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General Affairs Committee
November 16, 2007

[LR149]

SENATOR McDONALD: Good afternoon and welcome to the General Affairs Committee hearing on LR149. I'm Senator Vickie McDonald; I chair the committee. To begin with, please turn off your cell phones, pagers, or anything that makes noise. Keep conversations at a minimum and take out, if you have some, would like to speak someone, if you would go out in the hall that makes it a little bit easier for us to hear the presentation. I'd like to introduce our committee members who are present. We have Cap Dierks from Ewing to my right. Next to him I have Mike Friend from Omaha. We have a couple of senators that are going to be gone: Senator Erdman, Senator Preister, and Senator Janssen. But we're hoping that Senator Dubas and Senator Karpisek will join us in a few moments. Committee staff, to my right, who is now in the hot seat, is Laurie Lage. She is our legal counsel. To my right end is Nikki Trexel, our current committee clerk, and also with her is our new clerk for next year, Matt Rathje. Today we'll be hearing one study resolution, LR149, and we'll begin looking at issues related to our farm wineries and federal case law that may affect them. Our pages today are Molly from North Platte, and Kim from Lincoln. If you are planning to testify, please pick up a sign-in sheet from the tables in the back of the room, fill out your name before you testify. When it's your turn, give the sheet to the page so the page may have an accurate record. Remember, for interim hearings we do not have pro and con presentations. We just come in as you feel like you are free to testify. If you have handouts, please make sure that you have ten copies, and the page will hand them out for you. When you testify, please speak clearly and speak into the microphone. Tell us your name, who you represent, and most of all, spell your name, first and last name, please. So with that we are ready to begin. Counsel will have a short opening and will be followed by the director of the Nebraska Liquor Control Commission. [LR149]

LAURIE LAGE: Thank you, Senator McDonald, members of the committee. I'm Laurie Lage, counsel to the General Affairs Committee, here to introduce LR149. This will be just a very brief opening. As the senator said, Hobie Rupe, who is the executive director

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of the Liquor Commission is here to give us an update and what he thinks is important pertaining to this resolution. As you may recall, a few years ago a major Supreme Court case was decided, that changed the distribution laws for wineries in the states. This is what this about. We haven't had a response in Nebraska yet. That's what Hobie is here to talk about, to talk about what we should anticipate, what may be going on in the federal courts, and so we know...so that we'll be prepared for whatever may be happening on the federal level, and to consider what our response should be. So with that I will turn it over to Hobie unless you have questions. [LR149]

SENATOR McDONALD: Thank you, Laurie. [LR149]

HOBERT B. RUPE: Thank you, Senator McDonald, senators. My name is Hobie Rupe. I'm the executive director of the Nebraska Liquor Control Commission. When Laurie and I were working on this last spring, she, I, and almost every other pundit thought we would have more clarity of some of the issues that have been raised by Granholm v. Heald and its progeny. The most important one of those is a case called Costco v. Hoen. Everybody thought that by now the Ninth Circuit would have ruled on the appellate issue. Well, everybody was wrong, and it's still pending before the Ninth Circuit. So what I'm going to do, is I'm going to give you a brief overview of our current system, and some possible impact that might occur from Costco, and some sort of an update of what some other states are looking at right now. And the reason I give a brief overview is oftentimes I realize I'll start talking in short sentences with a knowledge that not everybody has, and so I just want to make sure that we understand how Nebraska's current licensing structure is set up, how it may or may not be affected by any of the Granholm or its progeny decisions, so. First, Nebraska is a traditional three-tiered state, and I do have copies of the...you can hand these out. [LR149]

SENATOR McDONALD: And I would like to interrupt you. We have Senator Karpisek has joined us. [LR149]

