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LATHROP: Good morning, and welcome to the Judiciary Committee. My name is Steve Lathrop, and I represent Legislative District 12. I am the Chair of the Judiciary Committee. Committee hearings-- we're going to have this intro every time we-- we gather. And it takes a little bit because of COVID, like everything else that we do around here. Committee hearings are an important part of the legislative process. Public hearings provide an opportunity for legislators to receive input from Nebraskans. This is an important process but, like so much of our daily lives, it is complicated by COVID. To allow for input during the pandemic, we have some new options for those wishing to be heard. I would encourage you strongly to consider taking advantage of those additional methods of sharing your thoughts and opinions. For complete detail on the four options that are available, you may go to the Legislature's Web site, which is at nebraskalegislature.gov. We will be following COVID-19 procedures this session for safety of our committee members, staff and pages, and the public. We ask those attending our hearings to abide by the following procedures. Due to social distancing, seating in the room is limited. We ask that you only enter the hearing room when necessary for you to attend the bill hearing in progress. The bills will be taken up in an order posted outside the hearing room. This-- the list will be updated after each hearing to identify which bills are currently being-- third, the committee will pause between each bill to allow time for the public to move in and out of the hearing room. We request that you wear a face covering while in the hearing room. Testifiers may remove their face covering during testimony to assist the committee and transcribers in clearly hearing and understanding the testimony. Pages will sanitize the front table and chair. When public hearings reach seating capacity or near capacity, the entrance will be monitored by the sergeant of arms, who will allow people to enter the hearing room based on seating availability. Persons waiting to enter the hearing room are asked to observe social distancing and wear a face covering while waiting in the hallway or outside the building. The Legislature does not have the availability, due to the HVAC project, of an overflow room for hearings which attract many testifiers and observers. For hearings with large attendance, we request only testifiers enter the hearing room. We also ask that you limit or eliminate handouts. Due to COVID concerns, we're providing two options this year to testify at a committee hearing. First, you may drop off written testimony prior to the hearing. Please note the four requirements must be met to qualify

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to be on the committee statement. One, the submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:30 in Judiciary hearing room 1113. Two, individuals must present their written testimony in person and fill out a testifier sheet. Three, the testifier must submit at least 12 copies. Four, the testimony must be written-- a written statement no more than two pages, single spaced, or four pages, double spaced, in length. No additional handouts, letters from others may be included. Five, the written testimony will be handed out to each member of the committee during the hearing and will be scanned into the official hearing transcript. And second-- the second option is in person testimony. As always, persons attending public hearings will have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee; please print legibly. And then hand out the yellow testifier sheets to the page as you come forward to testify. There is also a white sheet on that table. If you do not wish to testify, but would like to record your position on a bill. This sheet will be included as an exhibit in the official hearing record. If you are not testifying or submitting testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12:00 noon the last workday before the hearing. Position letters will only be accepted by the Judiciary Committee's e-mail address posted on the Legislature's Web site or delivered to the Chair's office prior to the deadline. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. Let me say that again. If you want to drop something off between 8:30 and 9:30, that letter, assuming that it's in the proper length, will be included in the official record. So you don't necessarily have to testify this year. We will begin each bill hearing today with the introducer's opening statement, followed by proponents of the bill, then opponents, and finally, anyone speaking in the neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring up at least 12 copies and give them to the page. If you are submitting testimony on someone else's behalf, you may submit it for the record, but you will not be allowed to read it. We will be using a three-minute light system. When you begin your testimony, the light on

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the table will turn green. The yellow light is your one-minute warning. And when the light turns red, we ask that you stop your testimony. As a matter of committee policy, I would like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. You, I will add, may see senators using their laptops. They-- they can be reading comments from other individuals who have communicated with us on the bill. They're not horsing around and on Facebook, they're actually working if you see them on their laptops at the committee, and they're not trying to be rude. At this time, I would ask everyone to look at their cell phones and make sure they're on the silent mode. A reminder that all verbal outbursts or applause are not permitted in the hearing room. Such behavior may be cause to have you excused. Since we've gone paperless this year, the Judiciary Committee senators will instead use their laptops to pull up documents and follow along with each bill. You may notice committee members coming and going. That has nothing to do with how they regard the importance of the bill being heard, but senators may have bills to introduce in other committees or have other meetings to attend. And with that, I would like the committee members to introduce themselves. And we'll begin with Senator DeBoer.

DeBOER: Hi, my name is Wendy DeBoer. I am the senator for District 10, which is Bennington and northwest Omaha. And I actually have to leave to introduce a bill in another committee. I've just been texted, so--

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

PANSING BROOKS: Patty Pansing Brooks, Legislative District 28, right here in the heart of Lincoln. And I'm Vice Chair of the Judiciary Committee.

MORFELD: Adam Morfeld, District 46: northeast Lincoln.

SLAMA: Julie Slama, District 1: Otoe, Johnson, Nemaha, Pawnee, and Richardson Counties.

McKINNEY: Terrell McKinney, District 11, which is primarily North Omaha.

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GEIST: Suzanne Geist, District 25, which is the east side of Lincoln in Lancaster County.

LATHROP: Assisting the committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, our legal counsel. The committee pages are Evan Tillman and Mason Ellis, both students at UNL. We appreciate their service. And one last note-- and I said this out in the hallway and I'll repeat it again-- because we have to do 10 bills today and get 152 bills done in 16 days, we are necessarily going to limit the testimony on bills. We will hear from the introducer, and proponents will have 30 minutes, including questions, and the opponents will have 30 minutes, including questions. And typically, we have little neutral testimony, but that will be limited, as well. And then we'll hear from the introducer to close. And with that, we'll begin our first hearing on LB277. Senator Hunt, welcome.

HUNT: Thank you, Senator Lathrop and members of the Judiciary Committee. My name is Senator Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8, which includes the neighborhoods of Dundee and Benson in Midtown Omaha. In 2019, the Legislature enacted LB433, which amended the Uniform Residential Landlord Tenant Act. However, it did not update the Mobile Home Landlord and Tenant Act to match it. After discussions with interested groups and Senator Hansen's office-- Senator Matt Hansen was who introduced LB433 which passed-- I decided to bring LB914 last year to ensure uniformity in our state law with regard to the landlord tenant issues addressed by Senator Hansen's LB433. This bill that we're hearing today is the exact same bill as last year's LB914, which had no opponents at the hearing. The bill did not advance out of committee because I decided to push for my higher priority bills to get out of committee. We were all really nervous about the pandemic and we were limiting our bills. But there were no major concerns about this bill raised by the committee members at that time. So we're just going to give it another try. Currently, the Mobile Home Landlord Tenant Act requires a landlord to return the security deposit within 30 days from the termination of tenancy or receipt of a forwarding address from the tenant. This bill, LB277, would change that to require the landlord to return the security deposit and/or itemized list of deductions within 14 days, which is the same as the residential act requires. So make it really simple, it just makes the Landlord Tenant Act for mobile homes the same as the Landlord Tenant Act for other residents. LB277 also harmonizes the two acts by providing that a tenant should not have to pay for damages

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resulting from the removal of a tenant, by order of a government entity, because the home was not fit for habitation due to negligence or neglect by the landlord. The urgency of being evacuated prevents a tenant from going through their usual steps of cleaning or making repairs to the home. As did the updates to the Uniform Residential Landlord Tenant Act, LB277 adds to the Mobile Home Act that if the landlord willfully and in bad faith fails to comply with the security deposit process, they could be liable for liquidated damages equal to one month's rent or two times the security deposit. This is in addition to what the landlord already owes to the tenant for a violation of this section, which is the security deposit plus reasonable attorney's fees. This section is key because without it, if a landlord fails to return a security deposit, the tenant is only entitled to money owed and the attorney fee if there is a judgment. And as testimony-- as testimony on LB433 revealed, this fails to have a deterrent effect on the landlord. Finally, state statute requires that when a mobile tenant is late on rent, a landlord must provide written notice to the tenant if they fail to pay within five days, that if they fail to pay within five days, the landlord will terminate the lease and initiate eviction proceedings. LB434, which was passed as part of LB433 last year, amended the Uniform Residential Landlord Tenant Act to provide for seven days' notice. This number was decided because it still gives landlords enough time to evict a tenant and get a new tenant into the unit before the next month. It ensures no new burdens are placed on the landlord, and no additional rent money is lost. This bill does not make it harder for landlords who are already using best practices. Those landlords who are rightfully returning tenants' deposits and properly handling evictions will not be affected. The whole idea of this bill is just to make the two acts identical, the residential act and the mobile home act, and it will avoid unnecessary confusion, and it will also avoid litigation. I'd be happy to take any questions.

LATHROP: I see no questions. Thank you, Senator Hunt. We will now take proponents. How many people intend to testify as a proponent in favor of the bill? How many in opposition? OK, perfect. Thank you. Welcome.

RYAN SULLIVAN: Senator Lathrop, members of the committee, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I'm an associate professor of law at the University of Nebraska College of Law, where I direct the clinical program and I also supervise the Tenants' Rights Project. I'm testifying today in favor of this bill as a citizen, not as a

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representative of the university. As Senator Hunt noted last session, this Legislature passed LB433 that amended two sections within the Residential Landlord Tenant Act [SIC]. That final version of the bill was a product of significant discussion and agreement between those representing the interests of tenants and those representing landlords. As a result, it passed with almost no opposition. When the dust settled and the new laws went into effect and in practice, we soon realized we failed to consider Nebraska's other res-- landlord tenant act, the one that covers the rental of mobile home lots. LB277 is intended to correct that oversight and harmonize these two acts to ensure consistency in the rental home market. The same reasons given in support of LB433 and-- two sessions ago-- and LB914 last year are applicable here. And so I won't go into them because I think it's sufficient to say that renters of mobile home lots deserve the same rights as renters of traditional homes and apartments. I'll add that consistency between the two acts is of particular importance in those situations where both acts are implicated. So in our clinical program, we regularly represent individuals who rent the mobile home lot, so the mobile home act would apply. But they also rent the trailer that sits on that lot, so the residential act would apply. When the two acts are not in harmony, as the case is now, it's simply impossible for either party to know their rights under the law. For example, it's difficult for a landlord to know: Do I have to give them five days notice or do I have to give them seven days notice? When it comes to the tenant's deposit, do I have to return it in 14 days or do I have to return it in 30 days? LB277 will make the two acts identical in respect to those provisions, and it will ultimately eliminate unnecessary confusion and litigation, going forward. I'd be happy to answer any questions if you have them.

LATHROP: OK. I do not see any questions. Thanks, Professor.

RYAN SULLIVAN: All right. Thank you.

LATHROP: Next proponent. Welcome.

SCOTT MERTZ: Thank you. Thank you, Mr. Chairman and members of the committee. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z. I'm speaking today in support of LB277 in my capacity as the managing attorney of the Housing Justice Project at Legal Aid of Nebraska. At Legal Aid of Nebraska, we represent tenants. We represent tenants who rent residential homes. We represent tenants that rent lot space for their

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mobile homes. When tenants contact Legal Aid of Nebraska, these individuals seek clarity and understanding of their rights and their ability to secure their housing and avoid eviction. The disparity between the Mobile Home Landlord Tenant Act and the Residential Landlord and Tenant Act creates confusion and unnecessary complications in our efforts to advise, counsel, and represent these tenants, regardless of the type of physical dwelling space in which the person resides. More than confusion, the discrepancies between the two acts create a tiered system of tenants' rights here in Nebraska. There's one category of tenant will be afforded more rights and protection than a separate category of tenant. These discrepancies are more than mere technicalities or minor distinctions. Right now a tenant in a residential property will have more days afforded to them to cure late rent and-- than a tenant in a mobile home space. This is a difference of just two days but, when one is seeking rental assistance or awaiting unemployment benefits, those days can and do make a major difference to that tenant. Also, by ensuring that the rights to a security deposit are the same for residential tenants as they are for the mobile home tenants, mobile home tenants will have the exact same opportunities to move and secure substitute housing with their deposits intact. We know from the flooding of 2019, how important the security deposits are for mobile home tenants. Tenants were forced to relocate with very little known-- notice and often without all of their personal belongings. At Legal Aid of Nebraska, we did assist the mobile home tenants in requesting the return of these deposits in the aftermath of the flood. Far too often, these deposits were not returned to the families who had already lost all of their belongings. So the passage of LB277 would certainly restore fairness and consistency to all of Nebraska's landlord and tenant laws. I thank you for the opportunity, and I'd be happy to answer any questions at this time.

LATHROP: All right. I do not see any questions. Thanks for being here today.

SCOTT MERTZ: Thank you.

***KASEY OGLE:** Chairperson Lathrop and members of the Judiciary Committee: My name is Kasey Ogle and I am a staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between

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Nebraska Appleseed, Civic Nebraska, and the South of Downtown Community Development Organization that works with residents of six Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that is responsive to their needs. I am writing to you today on behalf of Collective Impact Lincoln in support of LB277. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolnites. We support LB277 because it provides the same protections for renters of mobile home lots as those who rent an apartment or a house. LB277 amends certain sections of the Mobile Home Landlord and Tenant Act to align with changes made to the Uniform Residential Landlord and Tenant Act by the Legislature in 2019. These changes were made to increase protections for tenants, and the same changes are necessary for the Mobile Home Landlord and Tenant Act. Nebraska law currently offers less protection to those in mobile homes, and this bill correctly aligns mobile home requirements with other landlord tenant law. This bill eliminates the need for mobile home renters to affirmatively demand for the return of their security deposit. As the law currently stands, mobile home landlords are not required to return a tenant's security deposit unless the tenant affirmatively requests its return. Many tenants are unaware that they must request the return of their security deposit which often creates a windfall for the landlord and a substantial loss for the tenant. The return of the security deposit is especially important for low-income Nebraskan renters who could use their returned security deposit for moving or other living expenses. LB277 also extends the amount of time a tenant has to pay any rent due before their landlord can file an eviction action against them. Under the Uniform Residential Landlord and Tenant Act, tenants have seven days to pay rent before their landlord is able to file for eviction. However, the Mobile Home Landlord and Tenant Act only provides mobile home tenants with five days to pay rent before their landlord can file an eviction action against them. LB277 ensures that mobile home renters are given the same protections that other renters enjoy under Nebraska law. For these reasons, we urge you to advance LB277.

LATHROP: Is there anyone else that wishes to speak in support of LB277? Seeing none, we will take opponents-- opponent testimony. If you-- if you oppose the bill, you can come forward and be heard. Do you want a seat?

PIERCE CARPENTER: I'd rather not-- just stand.

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LATHROP: OK, that's fine. Just make sure you speak clearly so we can--
because we make a transcript of your testimony.

PIERCE CARPENTER: Can I pull my mask down? Can I pull this down?

LATHROP: Yeah, you may, If you stay behind that guard.

PIERCE CARPENTER: OK. The-- this-- this mobile home law requires an
itemization--

LATHROP: Can we start with your name and spell it for us?

PIERCE CARPENTER: Oh. My name is Pierce Carpenter, P-i-e-r-c-e
C-a-r-p-e-n-t-e-r.

LATHROP: Thank you.

PIERCE CARPENTER: This mobile home law, I am not fond of it and I'm
not fond of the law for the tenant landlord act. The law requires an
itemization and refund of the security deposit 14 days after the
tenant has left. It's better if the tenant requests this refund to
initiate the 14 days and to require the tenant to denote specifically
what date they left and the dis-- disposition of the materials they
left in the unit. If I have a specialized repair work that I cannot
get done in 10 days after the apartment is vacated, I'm going to
triple my estimate of what the work is. I just had an incident where I
was repairing a door and I couldn't get anybody to do it, so I did it.
So I started late and when I opened the door, it was chewed up on the
inside and I had to do a lot more work to it. So it took eight hours
rather than two. I mean, I-- I would charge probably 400 bucks for
that door even, you know-- so even though going into it, I think the
door would be, you know, a \$100 fix, I'm going to charge \$400 next
time because there's no way to negotiate that 14 days; that's a tenant
right. And that is a mistake. You need to have the tenant write a
letter and request that to initiate the 14 days. And in that letter,
they should specify, you know, when they're out of the apartment and
what is the disposition of the materials. The-- the problem-- OK, I'm
just going to read, continue reading. OK, I've actually had a tenant
request their deposit back before they moved out, like on the-- you
know, the 25th of the month. And then they tell me they're moved out,
but you go in the apartment, their toothbrush, clothes, and personal
effects are still in the unit, so you write them out a disposition of,

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you know, abandoned material. And then they-- you-- you find them in the apartment five days later and they say, oh, I'm cleaning the apartment for you. And, you know, all this vagary comes with a tenant having no responsibility to inform the landlord of anything and the landlord being responsible for everything. I mean, I've actually had them, you know, tell me they've moved out, request their deposit; their stuff is still in the apartment. And then they-- so then some of that stuff is leaved [SIC], and then you catch them, you know, days later and you're sitting there with a letter that says they moved out on the 25th. And here it is, the 8th of the month and there's still a recliner in the apartment. OK, I am not fond of this law. And you know, they need-- you know, the-- the thing that we're getting away from is the tenant responsibility is just gone. Everything is now on the landlord and the landlord has to do everything, except the tenant could go see a lawyer and get all his refund back. Thanks for letting me present this. Sorry, I'm kind of involved.

