time is wasting, and so I'll just shut up now.

**HUGHES:** All right. Do we have questions for Senator Lowe? It's about time? Yeah, it's about time.

**LOWE:** Standard or daylight?

**HUGHES:** Oh, Lord help us. All right. Thank you. That concludes LB838. And we did have 3 online comments, 1 proponent and 2 opponent. Right? I don't know. I'm looking those up. Thank you. Oh, yeah. We're done with the hearings today. But I think we're going into Executive, so-- and I will hand off the gavel.