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HOBERT B. RUPE: The vast, vast majority of all alcohol that's sold and consumed in Nebraska goes through the traditional three-tiered system. That's the first tier is, of course, is the manufacturer and supplier tier. We have no true manufacturers in Nebraska right now. We have some craft distilleries, craft wineries, and the farm wineries and craft breweries. We have not had a true manufacturer since, I believe, the closure of the Falstaff plant up in Omaha. Even though this is called manufacturer and supplier, most of the alcohol that comes into Nebraska comes in through a supplier. They brew, vint, or distill in the United States, or they import products into the United States. We consider them a supply tier, as well. An example of that would be the Diageo corporation which is the largest single company holding of distilled spirit assets. They would have a shipping license which allows them to ship that product into a licensed wholesaler in the state of Nebraska with the appropriate license. We're talking distilled spirits. It would be an X. And also for wine. And if it was beer, it would be a Class W. Wholesalers can purchase, import, and from a licensed manufacturer or shipper. They are the ones who buy it and they bring it into the state of Nebraska, and then they can sell that product to a licensed Nebraska retailer. They cannot sell it to you or I. A wholesaler can only sell it to someone who currently has a Nebraska retail license or also a special designated license. That's why sometimes you'll see the local beer distributor selling it to the VFW or for the fire department for a street dance. They can do it because they technically have a license, a retail license, at that time. And then the retail license, which is the largest number of licenses. On-premise consumption, which would be bars, taverns, and restaurants. Off-premise sales would be convenience stores, grocery stores, package stores. These are the only tiered that's licensed to sell to the general public from the tier. As I stated earlier, the vast majority of all alcohol consumed in Nebraska goes through the traditional tier system. Then we have what I call the rogue license: the licenses which sort of have traits of one or more of those above tiers. The first is the S-1 licenses. This is why we did not have to do something in a knee-jerk reaction to Granholm when it came down, because we already had in place the S-1 license which allows an out-of-state entity to get a direct license to ship to a final-end consumer in Nebraska. Currently, our retailers can ship to somebody in

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Nebraska. You make the purchase at the store; they ship it to you. And we allow out-of-state entities the same thing. That's one reason why a lot states had to do, oh, my gosh, we're in trouble, we need to get into compliance with Granholm, which is the U.S. Supreme Court decision. We didn't have to because of our S-1 licenses. (Inaudible) we might be challenged sometime. Nebraska currently has the highest S-1 license fee in the nation at \$500. We hear complaints about that a lot, but that still doesn't stop us having roughly 145 of those licenses issued, so. And it does not technically have to be a manufacturer. Some of the small wineries have sort of gone into co-ops, and the co-op (inaudible) get the S-1 license. So each individual winery doesn't have to get it, but they'll go to a co-op who will do Internet sales, and that. And this was the exact issue and point in the Granholm case which we will get to later on. We then have the craft brewery and the micro-distillery license. As you are aware, the micro-distillery license was just passed last year. We have not issued any licenses yet. We do have two license applications we're processing. The craft brewery, I believe we have 19 of those currently in the state of Nebraska. Both of them allow limited production: 10,000 barrels from a brewery; 10,000 gallons from the micro-distillery. They allow retail sales on the licensed premise and off-premise sales from that location. If they were to sell their product in any other store, they then have to reenter into the wholesale tier. An example I will give you would be Empyrean Ales which is brewed here in Lincoln. Lazlo's, they sell it at their location there. But if you then buy that at SuperSaver later on, that has gone back in through the wholesale tier. The tax on both the craft breweries and the micro-distilleries is exactly the same as it is on a relevant out-of-state entity. Empyrean Ales pay the same 31 cents a gallon that Budweiser pays, and our distilleries will pay exactly the same \$3.75 a gallon excise tax that a large one. Then we have our farm wineries, which have even broader abilities but even more constraints upon it. They have a limited production of 30,000 gallons. They require a 75 percent Nebraska agricultural product. Please note, that does not say grapes. It includes all Nebraska agricultural products, so the apple wine that's produced, especially down in the southeast part of the state, is also brought in there at 75 percent. It's 6 cents a gallon tax. They can sell wines produced for consumption at the premise.