LATHROP: No, no, no, no. We're glad you're here. We appreciate you coming down today. And your testimony is always helpful. Anybody have any questions for Mr. Carpenter? I see none. Thanks for being here.

PIERCE CARPENTER: I have one last comment. I want to make note that the only two people that were pro-tenant were actually-- have-- are not tenants and have not-- they're people that think they know what's best for the tenant. But I think what you're going to find with the people that testify against this law are people in the field doing the work.

LATHROP: OK.

PIERCE CARPENTER: They have a better understanding. Thank you.

LATHROP: Thank you, Mr. Carpenter. Next opponent to testify. Anybody here that wants to be heard in opposition to the bill? Anybody want to testify in a neutral capacity? All right, Senator Hunt, you may close.

HUNT: Thank you, Senator Lathrop and members of the committee. One thing I want to emphasize with all of my bills, particularly in Judiciary Committee, is that a lack of in-person support does not demonstrate a lack of support for this bill. Because of the pandemic, I've asked many testifiers to submit letters, to contact you personally, because I want them to stay safe. So I know there is a lot

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of support for this bill. Purely for the sake of harmonization, LB277 is a sound extension of current law. We adopted these changes for most residences by a 43-1 vote, and to harmonize these benefits in the context of mobile home tenancies, I urge this committee to move this bill forward and just get rid of the confusion and potential litigation that could result, because I think the fact that the mobile homes weren't included in the residential changes that we made in Senator Hansen's bill, it was a little bit of an oversight because it-- it created these kind of holes in statute that caused a lot of confusion. So given that we've already changed the law, let's just update this part of it to make it less confusing. Thank you.

LATHROP: Thank you, Senator Hunt. This is the first time that we're going to deal with the different ways to communicate, and I got to read something. Now if I'm not doing it right, Laurie is going to tell me. So we have seven position letters on LB277. There were seven proponents, no opponents. We also had testifiers who dropped off testimony today. They include proponent Kasey Ogle, O-g-l-e. Am I doing that right? Oh, that's the only one. So we got through our first hearing under the new format. That will close our hearing on LB277 and-- Mr. Carpenter, we can't take questions, but your testimony and your opposition has been noted, and it's part of the record. OK? Next bill that we'll take up is LB46, and that brings us to Senator Matt Hansen. No? All right, different batting order-- LB268, which is Senator McCollister. Welcome, Senator McCollister. We're working out a few of the bugs here, but--

McCOLLISTER: No problem.

LATHROP: All right, thank you. You may open on LB268.

McCOLLISTER: Thank you. Good morning, Chairman Lathrop and members of the committee. I am John McCollister, J-o-h-n M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District in Omaha. LB268 is a bill to clarify existing language already in statute, relating to landlords entering a tenant's rental unit. Current law states that landlords must give tenants one-day notice of their intent to enter a tenant's unit. This bill does not change the one-day notice requirement. This bill provides greater specificity in that 24-hour written notice must be given to each unit the landlord will enter and must include the reason for the entry. The language in this bill would slightly alter current procedure. It is an added provision that

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landlords must receive consent from at least one tenant before entering. This is an important tenant protection-- protection that is already in common practice among landlords. Under LB268, landlords may still enter a tenant's units in emergency situations, or if a tenant have abandoned or surrendered the premises. LB268 provides a minor update to the Residential Landlord and Tenant Act that is long overdue. Not only does this update-- help of tenants, but it also helps landlords. This bill would ensure that a more detailed record of communication exists between a landlord and a tenant, which is already important if the landlord is ultimately in a position where he needs to begin an eviction proceeding. Because this simple bill has no fiscal impact, I would urge the committee to "Exec" on this bill as soon as practical. Thank you, Mr. Chairman.

LATHROP: Thank you. Any questions for Senator McCollister? I see none. You'll stick around to close?

McCOLLISTER: I will not.

LATHROP: Oh, OK.

McCOLLISTER: Thank you.

LATHROP: All right. Thanks, Senator McCollister. It is 10:05. We will take proponent testimony for up to 30 minutes. If you are here to testify in support of the bill, you may come forward. Good morning.

ERIN OLSEN: Good morning, senators.

LATHROP: Welcome to the Judiciary Committee.

ERIN OLSEN: Good morning, senators. My name is Erin Olsen, E-r-i-n O-l-s-e-n. I'm one of a few staff attorneys at Legal Aid of Nebraska's Housing Justice Project. Thank you for the opportunity to appear here today in support of LB268. I also want to thank Senator McCollister for introducing this bill and inviting Legal Aid to testify. Through Legal Aid's unique experience in assisting our most vulnerable citizens with housing issues, we know that to better protect low-income Nebraskans, Nebraska's landlord-tenant laws need to be clear and effective. Specifically, Legal Aid supports this bill because it clarifies the Nebraska Residential Landlord Tenant Act, which I'll just call the LTA for now. And it-- it clarifies a provision in the LTA, stating that landlords must give one day's

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notice. Although the change from phrasing one day's notice to 24 hours notice may seem unimportant, I've seen this impact Legal Aid's clients. The logic is sound that the more specific wording makes the LTA easier to understand for landlords and tenants alike. To illustrate, when a tenant receives a call from a landlord at 11:59 p.m., on Monday while the tenant is sleeping, and the landlord leaves a voicemail about needing to enter the building-- or their unit, excuse me, while they're sleeping. And they-- in that voicemail, they say they'll be there at 7:00 a.m., the next day, Tuesday. In that situation, the tenant has effectively received no notice at all, while the landlord has effectively complied with the law as it stands today. Tenants, just like everyone else, wish to be able to do and just be in their residence without someone walking in unexpectedly. This bill also clarifies that the notice of entry must be written notice. Another situation we hear about from our clients frequently is that their landlord is entering the residence without giving any notice at all. As much as this is the exact situation that this provision of the law wants to avoid, we often have little legal recourse to address this violation without documentary evidence to back up what a tenant-- tenant testifies to. The clarifications in this bill avoid these kinds of scenarios. Legal Aid also supports LB268 because it adds a requirement that the landlord not only provide written notice, but that they also obtain consent from at least one tenant and-- before entering the residence. This somewhat minimal burden put on the landlords, especially in comparison to the rights that it solidifies for tenants to be able to exclude people from their own homes, makes this a smart change to the law as it stands. The right to use and enjoy one's property, which stems directly from the rental agreement-- excuse me-- that includes a tenant's right to use that property without interference from anyone, even a landlord. It's important to keep in mind, also, that tenants still must have a reasonable justification for denying the landlord's entry. And it looks like I'm out of time, so I'll just say thank you, and I can answer any questions.

LATHROP: OK. Ms. Olsen, thanks for being here today.

ERIN OLSEN: Thanks.

LATHROP: Any questions for Miss Olsen? Senator Brandt.

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BRANDT: Thank you, Chairman Lathrop. Just a couple of points. The example you gave is sort of extreme, the 11:59 at night. I would assume most landlords work with their tenants, that they aren't going to try and do something fast. So I'm a landlord. I give a written notice. We rent an apartment here in Lincoln. They tape a notice to the door; I'm all right with that. Probably if that person is in the apartment, I would hope the landlord would probably knock on the door, but not. So I guess the consent part of this is where I'm a little confused. So if you're the landlord and you've done the 24-hour notice, and the tenant doesn't consent, what happens then?

ERIN OLSEN: Well, if it-- if they deny that-- if they attempt to deny entry of the landlord, the reason has to be-- the justification they give has to be reasonable.

BRANDT: What would be reasonable?

ERIN OLSEN: Generally, there's a reasonable-- reasonableness standard that, you know, the judicial system, although it's not, you know, clear cut, accepts as a standard.

BRANDT: I guess, what-- what-- you know, maybe I'm a little more practical, but, you know, we're in winter now and a water heater, a furnace-- you know, generally it seems like most of these landlord issues, on their side anyway, probably boil down to maintenance issues. And there's a lot of timeliness involved with a water leak, because if you don't address that in an upstairs apartment, it can go down through the floors and cause a lot of damage. And I guess I'm not-- I'm not trying to be antagonistic. I'm just looking for-- for if we're going to pass laws, they need to be very clear for all parties involved, you know. And-- and written notice-- what is written notice? If they take that to my door, is that written notice? Does it have to be a hand-delivered written notice? Does it have to be shoved underneath the door into the apartment? Do they have to date that notice? Because we're requiring a 24-hour time stamp here. So that notice really needs to have a time stamp on it, too, does it not?

ERIN OLSEN: Well, I guess what I'll say about that is the law, as it stands today, is even less clear. So by passing this bill, it would be more clear than not doing anything at all about the current law. And it's-- how it's confusing for landlords and tenants. And I think especially with the, you know, the use of technology today, I-- I have

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received texts from landlords at-- via my client's phone-- at 2:00
a.m., you know. It's easier to communicate in today's society. And so
I think the law should reflect that.

BRANDT: One-- one last quick follow-up. Do you see-- Legal Aid
actually represents a lot of tenants and you do good work. OK? Do you
see that-- is this-- is this really a big issue that you see?

ERIN OLSEN: Yes. To-- to me, it's-- it's a frequent thing that comes
up with the clients that I speak with, usually before an eviction
hearing.

BRANDT: OK, thank you.

ERIN OLSEN: Thank you.

LATHROP: I don't see any other questions. Thanks for being here today.

ERIN OLSEN: Thank you so much.

LATHROP: Appreciate hearing from you. Next opponent-- pardon me--
proponent. Anyone else here to testify in favor of the bill? Welcome.

JOHN SCHMIDT: Good morning. My name is John Schmidt; that's J-o-h-n
S-c-h-m-i-d-t. I'm a student attorney for the Civil Clinic at the
University of Nebraska College of Law. I'm testifying, speaking in
support of LB268 in my capacity as a student of the law and a
long-time tenant. I've rented in various forms over the past decade.
These places were more than just where I was staying. These were my
home. The home is sacred. The law maintains that the home can't be
entered without good reasons and without proper due process. Often
landlords forget that this is the tenant's home. This modification
contemplated by this bill encompasses something that many landlords
are already doing. They are providing tenants with real notification
of entry and will get consent if somebody is home. However, we do not
create laws for those who are following social norms and doing the
right thing; we create laws for those who are not. I've had issues in
the past getting notification from landlords. I've found random
maintenance people in my homes. I've come home to find somebody was in
my home. I've had landlords who have put notifications on bulletin
boards in common areas. I've even had them come home-- and-- or come
into my home while I'm there without me knowing, without knocking.
That even happened one time while I was in the shower. So this bill--

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changing one day's notice to a more accurate, descriptive 24-hours notice kind of helps landlords figure out what's required of them. It helps them understand what one day means as opposed to leaving it to a more general term. This makes it a little easier for not only the landlords, but also the courts do not have to make this determination. But most importantly, it protects the tenants and the sanctity of their home. LB268 further improves the Landlord Tenant Act [SIC] by requiring a detailed notice that would go to each unit. Landlords would not be able to use general notices that leave the tenants unaware of when they're actually going to be entering the home. This specific purpose requirement would also stop some from hiding behind vague notices that would allow them to enter the tenant's home using kind of more vague things to surprise the tenant. The final addition of requiring landlords to obtain consent before entering the home may seem daunting for many landlords, especially for those in multiunit buildings or with many units. Nonetheless, this is the law currently under common law, as well as the Landlord Tenant Act. Unfortunately, the Landlord Tenant Act is a little vague in this area. Section 1 of the statute says that the tenant cannot unreasonably withhold consent. This only makes sense if consent is required in the first place. So this amendment clarifies any misinterpretations with the act currently. Further consent is especially important in these times of the pandemic. The tenants may be home quarantining after a positive test, or they may be more susceptible to the virus. Proper notification and consent would allow the tenants to make a critical health decision that shouldn't be left to the landlord. That's all I have. Thank you for your time.

LATHROP: Very good. Any questions for Mr. Schmidt? Senator Geist.

GEIST: Yes, thank you for your testimony. I am not a tenant, but I-- I just have a question about-- we've done a number of remodeling projects in our house. And I'm curious, does this-- as you read it, does this act and the changes allow any leeway for something that the landlord may not know? For instance, you have a plumber coming and they say they're coming a particular day. And if that ends up not happening, but if they come the next day again, then the owner, the landlord would then need to give notice again? Is there any leeway for that?

JOHN SCHMIDT: You know, I think that's a very difficult situation. I think communication is obviously more important, making sure that the

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landlord is communicating and providing some form of notice. It may not be, you know, official written notice, but calling and saying, hey, the plumber did not come this day. He said he is coming tomorrow, you know, and I think that could-- could fashion itself into proper notification or sending an e-mail or a text or providing a new letter in cases like those, just to make sure you're covered. You know, there-- there are going to be some of those difficult situations. But at the end of the day, I still think it's more appropriate to give proper notification and get consent before you enter someone's home.

GEIST: Thank you.

LATHROP: Senator DeBoer.

DeBOER: So apologies for coming in late; I was introducing in another committee. But as I'm looking at this, it looks like there isn't-- I mean, one day and 24 hours-- I mean, it's functionally the same thing. And the only difference then, it looks like, is the consent. And how are you going to do that? If you have a 500-unit building or a series of buildings, how are you going to get-- like if you're going to change the furnace filters, right? I used to live in one of those big-- and they'd have to change the furnace filters. How would they go about-- what would satisfy consent in that situation from 500 different units, maybe ones out of town, maybe, you know-- how does that work?

JOHN SCHMIDT: I think there are various ways you could do it. I mean, it does seem daunting. And that's, you know, that's kind of why I mentioned those, you know, the multiunit buildings. Phone consent, text consent-- you know, we're the age of technology. Get an e-mail consent, have them-- your notice could have a portion on the bottom that they can sign and drop it off back at the main office.

DeBOER: They're not going to-- sorry, but I don't see how that works, 'cause they're going to lose it, right? I would-- I would immediately lose it and not return it or I would have-- I would have the best intentions of returning it and I would not return it. I mean, there's a million reasons why your e-mail may not be the current e-mail or your phone number might not be the current phone number. I'm just trying to understand practically how I'm supposed to, if I'm a landlord-- I don't-- I'm not worried about the water or anything

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because there is an emergency impracticable exception; so that's fine.
I just don't understand how the consent part works.

JOHN SCHMIDT: And it may have to be worked a little more functionally
and find some of these things. But at the end of the day, this isn't--
that-- that's working it functionally, but still the base notion that
consent before you enter someone's home should still be present. So
finding out how the landlords are going to do it is going to be a
little difficult in those rare situations of the big multiunit
buildings. But it's still something that I believe needs to happen.

DeBOER: OK, thank you.

LATHROP: I see no other questions. Thanks for being here today.

JOHN SCHMIDT: Yes, sir. Thank you.

LATHROP: Next proponent-- person in favor of the bill.

RYAN SULLIVAN: Members of the committee--

LATHROP: Welcome to the committee.

RYAN SULLIVAN: Thank you, Senator Lathrop. I wasn't intended to
testify today, but there seem to be a few more questions that maybe I
could answer. I want to highlight just a couple of things. Then I'll
stay a couple of minutes for questions, if there are any. I-- I
assisted in the drafting [INAUDIBLE].

LATHROP: Can I have your name?

RYAN SULLIVAN: Sorry. Sorry, Senator. Ryan Sullivan, R-y-a-n S-u-l-l-

LATHROP: And one-- if I can pause for just a second. If you-- we have
a lot of people with masks-- senators and testifiers. If you can lean
forward, talk a little bit slower 'cause someone's going to try to
transcribe this, and we want to make that job a little easier by being
clear.

RYAN SULLIVAN: Fair enough.