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They can sell it for...you know, you can buy a bottle and take it home with you as retail. They can ship to residents within the state, and then they can sell to a distributor without use of a wholesale. That's one of the major differences between the craft breweries and the farm wineries. And that will become clearer later on when we look at one of the issues that's been raised by the Costco v. Hoen case. We'll look at those cases at this point. Granholm. Granholm was a United States Supreme Court decision. It was brought primarily by the Wine Institute and others. What it basically was, the court had to weigh two competing constitutional provisions. The Twenty-first Amendment gives states enormous rights on the sale and distribution of alcohol. At the same time, the dormant commerce clause basically says, you can't treat in-state different than out-of-state. And so the Supreme Court, on a 5-4 decision, had to really weigh those two competing constitutional issues. The essence of the court's holding that's best expressed is that, and I'll use the pun intentionally, distilled down to its clearest, is if you allow an in-state person to do it, you should allow an out-of-state person to do it. You can't pick and choose how you're going to approach that. A lot of the people from some pundits and commentaries basically said that Granholm was the death knell of the three-tiered system. Well, that's only reading part of the decision, not the whole part. As you'll see, there's a state there that...how the Supreme Court reaffirmed that the states do have broad powers under the Twenty-first Amendment, but they just can't utilize them in what could be considered a discriminatory nature against out-of-state entities. Consequences. Costco v. Hoen is the next issue. As most Supreme Court cases, Granholm caused as many questions as it answered. And for lack of a better term, Costco decided they didn't like the Washington Liquor Control Act, and so they basically tried to gut it. And really they did gut a lot of it. As you'll look at specifically Costco challenged a lot of the provisions within their act. Believe it or not, Nebraska had this litigation back in the late '80s, and a lot of ours went away. We don't have price posting. We don't have a minimum markup law. We do allow volume discounts. The one issue that might be open to challenge is the last one, in that in Washington...one of the main thing you have remember, the difference between Washington and Nebraska. Washington is one of the control states where the state serves as the spirits wholesaler

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itself. They didn't license independent organizations to do that. Also one thing to remember is Washington has a very, very large and active wine industry. Its largest winery is a place called Chateau Ste. Michelle, and I think...you know, I could be wrong, but I believe it's probably in the top ten producers. It's definitely one of the largest wine producers outside of the Napa and Sonoma regions in California. There are two facets they challenged: (inaudible) the anti-trust and the dormant commerce clause. You can sort of read that in the handout. It sort of gives you an overview of what happened. Costco went through a lot of different...basically three rounds where the judge looked at it. And this is just a district court judge...federal district court in the eastern district of Washington right now. As I stated earlier, we really hoped we would have had the Ninth Court of Appeals decision by now so we would be at least have more than one judge looking at this issue, and perhaps even an appeal to the Supreme Court by now, but they're dragging their feet. This one deals mostly with the anti-trust claims. The one issue that sort of raised up for us, is under the motions for summary judgment, the judge found that...I'm backing up a little bit. One of Costco's main complaints was they could buy from Chateau Ste. Michelle and other wineries in Washington without have to go through a wholesaler, but if they wanted to buy from the California winery they had to go through a wholesaler. They argued that that raised the price of the final product and therefore the wine, the out-of-state wine, was being sold at a higher price than in-state wine because of the net effect. And the judge agreed with that. However, she would...it was called leveled down, and basically said nobody can ship direct; you all have to use a wholesaler. She stayed her decision for three months to allow the Washington legislature to convene, and they amended it, and basically they then leveled up; they allowed everybody to do it. Another big issue why this, to sort of put it in the back of your heads why we're looking at this issue, why this might not be applicable to Nebraska is, pure geography. Northern California is not that far from Washington. I mean, they conceivably might be able to ship direct to a retailer there, and it's more cost-effective than going through a wholesale tier. I'm not sure that's an issue that Nebraska will have. Basically, the judge gutted the Washington Liquor Control Act. About 75 percent of the...they won about 75 percent of their acts. A lot of the things

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were cut down. She did uphold the retailer-to-retail ban, which Nebraska also has, i.e. a retailer can't sell to another retailer. A retailer can sell to a final-end consumer. Some consequences, as stated: This is a district court judge. Right now, it's only applicable in Washington. If the Ninth Circuit rules on it, it's only really applicable in the Ninth Circuit. A lot of states are looking at this. I think Nebraska needs to keep an eye on this. I'm not sure that we need to do anything legislatively right away. But a lot of times that's what the purpose of interim studies are, is just to make sure that we're aware that we're not blind-sided by something that might be coming down the pipe. A lot of states are looking at issues. The example I gave earlier, Washington leveled up; they allowed anybody to do it. Oklahoma, which had a lawsuit going on, they leveled down; they basically required all producers to do through a wholesaler. That's sort of my brief PowerPoint just to sort to bring you up to where we're at. The courts are still determining how Granholm and still applying Granholm. It was just, I believe, a week or two ago, the state court in Maine upheld their face-to-face transaction requirement which prohibited...it was challenged by the out-of-state wineries who wanted direct ship, but they don't allow anybody to ship. In Maine, you have to go up to the clerk, present your ID, present your cash, and get your alcohol. And the Maine court said that was in conformance with Granholm. As I say, for the most part, and that's the reason I went through the overview, I think, on the whole, Nebraska's existing structure is pretty sound. The one issue that we might have to be very careful on, I think is on our farm winery, because that's the only producer we allow in the state to self-distribute to retailers. And there are a lot of reasons why we do that. These are very small, they have to use 75 percent Nebraska agricultural product. Getting a big wholesaler to deal with a very small batch of wine, a lot of times isn't an easy thing to do. But I guess I have to be very frank and say that if we were to get challenged, that would be the one I think we would get challenged on, because that's the one where we're sort of sticking out there a little bit, because we make both our other in-state manufacturers go through the wholesale tier. The other thing would be, hypothetically, would be if a manufacturer were to arrive, they could argue on the other side that they should be able to have a retail tasting location because we allow our craft breweries to sell retail at the locations,

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and also our wineries. But if somebody really wants to come in and make a multi-billion dollar investment in Nebraska, I'm sure we might be able to allow them to have a tasting room. But those, I guess, were the two areas where I think we just need to be cognizant as a Legislature, and the commission feels we need to be cognizant of. I don't think we're going to have a recommendation for a change right now. I think we're still watching. But as Ms. Lage stated, two years ago when Granholm first came down, Senator Landis was on the committee at that time and he specifically said, well, make sure you keep us in the loop of what's going on. And although he's moved on, I believe it's still the duty of the commission to keep the Legislature aware of what's pending out there from a federal court issues. So with that I guess I would answer any questions anybody would have. [LR149]

SENATOR McDONALD: Thank you, Mr. Rupe. Do we have any questions? I do have a question When we put our farm wineries into legislation, did we mirror our farm wineries after other states that had success with this? Did we come up with our own ideas, our own law? Could you refresh us on that? [LR149]

HOBERT B. RUPE: I think, and some of the people from the farm winery might be able to say that better, we (inaudible) sort of what's called a second-tier farm winery, of allowing that. The first ones sort of just allowed them and didn't have requirements like Nebraska on the 75 percent agricultural product. The example I'll give is the Iowa native wines. You can buy a wine in Iowa and you have no idea where the grapes are grown. They could import 100 percent of their juice from out of state. Nebraska, Missouri, and some of the other states which then later on, after that, came up and created that. The impetus there was this is a good thing, this is going to promote state agri-tourism, this is going to diversify an already very agricultural state, but diversify its production. And so, therefore, you know, if you're going to have a Nebraska product, you're going to call yourself a Nebraska wine, we don't want you just shipping in frozen concentrate from California and making Cabernet here in Nebraska. Cabernets don't grow in Nebraska. I think we did...the Wine Institute and other entities were very much in accordance, and I