LATHROP: Go ahead.

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RYAN SULLIVAN: Fair enough. Thanks, Senator. R-y-a-n S-u-l-l-i-v-a-n. The first point I want to make is, consent is already required under the current law as it is. As Mr. Schmidt notified you all, Section-- Subsection 1 already implies-- and consent is required because it states consent cannot be unreasonably withheld. This just clarifies that, because I think a lot of landlords do not realize that consent is required before you enter in someone's home. I don't think landlords typically realize-- and I'm a landlord myself; I've been a landlord for 20 years. A lot of landlords don't realize that when they contract for a lease for that property, they give up their rights of access. Under common law, they would give up all the rights of access. The Landlord Tenant Act, however, carves out a little bit of access for them in emergencies. And if they go through these proper steps by giving proper notice and consent, because this is-- these are people's homes. They have a contract right to be there and have exclusive access, but for what is set out in statute. And so to require consent before you enter someone's home, I don't think that's a burden at all. If-- if-- if there's an emergency, if-- if there's a water leak, if water is draining through several floors of the apartment, that's an emergency, so that's an exception. So we're talking about general maintenance-- hey, we need to change the filters, we need to-- we need to inspect the property because we're going to maybe re-rent it in two months when your lease expires-- things like that. Just giving basic notice and-- and obtaining consent, I don't think is that really extensive burden. A police officer can't enter your home without a warrant. So why should a landlord be able to enter and just come and go as they please, which is often the case, as we see in a lot of examples that I see through the clinic. And this has been particularly a problem during the pandemic, as people are trying to self isolate or quarantine and they come home and they find that a landlord had been in their home without their knowing. So I think they have a right to obtain consent. I think they have a right to be there before a stranger comes into their-- to their home because, again, it is their home. And with that, I entertain your questions if there are any.

LATHROP: Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Professor, for testifying today. So this is written fairly-- very clearly. And if you wrote this, 24 hours written notice of the landlord's intent to enter. So now they will have to timestamp a document. And it says written.

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They had talked about texting. Is that considered written in the state
of Nebraska--

RYAN SULLIVAN: Yep.

BRANDT: --if you text or e-mail me? Is that legally--

RYAN SULLIVAN: Correct, yep. A text message or an e-mail. A lot of
landlords also have apps that they use to note-- I know this because
they use them to notify somebody of their seven-day notice for
eviction. So they can certainly use that to give them notice, and they
can build it right into their software that they write back, and check
the box, and say, I-- I consent. It'd be-- it'd be pretty easy, given
this is a pretty fundamental right.

BRANDT: But going old school where you're actually writing it out and
taping it to the door or shoving it under the door, they will have to
put a time on the notice now to qualify for the 24 hours. Correct?

RYAN SULLIVAN: I would think so. If they want to be able to prove that
they gave that 24-hour notice, again, that would be the landlord's,
because they are-- they are jumping through these hoops to get access
that they otherwise would not be given access to, which would really
qualify if-- if there's landlords here to testify that have trouble
with that consent term, that means they haven't been getting consent,
which would be not only in violation of the act, but criminal
trespass.

BRANDT: OK, thank you.

LATHROP: I do have a question for you. So what if-- what if I'm a
landlord, I have a 12-unit apartment that's pet-free, and I can smell
a cat when I walk down the hallway? Some-- one of my tenants now has a
cat and I can smell it in the property. And I want to go in there. And
of course, the tenant isn't going to be keen on saying, yeah, sure,
come on in and see that I'm violating the terms of the lease. How do
we litigate whether I get access or I don't get access as a landlord?

RYAN SULLIVAN: Yeah, I think--

LATHROP: Who decides if-- that the-- that the tenant's refusal is
reasonable or unreasonable? Is that done in a courtroom or does the

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landlord just get to go in there and sort it out in sort of an
after-the-fact process?

RYAN SULLIVAN: No, if-- if a-- the Landlord Tenant Act sets out that
if it is-- if a tenant unreasonably holds consent, then the court
could go and get injunctive relief to enter the unit.

LATHROP: So-- so now if we require the consent of a tenant and they
refuse to do it, the landlord needs to initiate an action in county
court to get the court's permission to order that tenant to allow him
in.

RYAN SULLIVAN: That-- that's how it is under current law, even before
this amendment. That's-- that's what would be required because it's
the tenant's-- it's the tenant's unit at that point.

LATHROP: If I'm a landlord, can I put into my lease that you consent
to the entry of the landlord on 24-hours notice? In other words, can
you consent-- can you put the consent right in the lease? And will
that satisfy the-- the need for consent?

RYAN SULLIVAN: No, I don't think that would be permissible under
common law because you can't consent to something. It has to be
informed consent in Nebraska, and that wouldn't be informed consent
'cause you wouldn't know when they would be entering, just in any
other event where you wouldn't be able to give consent to something
that you don't know, it's going to happen in the future.

LATHROP: If the current statute says that consent can't be
unreasonably withheld, do you believe current law requires consent at
this time?

RYAN SULLIVAN: Yes, I think it does.

LATHROP: The bill-- the bill goes from one day to twenty four hours,
not a significant change. And it seems to me that-- that the most
obvious purpose of the bill is to put into law the need for consent
from the tenant, but you're telling me that's also already part of the
law.

RYAN SULLIVAN: Yeah, I think what that law really does-- in fact, I've
heard from-- from many landlords who are in favor of this because it
clarifies everything. It takes what's in the current law, mixes in

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what-- what we believe to be already in common law as well, and just gives the landlords really step-by-step instruction on what this notice has to look like. And it clarifies-- it doesn't add the consent requirement; it just clarifies it.

LATHROP: OK., Senator DeBoer.

DeBOER: Has that consent requirement been litigated in Nebraska?

RYAN SULLIVAN: Not in Nebraska. As the representative from Legal Aid, Erin Olsen, testified before--

DeBOER: Sorry.

RYAN SULLIVAN: --these are really hard for tenants because being able to get an attorney at that point, they've already often been evicted. They're scrambling 'cause they're usually low-income tenants. They are scrambling to just find a new place to live for their family. And so being able to take one of these cases and litigate them, we've settled many of them in the clinic. As soon as we-- we get involved and we notify the-- the landlord and they-- they notify their attorney, their attorney says, yeah, absolutely, you shouldn't have done that. And we're able to settle those. But very few go to-- go to trial because we're talking about only-- you know, \$500, \$1,000 dollars in damages is all that's permitted under the act? And so it's hard for either side to really justify the cost of litigating that.

DeBOER: So then what's the legal theory under which-- it's just common law that's been litigated elsewhere? I mean--

RYAN SULLIVAN: As to?

DeBOER: As to consent?

RYAN SULLIVAN: Well, as to consent, I'd say it's pure just statutory interpretation. So it says right in there that consent cannot be unreasonably withheld. Therefore, there's only one way you could review that and-- and to interpret it to mean that consent is-- is a given. And it's also just basic tres-- trespass law. The landlord transfers by contract-- all of their rights to access, but for what's permitted under the current act.

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DeBOER: But the landlord-tenant relationship is different than-- you used the example of a police officer with a warrant. But the police officer, regardless of whether they have that warrant, has no duty to the owner of the home to keep it up and do various things. And a landlord retains duties, so therefore, it seems there would be some remainder of, you know, an ability to enter in order to uphold those duties.

RYAN SULLIVAN: Yeah, absolutely. And that's-- that's why we have the Landlord Tenant Act that really accounts for that and says, OK, hey, we understand you're giving up 99 percent-- actually, you're giving up 100 percent of rights, your access to this property. But we know you need to get in there to make repairs. We know that you need to get in there, maybe do some remodeling, update the kitchen, or do-- do things along those lines. So let's carve out this exception to what would otherwise be trespass, to say, hey, you can go in emergencies and you can go in when you give notice and consent when-- when practical. So the statute already builds that into there. There's some times where it's just impracticable to do so.

DeBOER: Would it be-- would it be impracticable to get consent from 500 units for changing a furnace filter?

RYAN SULLIVAN: No, I don't think so. I think-- I think if you're going to give an exception to a business person who says, hey, I want to do-- I want to enter into this business times 500, it's my responsibility to have a system in place that accounts for times 500. If it's required of the Mom-and-Pop person that has just one rental unit, it should be required of those that have 500 rental units because they're choosing to have 500 rental units. And so they understand there's going to be additional obligations with that.

DeBOER: Imagine that there's a tenant who is away from their premises because they are doing Doctors Without Borders, and they're somewhere-- they can't get-- they can't get their phone, they can't get their texts, whatever. And you want to change your furnace filter, which arguably is for the safety of all the other tenants around, as well. And you can't get permission. You can't get the express consent from them. Would that be a situation where you could say it was impracticable, you'd contacted them for a number of times, continued to not get information from them? You know, maybe it's been three

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weeks. And is that the sort of situation where you could say it's been impracticable?

RYAN SULLIVAN: I think that would be an interesting one. There's also-- and I can't-- I can't give you a citation, but there's a provision in the Act that if the tenant is going to be absent from the property for a period of time, they're required to notify their landlord of that. So that's intended to account for situations like that, so if the landlord sees a car that hasn't moved for a few months at a time. And again, as other testifiers talk about, communication is key. But in my view, it really just circles back to the recognition that this is the-- the tenant's home. The landlord has given up those rights, and if they want some of them back, they just have to do these, what I see as very basic steps. And I-- and I say that as a landlord.

DeBOER: Thank you.

LATHROP: Senator Morfeld.

MORFELD: I'll-- I'll make this really quick, 'cause we're running out of time here. But just to be clear, right now, they already have to give a day's notice.

RYAN SULLIVAN: Correct.

MORFELD: And you're positive that it just says a day.

RYAN SULLIVAN: Yep.

MORFELD: So right now, if I'm a landlord and I'm following the law and I care that much about whether or not I'm following the law, I would probably want to time-stamp it right now anyway, to show that I gave a day's notice. Right?

RYAN SULLIVAN: Correct. In fact, I think there was-- there was-- that maybe even came from a landlord. The whole 24-hour one day thing is just clarifying the law. I think there are several other statutes in various other areas where they're clarifying that piece, so--

MORFELD: I just-- I just want to make that clear. Like right now, if you want to follow the law that stringently, you should probably be time stamping it anyway, because there's already a date requirement.

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So this is just making it very clear. What does a day mean, and how
would I follow that as a-- as a landlord?

RYAN SULLIVAN: Yep, exactly. As a landlord, I see this as like, thank
you for this playbook. This-- this helps.

MORFELD: OK, thank you.

***ISABEL SALAS:** Chairperson Lathrop and members of the Judiciary
Committee: My name is Isabel Salas and I am testifying today in
support of LB268 on behalf of South of Downtown Community Development
Organization (SDCDO) and on behalf of our partnership with Collective
Impact Lincoln (CIL). Collective Impact Lincoln (CIL) is a partnership
between Civic Nebraska, Nebraska Appleseed, and SDCDO that aims to
improve the quality of life for six core neighborhoods in Lincoln:
Everett, Near South, University Place, Hartley, and Belmont. South of
Downtown CDO is a nonprofit, c3 organization in Lincoln, Nebraska,
that enriches the quality of life for residents of the Near South and
Everett neighborhoods through collaboration, economic opportunities
and community development. SDCDO is focused on two census tracts,
20.01 and 20.02, or roughly the area between K and A Streets and 9th
and 17th Streets. This includes the State Capitol itself, where the
committee is currently listening to and valuing the perspectives of
the folks who live mere blocks from where you sit. Within the South of
Downtown focus area, there are over 3,500 living units, 94% of which
are rental units. LB268 is incredibly important and relevant to the
folks who call this neighborhood home. One imperative issue that rose
to the top as we started having conversations with folks at their
doorsteps and community meetings is housing stability, quality,
affordability and safety. LB268 would help further provide high
quality of life for folks in the South of Downtown focus area. In
talking with both tenants and property owners and managers,
communication is of the utmost importance to a person's satisfaction
with their living situation. While knocking on over 2,000 doors in the
neighborhood, communication tended to be a strong factor in a tenant's
satisfaction with their landlord. LB268 would ease the ambiguity that
currently exists in Nebraska Landlord- Tenant law. By implementing
LB268, both landlords and tenants benefit from having a specific,
black-and-white answer to what constitutes notice to enter the living
unit. This provides clarity and further ensures that both tenants and
property owners and managers know what is expected of them when
communicating with each other about entry and access to a living unit.

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Moreover, a housing unit is more than a roof or a place to keep one's belongings. In the South of Downtown focus area, and in the other eLL neighborhoods, many folks indicate that they stay in the neighborhood because it feels like home. Folks get to know their neighbors, make friends down the block, and find themselves truly establishing their home in the neighborhoods. The home becomes a sacred place where folks can be comfortable and feel safe. When tenants don't have proper notice that their unit is about to be entered, this violates trust and sense of safety within the tenant's home. LB268 is a common-sense solution to this issue, by providing a clear, 24-hour notice in place of the ambiguous definition of "one day" in current landlord-tenant law and will provide a sense of security in that tenants will have a clear understanding of when to expect entry into their home. LB268 would mitigate the feelings of intrusion, distrust, and violation when a tenant is met with the uncomfortable surprise of someone else having access to their living space. Lastly, through the South of Downtown CDO and Collective Impact Lincoln's growing work on housing justice, oftentimes folks will reach out to us for clarity on what their rights are as tenants. Having this language clarified and cleaned up in our state's landlord-tenant laws will be critical, as often-times we can only provide tenants with the disappointing answer that the current statutes leave much up to interpretation regarding entry into a rental unit. Other service providers, such as Legal Aid of Nebraska and Community Action Partnership of Lincoln-Lancaster County have voiced similar concerns in the lack of clarity within our state statutes, specifically in the notice to enter a rental unit. LB268 is a simple bill that would provide clarity for all parties involved and would strengthen communication, trust and transparency between tenants and landlords. We urge the committee to advance LB268 in an effort to clarify our landlord-tenant laws and provide all parties with understandable guidelines to maintain a healthy landlord-tenant relationship.

LATHROP: OK, thanks, Professor. We are going to move on to opponent testimony. How many people want to testify in opposition, on a show of hands? OK. Welcome.

GENE ECKEL: Welcome. Good morning. Senator Lathrop, members of the Judiciary Committee, my name is Gene Eckel; that's G-e-n-e E-c-k-e-l. I am a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. And we're-- we're opposing this bill, and I-- I want to get this first out. What

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I've heard a lot today is that this bill is necessary because landlords aren't following the current statute. This bill is not going to change that if there's going to be a landlord who is not going to follow the statute. The statute is already clear. If a landlord wants to gain access, they have to give written notice to the tenant unless it's going to be for an emergency. With regard to consent, if a-- if a tenant says, hey, I need you to come in, I have a leaky faucet, that should be consent because they're requesting the maintenance to be done. A landlord shouldn't have to go an additional step and say, oh, I need consent to go on, even though you asked me to come in and fix this maintenance issue. And what we're going back to then, it allows a resident or tenant to frustrate a landlord's ability to fix what they're being asked to do in the first place. We have members who have dealt with tenants who refused entry or have already changed the locks and won't let them in. And that means that the landlord then needs to go to the-- to the issue of getting an injunction-- means filing with the district court, getting an injunction from the district court. And if you have to set up a hearing, it takes days, it takes thousands of dollars for a landlord to simply get in and do what they're supposed to do in the first place. We also want to point out on the issue of service. We believe currently it's fine. Service to one should be service to all. You're going to give a written notice to the tenant or tenants. All the names are going to be on it. And if you serve them correctly, they should already know about it. And in Nebraska, if you look at the-- at the definitions of notice for a tenant, it has to be two ways: handing it to them or mailing it. So we would enjoy the ability to send it by some other method, whether it's by e-mail or I-- or text or some other method that-- that we currently use in society. But it kind of frustrates us because that is going to just add an additional time for a landlord to get that notice to-- to a tenant. I'd be happy to answer any questions at this time, although I want to ask one more thing for intent. We're not going to get intent from a resident if we've heard that they have drugs. We're not going to-- they're not going to allow us in. So there's going to be times when we need to get in to inspect, to see if a resident may be having drugs or dealing drugs out of their apartment. With that, I'd be happy to answer your questions.

LATHROP: Senator McKinney.

McKINNEY: On your last point, if you suspect the resident has drugs, wouldn't you just call law enforcement?

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GENE ECKEL: You can, but law enforcement can't enter unless they get a warrant.