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think that's one reason why I brought this up. A lot of states are going to be looking at this. Some states are being sued on it. Oklahoma, I believe, was being looked at. That's why they had to do something legislatively, because if I remember correctly, Oklahoma's act is probably pretty similar to ours, in that they required it to be, at least some percentage, of the, in that case, an Oklahoma agricultural product. The percentages vary. Some states only require 51 percent; some almost require 100 percent. So it's an issue, and we sort of follow the states. But that's the beauty of the Twenty-first Amendment. The states can sort of do what they see as fit in regard to alcohol distribution in the state. That's the beauty of the Twenty-first Amendment. Well, Granholm now has said that, yeah, you can do that, but just make sure you're not being discriminatory against out-of-state people similarly situated. [LR149]

SENATOR McDONALD: Can we ship our farm wineries out of state? [LR149]

HOBERT B. RUPE: Our farm wineries can get a license the same as in other states. Most states have gone...I believe you might have a handout to that effect, which sort of gives a breakdown of direct shipping laws within the state. A lot of states are actually modeling themselves after Nebraska. This is one where Nebraska was actually sort of on the cutting edge. We were out there on the forefront of licensing out-of-state manufacturers and entities to shipping. And so a lot more states are going that way because they're faced with the question, either they don't allow their in-state entities to do it and don't allow any shipping from their in-state producers, or they allow other people to get the appropriate license to do it. As stated, we have the S-1 license which allows an out-state entity to get that license. Now, the one main difference is they are still subject to our shipping ban. Nebraska, you can bring in 9 liters, which conveniently works out to be a case of 750, one per adult per month per household. That existed...that's the closest thing Nebraska currently has to sort of an anti-bootlegging statute. We figure that that's personal use. If you're going more than that, you're probably selling it and you're trying to get around the taxes. So they subject to that thing, which an in-state person technically would not be. From an enforcement

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standpoint, I would hate to have to track more than that. In fact, it's getting hard enough to track even those sales. [LR149]

SENATOR McDONALD: Thank you. Any questions? Yes, Senator Karpisek. [LR149]

SENATOR KARPISEK: Thank you, Senator McDonald. Hobie, just kind of make this leveled up and leveled down a little. If we were to level up, then even, say, Budweiser or anybody, any manufacturer, beer, wine, distilled, could go directly to the retailer? [LR149]

HOBERT B. RUPE: Yes. [LR149]

SENATOR KARPISEK: And so if we were leveling down, then even the farm wineries would have to go through the wholesalers. [LR149]

HOBERT B. RUPE: That's correct. Yeah. And that's the issue. How many people will...if you were to level up, I mean, is a big debate, even in Washington, how many people are going to bypass the wholesale tier because of the strings of those wholesale tiers on service. But that would be the issue. And as I said, right now, Nebraska requires everything to go through the wholesale tier with the exception of farm wineries. [LR149]

SENATOR KARPISEK: Thank you. [LR149]

SENATOR McDONALD: Thank you. Do we have any more questions? I guess not. All right, thank you, Mr. Rupe. Do we have anyone that would like to come and present? [LR149]

ERIC NELSON: (Exhibit 2) Good afternoon. My name is Eric Nelson...that's E-r-i-c N-e-l-s-o-n, and I'm here as the chair of the Nebraska Grape and Wine Board. I was asked to be here and to give a report to this committee as far as what the Grape and

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Wine Board has been doing in the industry to help promote, and specifically allocation of the money that's been given to us through the Grape and Wine Promotional Fund for us to allocate. Our board met the first of November, and the very first page that you'll see in the handout this is the budget that we established for fiscal '07 and '08, which were in the same state period that ends June 30, 2008. And we allocate everything. Basically there is, at this particular time, for what we're estimating coming in because of the shipper license fees and the other excess fees, about \$6,200 that's unallocated at this time. And so we then established a RFP process, and I was asked also to include that for you folks to look at, at your convenience. And that's what's included in the following pages. The Grape and Wine Board feels very positive about the direction of the industry. A lot of positive things have been happening, and the growth has been probably more than what we actually expected. We've been fortunate enough to have funding coming in, especially with that \$500 from the S-1 license fees as was appropriated at the last legislative session. That we'll have, and so that will give us the ability to help fund research and promotion within the industry. Questions? [LR149]

SENATOR McDONALD: Do we have any questions? Well, thank you for coming and giving us this update. Can you tell me, looking at the budget, the unobligated contractual of \$6,200. Whereabouts do you plan on spending that money? [LR149]

ERIC NELSON: Actually, the RFP process, that will be sent out to...actually what we're going to do is we're going to advertise it through the UNL viticultural Web site, the Grape Growers Association Web site, and then we will have a press release also that will go out. And so any interested entity that qualifies according to the guidelines that we set up in the RFP can apply to us, and then the Grape and Wine Board will be looking at all applications. And the final decisions will be made the first of March at our spring conference meeting. [LR149]

SENATOR McDONALD: Okay. All right. Thank you, Eric. [LR149]

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ERIC NELSON: Thank you. [LR149]

SENATOR McDONALD: Thanks for coming. Is there anyone else that would like to come and present? Welcome. [LR149]

JIM BALLARD: (Exhibit 3) Good afternoon, Senator McDonald, senators. My name is Jim Ballard, J-i-m B-a-l-l-a-r-d, and I'm with James Arthur Vineyards in Raymond, Nebraska, and also representing the Nebraska Winery and Grape Growers Association as their president. I do have some handouts I thought you might find interesting, of our association's strategic plan. And I'll just give you a brief overview of the document that's being handed out. Basically, through a grant that we received last year, we did a number of listening sessions across the state that a lot of growers and wineries attended, to find out some of the needs and concerns of the industry. From that we developed a set of goals and objectives as part of our strategic plan. But also as part of this, which is what I think you might find interesting, is we did an economic impact study last year through the Bureau of Business Research at the University of Nebraska-Lincoln, basically to find out the economic impact that our industry was having on the state. As you know, this industry has grown quite a bit the last few years. We are up to, I believe, 20 bonded wineries now, and I know there are a few more out there seeking applications. Close to 300 acres of grapes are in the ground right now across the state, so I think it's an industry that's really growing and showing some signs of economic activity across the state. As part of that, and I won't bore you with all the details, but I think one of the pages you can go to is page 10, basically the summary of the economic impact study. It showed that the impact that this industry has had on the state so far was \$5.3 million. 82 new jobs, a number of visitors. We were real happy to see those kind of numbers coming in, and also just to let you know, this is the first part of the study. We kind of ran out of money to finish the second part of the study. But basically the second part would look at some of the multiplier effects for those tourists that we get into these communities; you know, the money they're spending on gas and lodging, etcetera. So once we get the second part of this study, I think that \$5.3 million