McKINNEY: So--

GENE ECKEL: So that would be a constitutional issue. And most of the time, police aren't going to do that because there's not enough there for them to get a warrant. But a landlord can inspect because they have a reason to do so.

McKINNEY: Under what right?

GENE ECKEL: Well, a landlord has the ability to inspect, if they are hearing that certain things might be going on. Now, if you say we're inspecting because we believe you have drugs, we're either not going to get consent or they're going to go ahead and hide the stuff.

McKINNEY: Is there-- is-- I guess, what I'm getting at-- is there evidence requirement? What I was saying is, just because you suspect something doesn't mean-- mean it's there. So shouldn't you need some type of evidence or something, some type of basis besides, I got a hunch you got drugs in your house?

GENE ECKEL: Those-- those issues are going to come up because the landlord is going to get a complaint from another resident. Either they have seen it being done, they might smell marijuana or some other what they believe to be drugs. And they're going to-- they're going to ask the landlord-- hey, we've got this problem, we need you to fix it. And that landlord then has a duty to inspect at that point. If they didn't do that, then they are going to be liable if something did happen, and someone said, well, you knew about this, you got complaints about it but you didn't do anything about it--

McKINNEY: OK, think about this. Say you got a neighbor that doesn't like another neighbor, and he or she comes to you and says, hey, so-and-so has drugs or it smells like weed over there, but they're completely lying. And then you go in and inspect or investigate this and it's not there. And these individuals feel violated. And because they feel violated, they sue your company for whatever, some type of violation of the right and defamation of character on that neighbor. Do you not think about that as well?

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GENE ECKEL: No, we don't, because again, if we have-- let's take another example. A resident comes and says, I'm being harassed by my neighbor. The landlord has to investigate the situation to determine, is that resident telling the truth or not? That means they have to go talk to both residents and say, tell me what happened. But you have to investigate. To not do it would then put the landlord up for liability, because they were informed about something, but they chose not to do anything about it.

McKINNEY: So what would the investigation for drugs be like if you don't smell the drugs? You're just going to go in and just search your belongings? I'm-- I'm not getting where you could--

GENE ECKEL: No. [INAUDIBLE] that the landlord could inspect the unit, not inspect someone's personal, but if they see something out on the coffee table or in the kitchen, then that would be something that is in plain sight.

McKINNEY: So I just don't agree with that. I think if-- if you're going to inspect some-- inspect or suspect something, you should-- it should require intent, just like law enforcement has got-- that would come in as well. But thank you.

GENE ECKEL: Yeah.

LATHROP: Thank you, Mr. Eckel.

GENE ECKEL: Thank you, Senator [INAUDIBLE].

LATHROP: Next opponent. Good morning.

LYNN FISHER: Good morning. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r, and I represent the Real Estate Owners and Managers Association here in Lincoln. And we're an association of small real estate investors, and we're also members of the Statewide Property Owners Association, which includes property investors from Lincoln, Omaha, Grand Island, Beatrice. And we represent hardworking landlords who are providing affordable housing to tens of thousands of hardworking Nebraskans. In a competitive marketplace, we must offer the lowest rents possible, given the cost and expenses required to provide a safe, clean, and attractive rental home. If we don't, then we simply won't be able to get good, paying tenants. Likewise, in a competitive marketplace, good tenants must offer themselves as highly

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likely to pay rent, and be respectful of the property, and be respectful of the neighbors with their good behaviors. When a good landlord and a good tenant make a private contract, which is mutually beneficial, then both gain something valuable. The tenant gains a nice place with good neighbors, and a landlord gains a small profit and the hope of asset appreciation. It is really a delicate balance, as there's always a risk for both parties. The tenants risk losing the peaceful enjoyment of their home if a landlord fails to maintain the property or if the neighbors misbehave and the-- and the landlord doesn't do anything about it. The landlord risks having the property damaged or destroyed or losing income when good tenants move out because of bad behaving-- a badly behaving neighbor. The Landlord Tenant Act provides remedies for both the tenant and the landlord, and has been doing a very good balance of accommodating remedies for-- for both. The current law works very well. Almost all landlords are very respectful of tenants' homes and their privacy; it's the only way to do business. One of the important remedies provided by the Landlord Tenant Act is the right to enter the property-- enter the property with proper notice in order to make repairs, inspect for lease violations, and do preventative maintenance. When a tenant behaves badly by damaging the property or impeding the peaceful enjoyment of the property by other tenants, or is not complying with safety codes, we must be able to enter to correct the issue. One common problem are smoke alarms and CO detectors. We must keep the tenants safe from fire and death by being sure that these are fully functioning, through the inspection process. This bill would allow tenants to prevent us from entering indefinitely by allowing or withholding consent, which would create a very dangerous situation. Poor behaving landlords are really the exception and not as common as being portrayed here by the proponents. We must be able to serve good tenants with the lowest possible rents, and this bill would make housing less affordable. Thank you and I'll be happy to answer any questions.

LATHROP: Thank you, Mr. Fisher. I do not see any questions for you today.

LYNN FISHER: OK, thank you.

LATHROP: Next opponent testifier. Welcome.

DOUGLAS LANE: Thank you, Senator Lathrop. Senators, Doug Lane, Omaha, Nebraska.

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LATHROP: Can you spell your name for us, Doug?

DOUGLAS LANE: Doug, D-o-u-g-l-a-s, Douglas; Lane, L-a-n-e.

LATHROP: Go ahead.

DOUGLAS LANE: OK. Looking at this bill, to me, it's fixing a problem that doesn't exist. Very few landlords that I know of want to enter properties without consent or without getting a phone call first for some maintenance problem. Yeah, I just don't see-- I just don't see what we're trying to fix here on that one. Some repair projects-- oh-- oh, this won't take long [INAUDIBLE], you know, and then it turns out it's a two- or three-day project. Do you have to give written notice for the second day, the third day? It says written notice. Doesn't say you can have a conversation on the telephone; it says written notice. So again, I-- seems like you're trying to fix a problem that doesn't exist. There's occasions when the gentleman behind me had some experiences with people coming in. That seems very odd. I don't know where, you know, where that came from, but that's very odd to me. You had mentioned that you gave a cat as an example. I think extra people living in the unit would be another example of needing to get into the unit and to verify who's all living there. Another example for maintenance would be cleaning gutters. There's a sweet spot when you can clean gutters. It's right about Thanksgiving. All the leaves have to be off the trees, but it can't be so cold and icy that it's a frozen clump in the-- in the gutter. So there's just a sweet spot in there. And you don't know what day it's going to be. It's got to be warm enough and you hit your properties and try to get it done. It's on the outside of the building. I don't know if we need to give notice for that. The same thing with fertilizing and weed spraying yards, is that something that requires a notice because you're on the outside? I guess I would like clarification on that. But that's all I have.

LATHROP: OK. Any questions for Mr. Lane? I see none. Thanks for being here today.

DOUGLAS LANE: Thank you.

LATHROP: Appreciate hearing from you. Any other opponent testimony?

DENNIS TIERNEY: Good morning, Senators.

LATHROP: Welcome.

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DENNIS TIERNEY: My name is Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I currently serve on the board of directors of the Metropolitan Omaha Property Owners Association, a group of approximately 500 independent rental property owners. It's estimated that members of our association control 10,000 to 20,000 rental units in the Omaha area. MOPOA also affiliates through the Statewide Property Owners Association, with the rental state-- with the Real Estate Owners and Managers Association of Lincoln, the Gage County landlord association, and other groups. LB268 would amend Statutes 76-1423, requiring 24 hours' notice instead of one-day notice before the landlord could enter a rental unit. Under LB268, the notice would need to state the intended purpose for entry and a reasonable time during which the landlord anticipates making entry. Furthermore, it would require the landlord to obtain consent from at least one tenant before entering. There are many reasons why a landlord might need to gain entry into a rental unit and could possibly be held liable for not doing so, such as the already stated reason about the potential for drugs. Having to state the reason could defeat the purpose of entry. For example, you have the drugs that was already stated. But other tenants in the building may be complaining about cigarette smoking coming from the unit in a nonsmoking building. If the time and reason for entry has to be stated and consent is required, the tenant could simply destroy all the evidence before the landlord arrives. Also, any time an investor sells a property, a prospective buyer needs to perform an inspection as part of the due diligence property. If a tenant has to give consent for the buyer's inspection and refuses, then essentially the tenant can destroy any landlord's right to sell their property. For instance, we're currently selling a 47-unit property in West Point. It would be a logistical nightmare if-- if we had to get consent from every single tenant to go into and do the inspection. We would never be able to-- to be able to complete the inspections so that the buyer could then feel comfortable about buying the property. This proposal will be totally unworkable in many cases. We oppose this change because of the many uncertainties such a change would cause for our members who are trying to do business in Nebraska. This amendment is not practical. If it were-- if it was, we would oppose the changes because of the added burden of compliance. Added compliance work means additional cost of doing business. Additional cost of doing business would be-- have to be passed on to the tenants. If it cannot be passed on to the tenants and the landlord's business cannot stay profitable, he or she may be going out of business, reducing the availability of rental units and, again,

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driving up costs because of supply and demand. We do care about the tenants because they are our customers. This bill unnecessarily places burdens on landlords and tenants to comply. I'd be happy to answer any questions.

LATHROP: Thank you. I-- Senator McKinney. I apologize. There's a reflection that's coming off the window and it's hard for me to see that way.

McKINNEY: If-- if seeking consent, what would you deem as unreasonable as far as the response from the tenant? Would it be a day? Would it be two days? Would it be three days?

DENNIS TIERNEY: I don't know. The-- the law doesn't state what's unreasonable. I think, you know, it's--

McKINNEY: In your opinion?

DENNIS TIERNEY: That's-- that's a-- that's a real problem, not having stated what's unreasonable. I would think anywhere from one to two to three days' delay would be unreasonable, as you are-- if you're trying to sell a property. If you have-- don't have all 47 people giving consent, you may take three weeks to do a inspection for a buyer because you can't get all-- everybody to say, oh, I can be available this day and I can't be available that day, even-- it-- it's logistically impossible.

McKINNEY: Would you say that, you know, if you're selling a property, wouldn't you give more than a day's no-- I-- I would think, if I'm selling something and I know that, if-- if not done properly, it could place a financial burden on me, and I know that the inspection is going to take place next week, but I know about it the week before, why-- why would you wait to a day before to say, hey, we're coming in to inspect? If you're selling something, especially like a 47-unit building, wouldn't you just go ahead and say, hey, next week we'll be inspecting the property?

DENNIS TIERNEY: We already do that. I mean, that-- that-- that isn't-- we don't wait till 24 hours ahead to-- to tell them we're coming in. But if they don't consent that we come in that day, then we're stuck. Right now we can say, OK, we're coming in in a week. So everybody's aware they're coming-- that we're coming in to do an inspection. And

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the buyer who may be coming from out of town is coming in to-- to purchase the property. But if we get five tenants that say, oh, I'm not available that day, I won't consent to you coming in, you're stuck; it's-- it's a logistical nightmare. No matter how advanced notice you give, if they don't give consent, you can't sell your property. Therefore, your property rights are-- are-- are blown up by the consent problem.

McKINNEY: How much of the property do you think would need-- would need to be shown for a deal to go through? I don't know what [INAUDIBLE].

DENNIS TIERNEY: Most-- most buyers will want to see all of the units in a multifamily property if they're doing proper due diligence.

McKINNEY: OK.

LATHROP: Thank you. I think that's it. Thanks for being here, Mr. Fisher.

DENNIS TIERNEY: Thank you.

LATHROP: Or Tierney, pardon me.

DENNIS TIERNEY: All right.

LATHROP: Any other opponent testimony?

PIERCE CARPENTER: Hi, my name is Pierce Carpenter, P-i-e-r-c-e C-a-r-p-e-n-t-e-r. I'm a landlord and wrote this up. This bill eliminates the one-day notice, requiring a 24-hour notice. That's a huge difference. If a landlord is trying to access to make repairs-- make repairs-- a plumber, electrician, drywaller or other other tradesman calls the night before, and said he wants to start at noon, you could do that with a one-day notice. With a 24-hour notice, that makes it impossible. And you're never going to find out if the plumber's available the day early because they won't call you until 5:00 that night or later. This just happened to me. It would be impossible to do that unless you get permission from the tenant, which-- which would destroy it. This-- we-- we just don't need this law. Also, providing access to each individual-- this is some of what we covered-- is excessive and abusive to the landlord. What actually does that mean? I have people that rent a house and there's three

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people on the lease. And so what do I do, have to send them all certified letters? And what-- what really does that mean? Normally, I just put a note on the door and then I text them; and that's good enough. And I-- I do always get permission unless it's an emergency just because I just do that. So what exactly does it mean if it's-- you can-- each individual should be notified? And of course, the issue of somebody out of town, does that mean no access? It's just very impractical. Obtaining consent is incredibly burdensome. We do bug inspections. We do 23 inspections in one day; it takes about two hours. We post a notice, usually a couple days before, that we're coming around 9:00 on Tuesday morning. And my wife shows up with a key and the bug guy, and they go through the apartments. And if they see anything, they'll do the whole apartment completely. Otherwise they just get the kitchen and the bathroom. If-- if we had to get permission from the tenants, the tenants would-- you know, we do allow the people to say we don't want you to do this. We don't do it for one month, but we won't do it-- we won't ignore that apartment for two months. And if you make permission, we'll end up with five or six people that will not want it. The bug guy charges \$130 a run, whether we're doing 1 apartment or 23. So those tenants are going to end up paying because they simply forgot to give us permission. And that-- that's a huge expense for them, it's a logistical nightmare for us, and we do not need this law. You know, I wanted to point out one other thing; hopefully I'll have the time. The first guy was Legal Aid, who talks to attorneys-- I think it was [INAUDIBLE]-- who talks to attorneys all the time, with pissed-off tenants. And they come in and say, well, we-- we need this 24 hours. That's baloney; you can't go by them. Second is a student who is here as a project. You know-- I mean, he-- he really doesn't have that much interest in this. He's here just to-- to make his mark in the laws of Nebraska. And the third guy is the guy that wrote the bill, who-- who says he has five landlords to support it. Tell us who the five are. Thank you. Any questions?

LATHROP: All right. Thanks, Mr. Carpenter. I don't see any questions for you. I think we'll take one more or another opponent. Good morning.

SCOTT HOFFMAN: Thank you, Senator. My name is Scott Hoffman, S-c-o-t-t H-o-f-f-m-a-n. I'm going to start this conversation out with it seems like I've been landlording for over 40 years. And for the last five years I've been down here every single time you've tweaked the Tenant Landlord Act. I've had thousands of tenants. I've never had any

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problems as far as communication. In this bill, it says it has to be in writing. Nobody mentioned about showing property. That's where I really need to go into the property because, if a tenant gives notice-- 30-day notice-- I need to go over there and show it to the new tenants. So what do I have to do, go over there and put-- give them something in writing, I'm going to go show the property tomorrow? So this is really vague and really hard to understand. I know you said something about, you know, cell phones, but I've got, you know, a conversation with one of my tenants, if I may, that I'm showing a property right now. And he-- let me see, where is that? Just a conversation: Hey, I have one guy that wants to look at that tomorrow at 6:30; thanks, guys. Mike responds, sounds good. Zach says, that works. And then last night, because we got all the snow: Hey, that guy called and wants to move back the showing tomorrow-- which is today-- around 4:00 p.m., FYI-- thanks, Scott. OK, that sounds-- that will work. Yeah. Let's get the streets plowed, you know, because quite frankly, to go over on a day like today. But like I said, Senators, this is getting really redundant. I mean, something that has to be in writing. And I think one of the people that protested earlier mentioned that, you know, they're the ones that are calling, that need the maintenance. So why do we have to give them a notice when they're the ones calling us, telling us they're having a problem? So-- and we are concerned about their welfare. Sometimes I inspect properties. I actually give people a week and say: Hey, I want to come over and take a look at the property, see how things are going. We're not just going to go pop in on people. I think one gentleman said he was taking a shower. I mean, even when we go over the property, say, I sometimes go into the property, walk around and survey. Hello, landlord, landlord, because we do not want that to happen. I don't want to use the word "politics" here, but some of these bills seem to be politically motivated. We're supposed to be a nonpartisan Legislature and I-- you can see clear cut through it. I don't agree with a lot of it. The notices are pretty much redundant. You try to have a good relationship with your tenants. And like I said, I've never, ever had one except for the ones that I had to evict. And the one-- and I have-- I haven't had to do a lot of those because I-- believe me, I vet my tenants quite a bit when they want to move into my property, make sure they're qualified and able to pay the rent. But when they-- when they need a problem, they call me, and then I come over there and take care of it. But the biggest issue here with this bill is showing property to new prospective tenants so that we can get in there and show it. And if

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they deny us to show the property, well, they'll be out in 30 days and you may not get your deposit back is-- 'cause I've had to state that one time. If you don't allow me to show it, you're not going to get your deposit back because you're going to cost me another month trying to get the place rented. And a lot of times we have some-- no problems with that. So anyway--

LATHROP: Yeah, I'm not sure that's the reason they're not getting their deposit back, but that's a-- that's for somebody else to start out in a courtroom, probably.