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will increase significantly with the number of tourists and those people that are coming to visit the wineries and the money they're spending in those communities which, to be honest, a lot of the wineries are in smaller communities around the state. That's a known fact, a lot of farm wineries get their roots started in agricultural, small rural communities across the state. So I thought you would find that interesting. There is also a survey that was sent out to show the number of grapes that are in the ground. If you all want to know what kind of varieties we're growing and how many plants there are in the state, all that information is in this strategic plan outline. And the topic that we're talking about today in terms of distribution across the state, into the state, out of the state, what we're seeing across the country right now, and a lot of wineries are dealing with this very issue. There are different ways to handle it. I think right now in Nebraska, the way we're set up, in order allowing wineries to self-distribute, has really made an impact for a lot of smaller wineries. It gives...some of them are taking advantage of that, some of them haven't, but at least it gives them an opportunity to promote their product, sell their product, through restaurants, through grocery stores, whatever the case may be. I think the way that is going right now has been very beneficial for a lot of small wineries in Nebraska. I know some states have introduced caps. In fact, in Nebraska we basically have a cap right now. We can produce, as a farm winery, up to 50,000 gallons. Once we hit 30,000 gallons, we have to go through a distributor. So we already have a cap in place here. Some states have taken those caps on at differing levels, some with success, some have been challenged. But that is another option that you could look at, as well; something that's already in place, in a sense, here in the state. We like the way things are going right now as an industry anyway, and speaking as a business owner of a winery, leveling up would be fine. I know that might create some headaches for Hobie, and I understand that, to level up and allow all these, anybody, as Senator there. You know, Budweiser, whoever. The chances of that happening are probably pretty slim, but that's another option. I think if we level down though, it could really be devastating for some small wineries. You know, for example, you level down and you have to go through a wholesaler, you live in a community ten miles down the road, there's a store that you want to sell to, you know, right now, you can go out and do that; sell it for your

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wholesale price, your retail price, or however you want to do it. But to level down and to require that small winery to go through a wholesaler, you are paying 20, 25, 30 percent right off the top to basically have somebody deliver your wine you could drive ten miles down the road to deliver. So that could have an economic impact. And to be completely honest, we're finding that a lot of distributors across the country don't want to deal with these small wineries. You know, they don't want to have to hassle with a case here or a case there. And so a lot of them will probably just say, you know, never mind, we don't want to deal with it. And we're seeing that happen. So those are some issues that I guess you can think about and look at as this process goes on down the road. And I would be more than happy to answer any questions. [LR149]

SENATOR McDONALD: Any questions? Yes. Senator Karpisek, go ahead. [LR149]

SENATOR KARPISEK: Thank you, Senator McDonald. I don't want to be too nosy into your business, but would leveling down be a big problem for you? Do you do a lot of...? Like you said, you already do go through a distributor, or do you not? [LR149]

JIM BALLARD: We actually have our own salesperson, so we self-distribute ourselves. I'll be completely honest, if we leveled down, we're large enough and we have a market presence that we've already developed over ten years of being open, that we could...we would probably be in pretty good shape to go through a distributor. Again, you know, nobody can sell our wine like we sell our wine, especially in our state. And we would probably have to keep a salesperson, so that's a cost to go out there and actually help sell that product. So what we're looking at really is just a delivery system for our wine, in essence. So I think we would be okay simply because we have developed a market, and distributors would look at us, and we're large enough that they would say, okay, we can deliver your product for you. [LR149]

SENATOR KARPISEK: But some of the smaller ones, especially just trying to start up, probably would have (inaudible). [LR149]

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JIM BALLARD: Probably would have more struggle, yeah, especially if they haven't already developed that market and they're not real large. You know, it's just a matter of economics for a distributor. I mean, I can understand that. You know, why deal with a small winery? [LR149]

SENATOR KARPISEK: Okay, thank you, Jim. [LR149]

JIM BALLARD: You're welcome. [LR149]

SENATOR McDONALD: Jim, why do you think the biggest...what's your biggest challenge in the farm grape? Is it trying to grow the right kinds of grapes? Is it trying to market the right kind? Get more people to drink wine? Tell me what you think your biggest challenge is in the farm wine business. [LR149]