SCOTT HOFFMAN: Yeah. Go ahead.

LATHROP: We appreciate hearing from you, Mr. Hoffman. Anybody have any questions? Senator McKinney.

SCOTT HOFFMAN: Go ahead.

McKINNEY: My question is, I understand where you're coming from, but what do we do about the-- the land owners and property management groups that violate tenants' rights and the slumlords that ravage my community currently?

SCOTT HOFFMAN: Well, I mean, again, Senator, that's in your particular district where that may be happening. I think a lot of us landlords-- and that's why we're down here. They're-- they're not here today, OK? They're not ones that are testifying. We're here trying to tell you that this is not happening with our tenants. I've been doing it for over 40 years. I've had hundreds, maybe close to a thousand people I've dealt with one-on-one. And as far as communication, it's a two-way street. It's a private agreement between two people. And if we need to get in there and do some work, we're going to let you know. Obviously, if the sewer line is backing up, you're not going to have sewage. And I have one house like that. The lady would call me-- boom-- we'd have a plumber over there right away taking care of it. But again, talking about plumbers, getting them to come over in a certain, particular time, and sometimes they get held up on another job. They're not going to make it. Then we need to recontact them and reschedule it again, I think which Senator Geist mentioned earlier, because that does happen, and that's happened a lot with me.

McKINNEY: It-- it happens--

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SCOTT HOFFMAN: Yeah.

McKINNEY: --all over our state and not just in my district. But in the case of my district, just because, in your opinion, it doesn't happen everywhere else, are we supposed to forget about the communities that are being violated by land owners and property management groups?

SCOTT HOFFMAN: I just-- you know, Senator, I just cannot see anybody, any landlord-- not just a tenant-- any landlord with clear conscience, that's just going to go over there, stomp in. Here I am. I'm going to do work without letting the tenant know that they're coming over to do it. I'm sure it does happen, but enough to where this bill has to be drafted, where it's in writing, not where you have to say contact people-- we're talking about texting, people are talking about e-mailing. But in the bill, it says it has to be in writing. Writing is not e-mail, texting. OK? So I'm just trying to make it clean and neat as far as contacting the tenant, between the tenant and the landlord.

McKINNEY: So would it be better--

SCOTT HOFFMAN: I think it's an overreach, this bill.

McKINNEY: So-- so would it be better written if, within the bill, it states written notice, which can consist of a text message, e-mail or any other correspondence? Would that be OK?

SCOTT HOFFMAN: And that's-- and that's what everybody up here is talking about. But that's not what's in the bill. OK?

McKINNEY: OK.

SCOTT HOFFMAN: That bill should have been written to where-- where it's I just told you with a text communication. But that's what we all do. We either do it with a phone call or we do it with a text. But that-- to where it, you know, has to be in writing, I can understand where somebody is given a notice, that has to be in writing. That's definitely-- we require that. You need to put that in writing, that you're vacating the property so you don't come at the end of the month and decide to stick around and go no; you put it in writing, OK, that we-- we-- we request and that is required in the Tenant Landlord Act. But I think that's as far as it should go as far as having thing-- something in writing.

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McKINNEY: So that tenant would need writing, but the--

SCOTT HOFFMAN: Right.

McKINNEY: --landlord doesn't.

SCOTT HOFFMAN: As far as vacating the property.

McKINNEY: But as far as entering, you don't need writing.

SCOTT HOFFMAN: I don't think so. I think it's a phone call or an e-mail or a communication, however way you can try to get ahold of that tenant to let them know you're coming in. But I'm not going to go over-- I'm sorry, Senators-- I'm not going to go over. I got a showing and a foot of snow, and put a note on the door or knock on the door: Here's your notice, I got to come over and show the property tomorrow. That's totally ridiculous. You know, I'm talking about showing property. I'm not just talking about maintenance because that's usually brought on from the tenant contact and the landlord saying something needs to be done. That's not involved-- that doesn't involve anything in writing; that just involves a phone call. And we take care of it. I have been doing it for 40 years. I know what I'm doing. But I'm going to tell you this Tenant Landlord Act-- it's been tweaked and I don't expect-- we talked about the-- Senator Hunt brought up the LB433 and the LB434 bill. Those two bills were merged on the last day of the Legislature. It had nothing-- one bill was to return the deposit, the other one was shortening it to three to seven days. And you know what happened with that, Senator? We all got together and we eliminated our grace periods, because we were giving everybody three to five days to pay the rent. And now we-- it's those-- rent's due on the first because you pushed it back seven days. Then we got another-- wait another 14 days for a trial. Then we got another-- wait another week for the constable to get the tenant out. But getting on to-- don't want to slide on to another topic. But this is what these changes have been made in the Tenant Landlord, which was quite unfair. And we were-- and its landlords were not on board with that change referred to as the Christmas bill.

McKINNEY: Thank you.

LATHROP: OK, thanks for being here.

SCOTT HOFFMAN: All right.

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LATHROP: We do-- we do, by the way-- we listen to both sides when we have these hearings and it helps the process when you come down here. I know it's not easy for you or convenient, but--

SCOTT HOFFMAN: I could be scooping snow right now, Senator. And-- and I wouldn't call somebody at 12:00 at night because I'd probably be having a cocktail. So I'm not going to--

LATHROP: All right. All right.

SCOTT HOFFMAN: Yeah, OK.

LATHROP: Thanks for being here.

SCOTT HOFFMAN: You bet.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary Committee; My Name is Justin Brady, I am testifying on behalf of the Nebraska Realtors Association in opposition to LB268 and would ask that this testimony and opposition be made part of the committee statement. LB268 does three changes to the landlord tenant act; it changes the term "one day" to 24 hours; it says that a property owner must declare the stated purpose for entering the premise; and finally, it says you must obtain consent to enter. It is this third requirement that the Nebraska Realtors are objecting to LB268. They are ok with changing one day to 24 hours, they are also OK with having to give a stated purpose to enter, the consent piece is the part they object to. Property owners do not want to just randomly walk into everybody's apartment, and they respect their tenets privacy. However, there are times that arise that the property owner needs to enter, maybe that's for inspections that are required by law, or to inspect the property to see if the tenant is living up to their contractual agreement on taking care of the property, plus other reasons why they may lawfully need to enter the property. Having to ask for consent to enter means they either never get consent and therefore never can enter or there is a delay which causes further damage or harm to the property. You will/have heard from the property owner's association that can/did provide more details about the hardship this will add to property owners across the state of Nebraska. We respectfully ask for this committee to IPP LB268. Thank You.

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LATHROP: With that, I think we're going to move on to the next bill. We've taken a half hour for opponent testimony. I apologize for those of you that haven't had a-- did not have a chance to testify, but in order to move through our bills, I have to make a couple of-- one-- couple more things for the record. We did have eight position letters: seven of those were proponents, one of those were opponents. And we also had a testifier drop off testimony this morning that was in opposition: Justin Brady, B-r-a-d-y, representing the Nebraska Realtors Association, provided testimony in opposition through the new means that we've developed this year. With that, that will close our hearing on LB268. Senator McCollister waived the close. And we were-- move to LB45 and Senator Matt Hansen. Welcome to the Judiciary Committee. And I'll remind everyone to speak as clearly as possible for our transcribers who are going to try to transcribe all-- all of this that we say. Most of it's said through masks and all of that. Senator Hansen, welcome.

M. HANSEN: All right. Thank you. And good morning, Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent Legislative District 26 in Northeast Lincoln. I'm here to introduce LB45, a bill that would repeal Section 76-1443, revised-- reissued Revised Statutes of Nebraska. This section currently prohibits judges from granting continuances in eviction proceedings unless extraordinary cause is shown and all ben-- and all back rent is paid. LB45 would allow judges and courts more discretion to delay hearings and eviction courts when necessary. This bill is the same as LB396, which I introduced in-- in 2019, which did advance out of this committee but did not get debated on General File. When I started working on this issue, I was surprised to learn that Nebraska is the only state in the country whose Residential Landlord Tenant Act effectively prohibits continuances in eviction proceedings by allowing them only when extraordinary cause is shown, rather than the good-cause standard used in virtually all other civil proceedings. I know several of you are attorneys but, just for the record, a continuance is a postponement of a legal proceeding granted by the judge at the request of either party or sometimes the judge themselves. Not only is Nebraska unique in this aspect, but within Nebraska, eviction proceedings are unique in that they are the only type of proceeding with this extraordinary-cause standard. Moreover, a tenant's circumstances are so rarely deemed extraordinary cause, the standard effectively prevents tenants from ever being able

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to get a hearing rescheduled. The current law is also strange in that it requires, in the rare circumstances that the causes do qualify as extraordinary cause, that all back rent be deposited with the court before the continuance is granted. The hearing itself is where the issue is often argued and decided. So forcings to pay before the hearing is not-- is not the way to handle the money that may or may not be owed. Obviously, the pandemic has made this issue even more urgent. Throughout the summer and fall, officials have pointed to this language, saying it tied their hands in doing what they thought was right, which was doing what almost every other judge was able to do and pause and to reschedule courtroom proceedings as needed. Instead, eviction cases continued, even as courthouses closed to the public for virtually all of their cases, while COVID cases continued to rise. Ultimately, we need to make sure that we are not creating a system where people are deprived of their day in court due to circumstances outside of their control, especially when it involves potentially losing their home. LB45 puts the power back in the judge's hands to be able to reschedule eviction proceedings when necessary. Behind me, there are testifiers who will give more specific examples. So I will close there. Thank you, Mr. Chairman.

LATHROP: OK. Thank you, Senator Hansen. Any questions for Senator Hansen? I see none. Are-- you will be here to close?

M. HANSEN: Yes.

LATHROP: OK, thank you. First proponent.

RYAN SULLIVAN: Senators, my name is Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I am here testifying as a lawyer and as a professor, but not on behalf or as a representation of the university. In 1974, the Legislature enacted the Uniform Residential Landlord and Tenant Act, except it didn't. The Uniform Act that was developed and proposed by the Uniform Law Commission was intended to promote and provide for a fair and balanced transactions between landlords and tenants. That act included protections to ensure leases were fair and tenants were not taken advantage of. That act also included an abundance of provisions that benefited landlords, including rights of access as well as a streamlined eviction process. All in all, that act, that uniform act was fair and brought balance in an otherwise imbalanced relationship. But that is not the act that was adopted by Nebraska in '74. Guttled from that balanced uniform act was nearly every provision

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that provided protections to vulnerable tenants or that benefited tenants in any meaningful way. Those tenant provisions that did remain were left toothless by the removal of language that would have made them enforceable. You will find dozens of provisions in the law that are extremely imbalanced as a result of what happened in '74. And that's why you saw last year, and you're seeing today, and you'll see throughout this session so many proposals aim to bring balance to an act that has favored landlords to the detriment of tenants for almost 50 years. You've heard, and will continue to hear, I assume, from landlords and their lobbyists who oppose all of these proposals. Of course they will. They don't want anything to change, as you've already heard today. They don't want that balance. They want to retain the advantage provided to them under the current law. As to the bill at hand, which would repeal the atrocious tenant "anticontinuant" statute, I'll let others share reasons for why that needs repealed and-- and some examples. But I will say that this statute, its sole purpose being to deprive a tenant of a fair opportunity in court, is just one of many egregious examples of the imbalance of the act, of what happened in '74, and I hope this Legislature rights that wrong. Thank you.

LATHROP: Thank you. Any questions for Professor Sullivan? I see none. Thank you. We will take proponent testimony, those in favor of the bill. Can I see, by a show of hands, how many people? You can come forward. How many people are here to testify in favor? And how many are here to testify in opposition? OK. Welcome.

ROBERT LARSEN: Thank you. Good morning, Chairman Lathrop and members of the Judiciary Committee. My name is Robert Larsen, R-o-b-e-r-t La-r-s-e-n, and I am a senior certified law student and member of the Civil Clinic at the University of Nebraska College of Law. I'm testifying in support of LB45 as a citizen and not as a representative of the university. Like Senator Hansen said, this bill was proposed last biennium as LB396, voted out of committee with no dissenting votes and placed on General File but, due to COVID, wound up not getting a vote on the floor. LB45 seeks to alleviate what I found to be one of the strangest discrepancies in Nebraska's landlord-tenant statutes. Under Section 76-1443, a continuance shall not be granted to a tenant unless extraordinary cause can be shown to the court. As has been said, that's a higher standard than is required of any other litigant in any other civil matter, including matters involving arguably exigent circumstances such as actions involving child removal

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proceedings, harassment protection order proceedings, and all criminal matters. Most glaringly in landlord-tenant proceedings, this higher burden is placed only on the tenant. A landlord need only show good cause. A law that singles out residential tenants does not make sense. Now I'm not advocating for anything that gives tenants some new unfair advantage or advocating for a special exception for tenants within our legal system. I'm merely advocating for the repeal of a statute that is a clear, unique, and illogical outlier in Nebraska law. In the past, landlords have testified against the repeal of Section 76-1443 by arguing that landlords want to work with their tenants and that, by the time eviction proceedings have begun, weeks have already gone by. But that is often not the case. At the clinic, we have found that eviction notices are often issued after the tenant is only one day late on rent and, once that process begins, it moves very, very fast. Even with this change, the tenant still must show good cause, the same as any other litigant. Courts will utilize their reasonable discretion in determining whether good cause has been shown. And if it has not, the continuance request will be denied. Eviction proceedings, like all judicial proceedings, should be as fair as possible for both parties. If a party has limited access to a continuance, they may not be-- they may not be able to appear at that hearing and, therefore, lose by default, even if they have a valid claim or defense. LB45 removes an inexplicable imbalance from Nebraska's Residential Landlord Tenant Act and applies the same continuance standard to residential tenants that has already applied to all other Nebraska litigants. I urge you to vote to advance LB45 out of committee and to vote for it when it reaches the floor. Thank you, and I'm happy to take any questions, to the best of my ability.

LATHROP: OK. Any questions for Mr. Larsen? I see none.

ROBERT LARSEN: Thank you.

LATHROP: Thank you for your testimony. Next proponent. Welcome once again.

ERIN OLSEN: Yes, hello again, Senators. OK. Once again, my name is Erin Olsen, E-r-i-n O-l-s-e-n. I'm one of a few staff attorneys at Legal Aid of Nebraska's Housing Justice Project. We'd like-- I'd like to thank you for the opportunity to appear here today in support of LB45. I also want to thank Senator Hansen for introducing this bill and inviting us to testify. So I'm going to try my best not to repeat

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the valid arguments that the other proponents-- proponents have already made, but I do want to point out that repealing this section regarding continuances does make the Nebraska Residential Landlord Tenant Act more-- more practical for several reasons. But I will just highlight that a lot of times, due to maybe other provisions in the law, things like that, tenants don't receive any notice of the court hearing until a couple of days before court. So the end result there is that tenants show up to their eviction hearings underprepared because they haven't had adequate time to collect evidence, prepare arguments in their defense, and unrepresented without adequate time to seek out any legal resources. I also want to highlight the inconsistencies in which this law is applied since Legal Aid services the entire state. In conferring with my colleagues on the Housing Justice Project, we have seen that in one courthouse, a plaintiff's request to continue was-- was granted without any reasoning at all. And in another courthouse, a continuance might be granted for this reason-- maybe a car accident on the way to the hearing-- but not another reason, something that also happened right before the hearing. So LB45 effectively repeals a law that either doesn't get applied at all in practice-- practice or, if it does, it is used inconsistently to the detriment of tenants' rights. And finally, I would like to point out that Legal Aid is supporting LB45 because, throughout the pandemic, judicial districts across Nebraska have cited this exact section as to their justification as to why they cannot continue these specific kinds of civil hearings, you know, due to public health and safety. The courthouse in Douglas County, when I was there, was basically empty, except for people going to Courthouse 20, apparently because of this current provision in the law. As another example, tenants facing eviction in Lancaster County over the summer had to bring a doctor's note in order to receive a continuance. Since the court did not implement measures for tenants to be able just to send this documentation electronically, unrepresented tenants had to attend the hearing to give the doctor's note, therefore thwarting the intention of the safety guidelines. I am out of time, so I will end with that, and I can answer any questions. Thank you.

LATHROP: OK. I do not see any questions, but thank you for your testimony, Ms. Olsen.

ERIN OLSEN: Thank you.

LATHROP: Welcome.

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SHAYNA BARTOW: Thank you. Chairman Lathrop and members of the committee, my name is Shayna Bartow, S-h-a-y-n-a B-a-r-t-o-w, and I'm a senior certified law student and a member of the Civil Clinic at the University of Nebraska College of Law. I'm testifying today in support of LB45, as a Nebraska citizen and not as a representative of the university. As you just heard from my colleagues and from other housing advocates, LB45 aims to balance the scales by giving tenants the same right to a continuance as both landlords and other civil litigants. To show you just how just and unworkable the current standard of extraordinary cause is, I want to spend my time today sharing with you some examples where the court actually ruled that the tenant's circumstances did not constitute extraordinary cause. One common situation arises when tenants are unable to get time off of work for the hearing, especially with short notice. This is consistently deemed not to be extraordinary cause, and the request for the continuance is then denied. This puts vulnerable Nebraska renters in an impossible situation. They have to choose between attending the eviction hearing or being fired. Worse yet, if they decide to attend the eviction hearing and they're evicted anyway, they're now jobless and homeless. Equally egregious situations, in which tenants have been denied a continuance, include: when a tenant was hospitalized for a medical condition; when a tenant had retained a lawyer, and that lawyer needed a few days to prepare for the hearing; when a tenant needed more time to secure records that actually showed they had paid the rent that was being contested as unpaid; when the tenant needed to stay home to care for a sick child; when the tenant had no childcare for that day and the court would not allow children in the courtroom; and when a tenant's car broke down or they didn't have a ride for that particular day, but they were able to appear in front of the court the very next day. These are just a few of the unjust situations that are created by this current extraordinary-cause standard. And I've shared a list with all of you with a few more examples that we've seen in the clinic. In most of these situations, the tenants were seeking just a few days for their continuance. And in any other civil matter, this would have been deemed more than sufficient to extend the hearing and grant the continuance. Notably unlike other civil matters, this is especially important because the landlord gets to set the hearing date without any input from the tenant, making this standard to get a continuance even more egregious. Litigants, particularly those facing an eviction, should have a fair opportunity to have their case heard and to appear in court. By adopting LB45 and applying the same

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continuance standard to tenants and landlords, Nebraska tenants will
be treated more equally under Nebraska law. Thank you.

LATHROP: Thank you. Any questions for this testifier I see none. Thank
you for your testimony.

SHAYNA BARTOW: Thank you.

LATHROP: Welcome.

RYAN SUMP: Thank you. Senator Lathrop and members of the Judiciary
Committee, thank you for having us here today. My name is Ryan Sump,
R-y-a-n S-u-m-- as in Michael-- p-- as in Paul. I serve as a volunteer
attorney for the Nebraska State Bar Association's Tenant Assistance
program, but I am not here today representing them in any capacity.
I'm just here to give you some personal experience. I'm just
representing myself. As I hope-- as I hope you can see, from some of
the previous testimony that we've already had for this today, Senator
Hansen was not at all exaggerating when he said it's practically
impossible for a tenant to actually get a continuance in an eviction
action under the current laws of the state. On the other hand, it's
extremely easy for a landlord to get a continuance, to the point where
I would almost be shocked if a landlord was ever denied a continuance.
As it stands, we just have to hope that the tenant shows up to the
hearing. If they have something going on in their life that they can't
make it, that's too bad. I feel sorry for them, but we have to hope
they show up because nothing we will say will allow them to continue
it. The worst thing the world could be happening to them, but
functionally they-- that would not matter. They would be evicted that
day. Meanwhile, a landlord or their attorney could not make it to
the-- not make it to the courthouse that day for any various reasons,
and the judge would almost certainly give them at least a week,
another week for-- for the case, until they can make it. This is a
little redundant because it's already been said once or twice, but
this law-- or this bill, excuse me-- is not seeking to give tenants
any sort of special treatment or give them any sort of privilege that
nobody else has. All this is doing is making eviction proceedings more
fair for both parties and seeking to bring eviction actions in line
with every other civil action in this state. Thank you. That's all I
have, and I will answer any questions if you have any.

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LATHROP: All right. Mr. Sump, I don't see any questions, but thanks
for being here.

RYAN SUMP: Thank you.

***KELSEY WALDRON:** Dear Chairperson Lathrop and members of the Judiciary
Committee, the Women's Fund of Omaha writes in full support of LB45,
allowing courts discretion to continue eviction hearings when
necessary, particularly now in a global pandemic when hearings and
evictions pose significant threat to individual and community health.
When asking people to stay home to prevent the spread of COVID-19, we
must ensure they have homes to remain in. Eviction and subsequently
homelessness have always posed significant risks to individual health.
Individuals experiencing homelessness often face additional health
conditions resulting from exposure to the elements, poor living
conditions, and limited health care access that puts them at higher
risk of contracting and experiencing extreme symptoms of COVID-19.
This pandemic has translated those individual risks to community-wide
ones, posing additional threat to the spread of contagion throughout
our community. Homelessness limits ability to self-isolate and
practice social distancing, with crowded shelters and food banks
becoming particularly vulnerable to the spread of infectious disease.
During this pandemic, over 86,300 Nebraska families who are renters
have experienced job or income loss. On July 14, 65 percent of renting
households with children reported concern about being able to afford
next month's rent. An estimated 105,867 Nebraska renters were at risk
of eviction at the end of December. Mass evictions experienced as a
result of COVID-19 income and job loss not only have devastating
impacts on households, but also on our community at large, slowing the
speed of economic recovery. Where our Governor recognized the
necessity of postponing evictions during this unprecedented public
health crisis in Executive Order 20-07, our courts felt bound by
statutory requires prohibiting hearing continuances. As such,
evictions have continued throughout this pandemic, with full
courthouse hearings and limited social distancing opportunities.
Further, without continuance of hearings and very rare exception for
narrowly interpreted "extraordinary cause", tenants have experienced
restricted access to our legal system. Tenants who have tested
positive to COVID-19, are experiencing symptoms, or who are
quarantining under CDC guidelines and are unable to attend their
original court date for concern of public safety, are subsequently
unable to obtain a new hearing. This creates tangible and pervasive

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barriers to accessing our legal system, locking individuals out of the opportunity for hearings and a defense through no fault of their own. Tenants are already significantly disadvantaged in eviction hearings as 90 percent of landlords have an attorney, a stark contrast to the only 10 percent of tenants with legal representation. Further limiting access to justice for tenants by preserving current statutory process where landlords determine court date timelines, without ability to continue hearings for tenants unable to attend court for extenuating circumstances, is a failing of our legal system. LB45 would address these barriers in future times of personal and community crisis, allowing judicial discretion to fully prioritize health and safety of our community and everyone's equal access to justice. The Women's Fund urges this committee to support LB45 and advance this bill to General File.

***KASEY OGLE:** Chairperson Lathrop and members of the Judiciary Committee: My name is Kasey Ogle and I am a staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between Nebraska Appleseed, Civic Nebraska, and the South of Downtown Community Development Organization that works with residents of six Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that is responsive to their needs. I am writing to you today on behalf of Collective Impact Lincoln in support of LB45. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolnites. We support LB45 because it provides tenants in an eviction action the same rights as other defendants in civil cases. Section 76-1443 of the Nebraska Revised Statutes restricts Courts from granting continuances unless extraordinary cause for the continuance is shown. Courts have interpreted this statute as allowing continuances to be granted as they normally would be when plaintiff landlords ask for a continuance, but only allowing continuances that have been requested by tenant defendants under truly exceptional circumstances. Tenants in eviction cases have been denied continuances despite being unable to attend court due to illness, even throughout the pandemic, and even as court orders require litigants to stay away from the courthouse if they have any possible symptoms of COVID-19. Tenants have been denied continuances despite being hospitalized or who are otherwise unable to attend their hearing. "Extraordinary

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cause" is a unique requirement for a continuance that only exists for defendants in eviction cases. In other civil proceedings continuances are granted at the discretion of the court. The "extraordinary cause" requirement functionally prohibits tenants from being able to get a continuance. But even if a tenant is somehow able to overcome this insurmountable task of proving "extraordinary cause," section 76-1443 places even greater obstacles in the tenant's way. Tenants who somehow manage to obtain a continuance must also pay any rent payments that are allegedly due, including depositing any rental payments that accrue during the pendency of the suit. This is also a feature unique to tenant defendants in eviction proceedings. Requiring tenants to pay any amount allegedly due into the court in order to avail themselves of basic due process rights effectively presumes that any amount claimed by a landlord in their complaint is the correct amount due. This is especially egregious for low-income tenants who cannot afford to pay inflated, unchallenged amounts into court in order to exercise their basic due process right to dispute a legal claim against them. This is a pay for play scheme in which low-income tenants must bleed their finances in order to seek justice. LB45 correctly eliminates these unfair burdens placed on tenants in eviction proceedings. It gives tenants the same rights as other defendants in civil proceedings and begins to level an exceptionally uneven playing field in our courts between landlords and tenants. For these reasons, we urge you to advance LB45.

LATHROP: Anyone else here to speak in favor of the bill? Seeing none, we will take opponent testimony, those in opposition.

LYNN FISHER: Good morning again.

LATHROP: Good morning.

LYNN FISHER: Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Real Estate Owners and Managers Association, as always, serving good tenants for decades. The Landlord Tenant Act provides for remedies for both the tenants and the landlords-- has done a great job up to this point. One of those remedies is when the rent is not paid or if a tenant behaves badly or impeding the peaceful enjoyment of the property by other tenants and neighbors, is the-- the right to process the eviction. Time is of the essence when rent is not paid, because our expenses continue to be due and payable regardless of the income that we then are not receiving if it's a rent payment situation while

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this process is underway. The very last resort for a landlord is to move to the eviction process because we have worked really hard with tenants to avoid it. It's expensive, it's time-consuming. We want to avoid eviction court at all costs. But when that is impossible, then we have to proceed. And it's not quick and easy, as it's been described here earlier with testimony. It's not a quick, and easy, and fast process that is unknown or unexpected by the tenant. Tenants know what's happening, and they have been, fully been made aware of their options, and we work with them very hard. And if they're willing to work, they can avoid eviction court. So LB45 really provides for, I think, some unusual options for the-- for the the tenant, particularly when today, at least here in Lancaster County, there is a cadre of volunteer attorneys for every tenant that shows up to eviction court, and they have all kinds of help to get the process stopped if they need to. As a matter of fact, we have had tenants be allowed continuances by judges, by the particular judge here in Lancaster County within the last few months, with the COVID situation in particular. So we have been at eviction court on a couple of occasions, and we've had tenants get that-- that continuance. So it's not a rare thing, and particularly in today's situation with COVID. Public safety is a concern about the COVID situation, and-- and I know there's been some discussion about-- about how public safety is not being considered when it comes to the eviction court. But it's interesting to note that only two percent of the people that have moved during the year of COVID-- what-- moved because they were-- they were forced out by eviction. 98 percent of the people, the tenants, that have moved have either moved out of state, purchased a home, moved to a different apartment. And there's certainly no-- no public safety concern for that 98 percent of the reason people are moving. So I'd be happy to answer any questions, but we're certainly opposed to this because of the time constraint and the additional cost it's going to cost if we have to delay eviction.

LATHROP: OK. Senator McKinney.

McKINNEY: How are you doing? What is a less than extraordinary reason for a tenant to be denied a continuance, in your opinion?

LYNN FISHER: Well, I think certainly, you know, all the examples that were given here just-- just before my testimony with the-- with the proponents, all the situations about-- about COVID or sickness or situations where a tenant is not able to get to court, if they are

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able to contact the court-- and-- and I know judges that are-- are very accommodating. Even given current law, I think a judge considers because they have discretion. The law doesn't-- the current law does not give a judge-- you know, tie their hands. They certainly can-- can make a continuance. It happens with us all the time. It's not an unusual situation for a tenant to be able to get a continuance even now. So I think a judge will say extraordinary certainly means if they're sick with COVID or if they-- they-- they can't come for personal reasons, if it's children or work or whatever, that those situations are generally accommodated.

McKINNEY: So what if a tenant is denied a continuance because they're in the hospital? Is that just tough luck?

LYNN FISHER: I-- I don't know any situation like that that's occurred with me and I-- decades of experience. I suspect that that's possible in some unusual circumstance where somebody is in the hospital and can't, for some reason, get ahold of the judge or the-- get ahold of the court. But that would certainly be unusual. That would be an exception.

McKINNEY: All right. Thank you.

LATHROP: Senator DeBoer.

DeBOER: Sorry, one of your answers to Senator McKinney sort of spurred something with me, so I'm trying to understand your position completely. So if, under current law, already continuances are being allowed for things like being in the hospital, these sorts of things, then what would your objection-- do you have an objection to making it more clear that those are acceptable reasons for a continuance?

LYNN FISHER: Well, I think that-- I think the way I understand the way the law is being proposed here-- the amendment-- that it would invite and probably make it less likely that a judge would not issue a continuance if someone came up with almost any reason.

DeBOER: So you would be open to continuances being allowed for things like being in the hospital--

LYNN FISHER: Oh sure.

DeBOER: c--or not being able to have childcare--

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LYNN FISHER: Absolutely.

DeBOER: --whatever-- those sorts of things. You're just worried about
an excessive use of continuances?

LYNN FISHER: Well, because the term "extraordinary" can be interpreted
by a judge in many ways. And I think judges use their discretion
currently. But if you take the-- the ability of the tenants to make
any excuse and it's not extraordinary, I think it just invites a
situation where a continuance could be granted continuously and we
could be weeks or months before we ever get to the point of getting
someone out for not paying rent.

DeBOER: So you trust the judges to be able to use their discretion--

LYNN FISHER: Absolutely.

DeBOER: --to best be able to provide continuances?

LYNN FISHER: Yes.

DeBOER: So if-- if we trust the judges to be able to best provide
continuances, then that is a favorable-- OK, thank you.

LYNN FISHER: Sure.

LATHROP: I don't see any other questions. Thanks, Mr. Fisher.

LYNN FISHER: Sure.

LATHROP: Next opponent.

GENE ECKEL: Senator Lathrop,--

LATHROP: Welcome back. Your mask is very thick, so I'm going to ask
you to be very close to the mike.

GENE ECKEL: Yes, sorry about that. Senator Lathrop and members of the
Judiciary Committee, my name is Gene Eckel; that's G-e-n-e E-c-k-e-l.
I'm a member of the board of directors for the Nebraska Association
for Commercial Property Owners and the Apartment Association of
Nebraska. We're here today to oppose LB45 for basically three main
reasons. Number one, it-- it can cause an inconsistency among the
judges in the different counties, because one judge might say, yes,

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we're going to continue it for whatever reason the tenant indicates to the court. Another judge may not. The current statute does give consistency because the judge knows it has to be for extraordinary cause, which they will make the decision at the court hearing. And if there's any rent that is owed at that time, the rent has to be paid into the court. So that's the first reason. The second reason is, it does allow for tenant abuse, it's not uncommon for our members to encounter where a resident calls that morning with an excuse why they cannot attend court. Yet that can cause a problem because it really doesn't know-- well, at least the judge may not know what those extraordinary circumstances might be if the person who says I can't make it to court. And it really hinders the ability for that landlord to have that hearing that day to address this certain situation. It's not always going to be for nonpayment of rent. Our members, again, have to encounter where there's a resident who may not be complying with the terms of the lease, whether it's having parties all the time, having unauthorized occupants, damaging the unit, or it could be for criminal conduct. If that person is allowed to call into the court and just give a reason why it needs to be continued, that allows that tenant to remain at the property for a longer period of time, which could also be a danger to the other residents. The other issue is that-- the scheduling. So it depends on the county. If you're going to get a continuance in Douglas County, it might be a couple of days or a judge might say, well, I'll be continuing until the next time I have a motion hearing, which could be a couple of weeks later. So during that period of time, the landlord is really at risk of losing more money for having a resident occupying a unit that could be back on the market. Those are our main reasons for opposing this bill. I'd be certainly happy to answer any questions.