JIM BALLARD: I think our biggest challenge, number one, is growing grapes. I mean, we're farmers, and like any farmer, weather can wreak havoc on us. We're finding the types of grapes that are working better in Nebraska, and therein lies our second challenge, is that a lot of times the things we're growing, the wines that we're making, people aren't real familiar with. And for us to go out, and like I said, this aspect of our business is getting better as the business grows. You know, to go out and tell somebody, hey, you should try this DeChaunac, they look at you like, what are you talking about? Because people know Cabernet, Merlot, etcetera. And so marketing becomes a challenge for us, and that's why I say one of the things that we really have to focus on is to hand-sell those. And even if we had to go through a distributor, we would still have to go out there and sell our product, because, like I said, we're not like the mainstream or the more common wines that are out there, and we still have to go out there and let people know what we're doing. Did that answer you question, kind of? [LR149]

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SENATOR McDONALD: It did; it did. Thank you. I guess there are no other questions. Thank you, Mr...oops, I'm sorry. [LR149]

SENATOR DIERKS: I noticed you have three different types of grapes mentioned here: red grapes, white grapes, and table grapes. [LR149]

JIM BALLARD: Correct. [LR149]

SENATOR DIERKS: What do you do with table grapes? [LR149]

JIM BALLARD: Table grapes, personally I think there is a great opportunity for table grapes in the state, and nobody has capitalized on that yet, or we're still trying to figure out how to grow table grapes. I know in our case, and I can't speak for a lot of other wineries, in our case what we've done with table grapes is we have sold them directly to Hy-Vees, SuperSavers. Last year, we went to the Farmer's Market here in Lincoln. It was a great summer project for my two oldest boys. They picked the grapes and cleaned them and took them to the Farmer's Market and sold them. So they are just for consumption. And we also, at the winery, have a you-pick program, where people can come out, pick grapes, pay for them out there. And they're all table grapes. They can also be used in the winemaking process, if necessary, but mostly it's for consumption. [LR149]

SENATOR DIERKS: Can you make a dry wine from a table grape? [LR149]

JIM BALLARD: You can make wine from just about anything if it has sugar in it. But you could. I'm not sure quality, what it would be like, but you could make a dry wine from a table grape; you bet. [LR149]

SENATOR DIERKS: Thank you. [LR149]

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JIM BALLARD: You're welcome. [LR149]

SENATOR McDONALD: Any other questions? I guess not. Thank you. Do we have anyone else that would like to come forward? [LR149]

ED SWANSON: (Exhibit 4) My name is Ed Swanson, E-d S-w-a-n-s-o-n. I want to thank the senators for having us here today. I am here representing myself through Cuthills Vineyards, along with my wife Holly. I do have a handout. I think that Gil has handed out to you before. It's titled "Self Distribution Rights; Nebraska Stands Apart from Most." Most of the stuff that Jim Ballard just answered to you was covered pretty well. I did go into some details in some of those and why I think that this doesn't actually apply to the Nebraska farm wineries, and why it didn't work for Cuthills Vineyards in particular. We were the first winery in the state, and did try going through a distributor to start with, and it failed miserably. And I do go into some of the reasons why that did fail, and I don't think it will work any better in the future. I think Jim had covered some of those points that, yes, it's really not cost-effective for distributors to handle very small wineries. And in our case, at Cuthills, we are very small and we're not going to get any bigger. We don't plan on getting any bigger so we don't have the market established that James Arthur has, and any many wineries will not. I have friends that started wineries that are going to be half the size that I am, and that's very, very boutique-style wineries. And a few of them have some pretty good clients and retailers already. They would lose that and I'm certain that it would not be handled at a later date through distributors. It just doesn't work. There is no incentive for salespeople to handle those, and it is covered quite well why that is the case, in there. So I would urge you to take time to go through this and read it, and it will explain that quite well. [LR149]

SENATOR McDONALD: Thank you, Ed. Any questions for Mr. Swanson? I guess not. Thank you for coming forward. [LR149]

ED SWANSON: All right. Thank you. [LR149]

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SENATOR McDONALD: Anyone else like to present? If not, that will close our hearing today, and thank you all for coming. [LR149]