LATHROP: Thank you. I do not see any questions at this time.

GENE ECKEL: Thank you.

LATHROP: Thanks for your testimony, though.

LATHROP: Welcome back.

DOUGLAS LANE: Doug Lane, L-a-n-e.

LATHROP: Go ahead.

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DOUGLAS LANE: OK. I've been-- Thank you, Mr. Lathrop. I've been-- I have been a landlord for 28 years, bought my first rental right after I got married and our first kid was on the way. I figured I got to up my game somehow. Soon as I put my roofing hammer down, I wasn't making any money, so I thought that I'd get into real estate. So here I am many years later. Anyway, I think the event, the eviction process is very important for both the landlord and the tenant or prospective tenant. It's very, very important, especially to the tenant who is either young and has no credit, good or bad, maybe has bad credit, not a very good rental history-- little thing to ver-- not much to verify. It's very important that the landlord is able to evict somebody in a reasonable amount of time. Otherwise you can't take a chance on this person. You can't take a chance on--. I'm sorry, I just can't take a chance on you. The more difficult you make it to evict, the longer it takes, the higher you raise the bar. And that will be the unintended consequences of some of these bills. People are going to be-- have a harder time finding places to live because I just can't take a chance on you. I've taken some chances on a lot of people, like most any of us who are in the rental business. Sometimes it works out or sometimes it doesn't. Many times it does work out, sometimes almost to your surprise that it works out. But yeah, people have-- I've got some really good examples that I can't-- don't have the time to go through it today, but I would love to share some of the stories that I've had. Some people who've spent time in federal prison for meth distribution, things like that, during their-- had turned their self around. I ran their credit report. The credit report came back as so low, we couldn't give it a score. And yet I ran into him and I'm still renting to him today. They've been good tenants for seven years, good people. And then they worked, so this one example. There's lots of good examples; there's a few bad ones. But it's very important-- you can't-- like I said, I can't stress that enough. If-- if you can't get somebody out in short order, you can't take a chance on them because I still have to pay property taxes, all the expenses of owning a property, so. And many times, if they're not paying the rent, they're not taking very good care of your property, as well. So thank you. Thank you very much.

LATHROP: Thank you, Mr. Lane. No questions.

DOUGLAS LANE: OK. I must be clearer than I think-- no questions.

LATHROP: You were perfectly clear. Welcome.

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RYAN NORMAN: Good morning, members of the Judiciary Committee. My name is Ryan Norman, R-y-a-n N-o-r-m-a-n, and I'm an attorney here in Lincoln. I represent rental property owners. I'm also a member of the Apartment Association of Nebraska. I'm here to testify in opposition to LB45. As it stands, the current continuance process in Nebraska's landlord-tenant statutes ensures that owners are able to protect their property rights swiftly without undue and unnecessary delays. And it also allows tenants to continue their cases when necessary. This bill, like many being proposed this session, is simply an attempt to make it more difficult for housing providers to complete the restitution process, thus frustrating their ability to provide quality and affordable housing to Nebraskans. These bills are being proposed without much of any effort to work with property owners or to address the underlying issues that lead to people being unable to afford their rent. Instead, the intent is to shift the responsibility to property owners to provide the type of assistance that should be provided by the government or other entities. If this bill were to pass, it would inevitably lead to backlogged court calendars and inconsistency between courts and judges regarding dealing with continuances. It would also stretch many restitution actions into a second month, which means landlords would often incur an additional month of unpaid rent. Collection of back rent, even after a successful court action, is usually unsuccessful. And loss for and due to vacancy can never be recovered. The people that are most harmed by bills like this one are small-time landlords who rely on monthly rent to pay their mortgages and paying tenants who ultimately will have higher rent. In rural jurisdictions, the problems created by this bill are magnified even further because, in some counties, judges travel to court hearings and those court hearings are held far less frequently. So a continuance of a restitution action in a rural county might continue the action a month, maybe even more delays in these types or-- and then, finally, I would highlight that it isn't only restitution actions for nonpayment that this bill affects. It also would cause delays in evicting tenants who engage in violent conduct or things like fire code violations. Delays in these type of evictions put other tenants' health and safety at risk. So I urge the committee, on behalf of my clients and other property owners, to oppose LB45. Thank you for your time. I'd be happy to answer any questions.

LATHROP: OK. I do not see any questions for you, but thanks for being here,--

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RYAN NORMAN: Thank you.

LATHROP: --Mr. Norman.

DENNIS TIERNEY: Morning again, Senators. I'm Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I serve on the board of directors of Metropolitan Omaha Property Owners Association. LB45 would be repeal-- repeal Statute 76-1443. If this section is repealed, tenants could be granted numerous continuances in their eviction hearings without paying the rent, further prolonging the process. The current law states: No continuance shall be granted unless extraordinary cause be shown to the court, and then not unless the defendant applying therefore shall deposit with the clerk of the court payments of any rents that have accrued, or give an under-- undertaking with sufficient surety therefore, and, in addition, deposit with the clerk such rental payments as accurate-- as accrue during the pendency suit. Perhaps a week or so may lapse before the landlord serves a seven-day notice when the tenant falls behind on the rent. Then from the time the landlord serves a seven-day notice until the case comes to trial, it typically takes approximately three weeks, as again, somebody else stated, was not a surprise to the tenant. Then it takes about another week after the trial for the sheriff to serve the writ to actually lock the tenant out. This takes up approximately one whole month of lost rent. It would be extremely unfair to the landlord for the tenant to ask the court for postponements of the restitution hearing without posting the rent as a bond. The tenant would allow-- the tenant would allow to continuing-- to continue to live free in the property. How long should the landlord need to continue to going without rent? If the amount of damage deposit is limited to one month's rent so the-- the damage deposit is already used up waiting for the eviction and lockout to occur. This leaves nothing for the actual damages to the rental unit. LB45 also, as just stated, allows no-- so it allows for nothing for the type of eviction being processed. It's one thing for a continuance in the case of a late payment eviction. If, however, the tenant is creating a dangerous situation in a rental unit and needs to be evicted for a clear and present danger, for example, endless continuances would be dangerous. If LB45 were to pass, the cost of providing for the possibility of being denied rent for longer periods of time would need to be factored in. This would likely cause stricter screening-- stricter screening procedures, possibly denying some people the ability to rent. Another likely result would be higher rents for all tenants. Landlords operate on tight budgets with

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principal, interest, taxes, insurance, and maintenance costs built in. They will not be able to simply absorb this new cost without passing on to the tenants. We urge you to oppose LB45. Be happy to answer any questions.

LATHROP: I don't see any questions, Mr. Tierney, but thanks for your testimony.

DENNIS TIERNEY: Thank you.

COLE MARANVILLE: Thank you for your time today, appreciate it.

LATHROP: Welcome.

COLE MARANVILLE: My name is Cole Maranville, C-o-l-e M-a-r-a-n-v-i-l-l-e. I'm a landlord, along with my brother who is here today, also. We-- the vast majority of our units are in the near south, so just a block away. So we-- you know, for 11 years we've been, you know, in this relationship with tenants. And I think one of the big things is that-- everybody really needs to know-- is that it's a symbiotic relationship. Landlords need tenants, and tenants need landlords to-- to be able to operate. We provide housing, and, you know, they provide the-- the financial piece in the agreement that allows us to operate a business and provide them that-- that housing. But this bill, I'm-- what I'm afraid of is multiple continuances. So if we-- if there's-- if we end up going to court and the tenant has a-- maybe-- maybe a reasonable continuance request, what's to say that the next time that we're in court that they don't come up with a different continuance request and then another continuance request? At what point is that unreasonable? I don't think it's been defined today as to what, you know, if that's even something to be addressed. If there's one continuance, can there be multiple continuances, which takes us further away from a reasonable time frame for the landlord to be able to recover-- possibly recover the-- the property? And part of that is just, in a timely fashion. We, as landlords, rarely, rarely, rarely want to evict a tenant. That-- that doesn't make our business. You know, but that-- that-- we want to provide housing to people. We want-- we want tenants to be in our places, and we want to, you know, provide quality, affordable housing to people. And all we ask for, from them, is that they're going to, you know, give us the same respect back. They're going to follow the lease that we have mutually agreed upon in the first place. And so what I'm afraid of is, in this

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continuance possibility, where is the burden of proof? So what happens is, I go to court and I say, I didn't have day care today; I just found out. My day care provider didn't-- and there's no burden of proof for that. So-- so we're going to continue it. And the next week, the next time that there's the court, again, I don't have to provide the burden of proof that what I am telling you is accurate-- my-- my car tire blew. I mean, and all these things, within themselves, are all certainly reasonable. But where is-- where is the-- where's the-- you know, what if it's-- I'm saying this because I know that that will provide a continuance versus legitimate inaccuracy within that request. So just, you know, again, we as landlords want to work with tenants. Communication is absolutely paramount, you know, and-- and it's something that we stress from the very beginning when we sign a lease with any tenant that we have. Thank you, guys, for your time.

LATHROP: Yeah. No, thanks for being down here. I do not see any questions for you. Must have been very clear.

COLE MARANVILLE: Thank you.

LATHROP: Yeah, thanks. Any other opponent testimony?

PIERCE CARPENTER: Hello. My name is Pierce Carpenter, P-i-e-r-c-e C-a-r-p-e-n-t-e-r. Most of what I have has already been covered, so I am going to skip a lot of it. But I would like to go over it. Looks like there were six people that were for it. The first was the senator who astonishingly gave a reason for the bill, because if you look in the intent portion, there's no reason. I thought it was just a way to beat landlords out of extra money and [INAUDIBLE] the tenants. Second was a lawyer, another lawyer, the Legal Aid lady, and another lawyer from the college, and another lawyer who worked on the [INAUDIBLE]. Basically, once again, you don't have any tenants. You have people who think they know what's best for tenants because they deal with irate tenants. I mean, it's really not a reflection of what's going on in the community. When I have an eviction, typically it takes about six weeks, because it takes two weeks for me to realize I'm going to evict them and it takes four weeks to evict them. I guess, you know, six weeks-- you know, rent is \$600 to \$1,300 a month. So, you know, you're-- you're talking \$900 to \$2,600. You know, how many more weeks of free rent do we give? What's reasonable? Do you want to give them another \$1,000? Do you want to give them another, you know, \$1,500? I guess that-- that's my point. There's just-- you know, they've had six

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weeks to resolve this, and they-- and that's not enough. So now you're going to make the landlord pay for more. That is why I object to this bill. Please do not vote it in. That's all I have. So are there any questions?

LATHROP: Senator McKinney.

PIERCE CARPENTER: Yes, sir.

McKINNEY: Thank you, Mr. Carpenter. Do you think you know what's best for tenants?

PIERCE CARPENTER: I bend over backwards to keep them in there, because what-- what other landlords have talked about. It costs \$350 to evict somebody, and then, by the time I pull the trigger, it's two weeks down the road, and it takes four weeks, and it's a lot of money. So I admit I'm looking out for my own interest, but nobody has come to me after the six weeks and said, Mr. Carpenter, here's the rent money-- or here's half of it. Basically, they usually have problems or issues. Do I know what's best for them? They need to do something with their lives so they can continue. So what would that be? I-- I guess I-- I don't have an answer for you. Each-- each one is unique and different. The last guy I evicted had a gambling problem. He was making \$2,600 a month and his rent was \$640, and he could not pay that rent. What would be a good solution for him? I-- you know, he should stop--

McKINNEY: Would you-- my last question. Would you be open to a cap on continuances?

PIERCE CARPENTER: I'm-- I'm sorry. What?

McKINNEY: Would you be open to a cap on continuances?

PIERCE CARPENTER: I-- I think what it would evolve to is, I think, every tenant that came in would be advised to get a continuance because the [INAUDIBLE]. And so I think what it would evolve into is they'd set a new court date two weeks later, my six weeks to evict people would immediately go to eight weeks if you had a one-- a one-cap continuance. So, you know, I think the system works well enough right now. I-- i can't think of a single tenant where a continuance would have helped them.

McKINNEY: So what is wrong with getting one continuance?

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PIERCE CARPENTER: You know, if you got an extra \$900 the next time I
bring somebody in and it costs me another \$900 in lost rent, and you
want to pay it, I wouldn't have a problem. But I don't-- I'm already
paying, you know, probably a couple thousand.

McKINNEY: So what if I'm in a hospital with COVID?

PIERCE CARPENTER: I would not evict somebody like that. I would hold
fast; I would not do that. But, you know, the people that-- that we're
talking about here, we're going-- you're-- the people that-- that
annoy me are the ones that don't deserve that continuance. But they're
going to take this legal position, turn it into a cudgel and pound
more money out of the landlords. And that's what I'd like to avoid.
And that's why I think the law is good enough the way it is, and I
don't think we need this law.

McKINNEY: All right. Thank you.

PIERCE CARPENTER: Sorry I talk so much.

LATHROP: Thank you.

PIERCE CARPENTER: Thank you.

LATHROP: I think we have one more landlord or one more opponent.

CHINDA DAVID: Hi.

LATHROP: Hello, and welcome.

CHINDA DAVID: My name is Chinda David.

LATHROP: Can you spell that for us, please?

CHINDA DAVID: Chinda, C-h-i-n-d-a; David, D-a-v-i-d.

LATHROP: OK.

CHINDA DAVID: I am a new landlord.

LATHROP: Can you move a little closer to the mike so we can hear you
better? Thank you.

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CHINDA DAVID: I am a new landlord, just about five years, and I worked very hard to buy the property. I have about six houses containing 14 unit. Most of my property are multifamily, containing two unit or up to three unit. However, I try to understand the law in this country. I came here in 1981, and I am first and began-- I'm sorry, I'm nervous.

LATHROP: Yeah, you don't need to be nervous with us.

CHINDA DAVID: I come from a very poor family, and I worked really hard to save the money. And I knew the only way for me to survive in this country, I need to have some sort of income additional to the job that I work. I'm sorry, I'm-- I'm trying.

LATHROP: You're doing fine. You're doing fine.

CHINDA DAVID: Anyway, this bill, if we-- if it-- this bill is allowed, if you allow it to happen, it will jeopardize my income since, as you hear, everybody said it take longer to evict people. And in the meanwhile, we are losing the income from that and jeopardizing myself to lose the house to the bank if I not have money to pay the mortgage. So I oppose this bill.

LATHROP: OK.

CHINDA DAVID: That's it.

LATHROP: You did great. Yeah.

CHINDA DAVID: You can ask me any question, if you like.

LATHROP: Let's see if there's any questions.

CHINDA DAVID: I had to evict a few other people. The longer they stay in my property, the more damage they done to my property. One example, after I served them notice, they know what they're going to get evicted. We tried to work with them. I tried to work with them. So they run the water. They just turned the water, and I stuck with the bill, over \$1,500.

LATHROP: Yeah, there are challenges with that line of work, isn't there?

CHINDA DAVID: Yes.

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LATHROP: OK. Well, thanks for being here today. We appreciate you
taking the time to come down.

CHINDA DAVID: Thank you.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary
Committee; My Name is Justin Brady, I am testifying as the registered
lobbyist for the Nebraska Realtors Association in opposition to LB45
and would ask that this testimony and opposition be made part of the
committee statement. LB45 would drastically increase the number of
contingence requested and granted, in cases where tenants have failed to
pay rent and are refusing to vacate the property. This will result in
longer and costlier proceedings for the property owners as well as an
increase in potential loss in revenue to the property owner, who now
must wait to evict a nonpaying tenant even longer without any guarantee
they will ever get paid for the past rent or the extended time the
property was occupied. You will/have heard from the property owner's
association that can/did provide more details about the hardship this
will add to property owners across the state of Nebraska. We
respectfully ask for this committee to IPP LB45. Thank you.

***BUD SYNHORST:** As President & CEO of the Lincoln Independent Business
Association, I represent over 1,000 businesses whose mission is to
communicate the concerns of the business community to elected and
appointed officials at all levels of local government. Nebraska has
enjoyed long-standing economic growth in the face of a recession,
record flooding, and a worldwide pandemic. According to the Bureau of
Economic Analysis, over the last ten years Nebraska's economy has
grown by more than 21%. Business friendly policies continue to promote
regional investment and encourage population growth. Moreover,
opportunities for Nebraska's workforce are plentiful. According to the
Bureau of Labor Statistics, Nebraska's unemployment rate in December
2020 was tied for the lowest in the nation at 3% which matches
pre-pandemic levels? With more money in the average Nebraskan's
pocket, rent has stayed affordable across the majority of the state.
Over the past ten years, the annual rent as a fraction of income in
Nebraska decreased by 0.28% and continues to stay well below the
national average. Now is not the time to pass legislation that would
hurt landlords and ultimately their customers. Strong property rights
have always been the foundation for economic growth and a healthy
housing market. We should not pass legislation that seeks to
fundamentally reform existing landlord and tenant policies when those

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policies are working as outlined above. This bill is a solution in search of a problem. Affordable housing should be a priority to encourage our young people to stay in Nebraska and to lower the pressure many working-class families face making rent payments. However, this bill does not get us closer to that goal and would make it less desirable for landlords to offer affordable housing in an already distressed housing supply market. Government regulations don't always fix the issues they are intended to fix. California has one of the most regulated housing markets in the country, yet it has the highest homeless population and ranks 49th in housing supply per capita. As Milton Friedman once said, politicians have a bad habit of judging "policies and programs by their intentions rather than their results." LIBA stands in opposition to this bill in order to protect property rights of businesses, and so rent stays affordable for those that need it the most.

LATHROP: That will-- Senator Hansen to close.

M. HANSEN: Thank you, Chairman Lathrop, and thank you to the members of the committee. A couple things I want to just point out and clarify is, this would be a change to the Landlord Tenant Act, specifically the Residential Landlord Tenant Act. It is not a new standard; it is not a new system. This is the same thing we do in the Commercial Landlord Tenant Act. It is the same thing we do in every other civil case. And I understand most times when a continuance is granted, it's probably not enjoyed by one party, but that's something we allow in criminal cases, we allow in civil cases, we allow pretty much everywhere else in our law other than eviction cases. As to the question of whether or not you can have repeated, repeated, repeated continuances, there would have to be a showing of good cause. And the judge has full authority to deny that. And knowing our courts and knowing our systems, if you-- that's-- that's the safeguard we do have. And I do believe our judges are adept at kind of finding whether or not something is, in fact, good cause. It's really just in this one specific scenario where you don't even have the option to ask. And as people have said, we've-- courts have deemed that actively being in the hospital with COVID isn't extraordinary cause, so whatever our current standard is just is unsustainable, especially as this pandemic continues. With that, I'll close and be happy to take any questions.

LATHROP: OK. I don't see any questions. Thanks, Senator Hansen.

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M. HANSEN: Thank you.

LATHROP: We did receive, on LB45, 11 position letters-- 10 of those were proponents, 1 of them were opponents. And we also received testimony from four people that dropped it off this morning. They would be: proponent Kelsey Waldron-- W-a-l-d-r-o-n, Waldron; another proponent, Kasey Ogle-- O-g-l-e; an opponent, Justin Brady, with-- or representing Nebraska Realtors Association-- that's an opponent; and another opponent, Dallas Jones, Lincoln Independent Business Association-- Dallas Jones represents the Lincoln Independent Business Association. With that, we will close our hearing on LB45. And that will bring us to LB46, also by Senator Hansen. Senator Hansen, you may begin.

M. HANSEN: Thank you. Good morning. Chairman Lathrop and members of the Judiciary Committee. For the record, my name is Matt Hansen, M-a-t-t H-a-n-s-e-n, and I represent LD26 in northeast Lincoln. LB46 strikes Section 76-1442.01, which will eliminate an alternative method of service that applies only when serving a summons to defendants in eviction proceedings. Currently, the person serving the summons may leave a copy of the summons at the defendant's last known address, by mail and mail a copy First Class, as long as they file an affidavit with the court. This bill would ultimately require the-- serving the summons in the same manner used in other civil proceedings. I know this will be common knowledge to some of you, but for the record, when a person is sued in a civil matter outside of specific eviction cases, they must be served with a summons which notifies them of a civil action that has been brought against them and of the upcoming court date. The traditional manner includes either personal service, where it is handed to them directly, or residential service, where it is left with someone who resides at their home. Our laws do provide for alternative forms of service for when traditional service cannot be made or when the plaintiff claims they made an attempt at traditional methods and they were unsuccessful. As I mentioned before, the current exemption in 76-1442.01 exists only for landlords and only in eviction cases. LB46 would return the summons process to more typical process used in other civil matters where plaintiffs must first get permission from the court before using this less effective alternative method of service, rather than the current process of just notifying the court after the fact. This ensures judicial oversight of this process and safeguards that are the fundamental right of due process, namely having notice of claims brought against you and when to appear in

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court. For a court proceeding that has the consequence of removing you and your family from your home, you should-- we should not have a system that allows-- we should not have a system that allows more effective forms of service to be thwarted or skipped. There are reasons why you usually need permission from a judge to be able to mail something rather than serve a summons in person, mainly because the court recognizes this method is going to be less likely to actually give it to you. With the repeal of this law, landlords will still have the option to serve by alternative means. They would just have to use Nebraska's substitute service statute, which is what all other civil litigants are required to use, and which provides, again, some level of oversight. With that, I would be happy to close and take any questions.

LATHROP: Can I ask a question, just as a matter of clarification?

M. HANSEN: Yeah.

LATHROP: If I want to evict somebody, what are my options before I go to this third option that you want to eliminate--

M. HANSEN: So--

LATHROP: --personal service?

M. HANSEN: Yeah, it's the standard. It's the standard personal service, residential service. But rather than going to this alternate service where you post it and mail it, you don't have to get leave of the court first. You can just go to that and then explain. So--

LATHROP: So this third thing that we're eliminating is just writing a letter and mailing it to the property.

M. HANSEN: Yeah.

LATHROP: OK. Just wanted that clarification.

M. HANSEN: Of course.

LATHROP: All right. I don't see any other questions.

M. HANSEN: Thank you.

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LATHROP: Thanks, Senator Hansen. Proponent testimony-- those in favor of the bill may come forward. Welcome.

SAM BAUE: Good morning, Chairman Lathrop and members of the committee. My name is Sam Baue, S-a-m B-a-u-e. I'm a senior certified law student at the University of Nebraska College of Law and a member of the Civil Clinical Program. But I'm testifying as a citizen and not on behalf of the university. LB46 should be advanced to ensure tenants receive notice of eviction proceedings. Every American who is sued in a court of law must be served with a summons. This isn't just a formality. It's a fundamental constitutional right for every American. Traditional methods of service include personal service and residential service. Nebraska law generally requires the use of one of these methods because they are effective in providing actual notice. Nebraska law allows a plaintiff to resort to alternative methods of service only where the court gives permission after determining that traditional service cannot be made. Judicial oversight protects a party's constitutional right to due process. However, current law allows landlords to use alternative service against tenants in eviction actions without judicial oversight. The law is being abused to deprive tenants of their constitutional due process rights. In many cases, alternative service is used as the primary form of service, either because it's convenient or in an-- in an attempt to deprive the tenant of notice. In some cases, landlords have mailed the summons, which was not received by the tenant until they are already evicted. The process server will often post the summons on a secured entrance door, where it can easily be removed or destroyed before the tenant ever has a chance to see it. In some instances, tenants learn of an eviction action for the first time when the sheriff comes to their home to remove them, and they didn't even know that an eviction trial had happened at all. LB46 would still give landlords the same opportunities to utilize alternative methods of service as any other litigant in Nebraska. They could use Nebraska's substitute service statute. This statute incorporates judicial oversight, making sure that the situation justifies an intrusion into the tenant's constitutional rights. Current law singles out residential tenants facing eviction and discriminates against one of the most vulnerable populations of our society. I encourage you to advance this bill to protect Nebraskans' constitutional rights. Thank you.

LATHROP: OK. Thank you. Any questions for this witness-- or testifier? I see none. Thank you for your testimony.

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ABBY KUNTZ: Good morning, Senators. My name is Abby Kuntz, A-b-b-y K-u-n-t-z. I'm an attorney for Legal Aid of Nebraska's Housing Justice Project, and I have experience representing low-income tenants. Thank you for providing me with the opportunity to appear before this committee today in support of LB46. A significant portion of my work involves the direct representation in eviction hearings. When I receive a new case, one of the first things I tend to look for in an eviction lawsuit is how my tenant was served. The turnaround time between the eviction filing and the eviction hearing is 10 to 14 days by statute. Because this timeline is so narrow, this is why it's so crucial that the service is completed appropriately. LB46 will make Nebraska law on service to tenants much more fair and hold landlords to the same standard as any other civil litigant in Nebraska. As it's been noted, constructive service is supposed to be the alternative. In reality, that is not what ends up happening. In any other civil case, a court permission is required in order to use this alternate form of service. And to get that court permission, the person filing the lawsuit has the burden to show that he or she has made diligent efforts of service to the defendant, to their person or their residence. I frequently see constructive service completed either on the same day as first attempts of personal written service or sometimes these attempts aren't even made at all. Since court permission is not required, there's no oversight, and this results in tenants being less likely to receive proper notice and turn around, less likely to appear for their hearings where they will eventually get evicted. Again, I stress that the short timeline between eviction filing and eviction hearing is no excuse to forgo any diligent efforts to ensure a tenant is served appropriately. If there was ever a time for judicial oversight to ensure someone is properly served, it is in eviction hearings. Tenants should receive actual and proper notice on eviction filing against them, and should always be afforded the opportunity to be heard in court. There is greater security in the traditional means of service because it requires actual contact with the tenant. Constructive service is less likely to provide the actual notice because there's no mechanism of confirming that the tenant has received that form of service. The passage of LB46 will make it clear to landlords that they are just as responsible as any other civil litigant to serve their tenants in a manner that ensures that they receive fair and actual notice of their hearing. Legal Aid of Nebraska supports the passage and enactment of LB46. Thank you again for

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allowing me to speak before you today, and I'd be happy to answer any
questions.

LATHROP: I do not see any questions, but thanks for being here.

ABBY KUNTZ: Thank you.

LATHROP: Welcome.

RYAN SUMP: Thank you. Good afternoon now, Chairman Lathrop and
members of the Judiciary Committee. For the record, again, my name is
Ryan Sump, R-y-a-n S-u-m-- as in Michael-- p-- as in Paul. Once again,
I serve as a volunteer attorney for the Nebraska State Bar Association
Tenant Assistance Program, but I am just here today in a personal
capacity. I'm not representing anyone at the State Bar Association or
TAP. It is-- it is my opinion that as the law currently stands, this--
the form of constructive service that we have has become somewhat of
the default model of telling tenants that-- that they have a court
hearing. Honestly, as important as it is to give people service, I
think the more important part of our program is our outreach
personnel, because even I, who don't-- who doesn't directly speak with
outreach personnel, do any of that kind of work. It's not-- it's not
uncommon for me to hear about tenants who, the only reason they know
that they're in court for an eviction in the first place is because
someone from TAP reaches out to them and tells them, you have a
hearing on this day. Do you think you can make it? That's the first
time they ever hear about it. In my opinion, as the law currently
stands, it allows landlords who do not want to do the-- who do not
want to do the work to serve a tenant, either personally or through
residential means, it allows them to do sort of the bare minimum
possible for that. You know, I've-- I've seen cases where there were
three attempts. All were made at the exact same time of the day,
during work hours when probably no one was home, or just a couple
times because they know they can just put a summons in the mail. And
then, as it stands, that would currently satisfy the service
requirements in the state. I know one of the-- one of the criticisms
for this bill that will probably be heard is that it-- is that tenants
will try to dodge service by simply never answering the door or
anything like that. But to be clear, this would not allow people to do
that, obviously, because there would still be processes for
constructive service. Tenants wouldn't be allowed to just dodge
personal service or residential service forever. All that would happen

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is that landlords would have to take the extra step of going before the judge and saying, you know, this tenant is-- this tenant is dodging me. I've tried getting in touch with the tenant a bunch; I can't. Please let me do this constructive service. I see I'm out of time. That pretty much wraps up my thoughts anyway. I would be happy to answer questions if anyone has any.

LATHROP: OK. I do not see any questions for you, but thanks for your testimony.

RYAN SUMP: Thank you.

LATHROP: Anyone else here to testify in support of the bill? Seeing none, we'll move to opponent testimony. How many people want to testify in opposition? Three, four? OK.

LYNN FISHER: Thank you, Senators. Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Real Estate Owners and Managers Association. I'll try to be real short here since we're running out of time. We use the cost of a local constable. We use the sheriff's deputies here to-- to give notices for evictions. No notices are posted in common areas or outside of a building entry door. I know for a fact I'm always asked to go unlock a building to gain entrance for being able to post a notice inside where it belongs on the actual unit. So that's just not true that those things happen. And the servers always try to give personal service first, so those comments are just not true, that-- that that is not being done properly. Because-- again, because the eviction process is our last resort and we're trying very hard to avoid eviction, and because of all the communications that we've had with our-- our tenants who are certainly aware of what's going on, it's no surprise for a tenant to know that they're going to be served for eviction when we get to that point. And to allow them to refute-- or to allow the-- or make the personal service the alternative or, as the gentleman just said, that we have to go before a judge, it's just taking a lot of time. It's just absolutely a reason to delay for no-- for no good reason other than a tenant is trying to avoid going to eviction court. And it's just-- it's not fair. The reason a lot of these-- a lot of these comments I hear are about other litigants and other situations and other civil cases have all these certain procedures that have to be followed. The reason it's different for rentals is because we're not talking about a dispute over, you know, somebody owes you money for whatever. This is a private property

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situation where we're trying to maintain our income on that property so that we can stay in business and provide good rental, affordable housing for other people. And if somebody's just not going to pay or they're a bad actor, they need to be removed. And the system works very well the way it is. And it takes a lot of time. This is expensive. It's not a quick and easy and simple process for-- for us to go through in order to regain possession of property when we need it. So that's the reason that it's different in the Landlord Tenant Act for the procedures that are allowed, because it's not-- it's not-- it's very important that that property be restored to an income-producing situation or to remove a bad actor that's causing a loss of peaceful enjoyment for the other people in the building. So it's-- it's a-- a matter of money and time and cost, and if this is passed along with some of these other bills that we're testifying, it's going to raise rents. It's going to make housing less affordable. And so all those unintended consequences are going to come to-- to pass if it makes it more difficult for us to remove someone. To answer-- I'd be happy to answer any questions.

LATHROP: I do-- oh, Senator McKinney.

McKINNEY: Do you also think it's important for tenants to not be surprised by-- by having to show up in court as well?

LYNN FISHER: They're not. How-- how can they be surprised? This is not-- they haven't paid the rent or they've been notified about bad behaviors. We've communicated and tried to work it out. We tried to, you know, come up with a plan, a solution or remedy without going to eviction court, so when we get to that point, they have probably, in most cases, in our case, they've been told that we're going to proceed with eviction if, in fact, they don't work with us in trying to come up with a solution. So they're not going to be surprised.

McKINNEY: Wouldn't being told you're going to be evicted and being served be different, though?

LYNN FISHER: Oh, absolutely. When we're forced to the point of having to do an eviction, then we do, of course, have to give them the proper service. And we use an attorney and-- and-- and the-- the constables to get that accomplished.

McKINNEY: OK.

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LYNN FISHER: Thank you.

LATHROP: Thank you, Mr. Fisher.

GENE ECKEL: Well, again, Senator Lathrop, members of the Judiciary Committee, my name is Gene Eckel; that's G-e-n-e E-c-k-e-l. I am here to oppose LB46, on behalf of the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. Our opposition to this bill is one, because it affects the administration of justice by making it extremely difficult, if not impossible, to serve a tenant with a summons and a lawsuit. If you look at the statute, the tenant needs to be served within three days and the process server needs to return that service within five days. If you take away the ability to constructively serve the summons by attempting to serve them by diligent efforts and then posting that on the door and allowing a landlord to send a copy of the summons and a complaint by first class mail, and signing an affidavit filing with the court. If you take that away, it's going to make it extremely difficult or impossible if you don't get them served personally or by residential service. In that case, the case gets dismissed. There is no opportunity for a landlord to file a motion with the court for leave to use some other alternative service. Even-- even at that point, if it was allowed for some reason, it could take weeks to get on the court's docket to have that motion heard. In that time, you'd have someone there who's not paying rent, or they could be a problem tenant and they get to remain there the whole time. Currently, 39 states have some sort of constructive service available for evictions. We don't think Nebraska should leave that 39 states. And most of the time tenants are not going to be able to be served personally. And this is a necessary alternative to do that. I don't think we should be questioning the honesty of a sheriff or a constable. They go there, they knock a few times, they try to find out if the person's there. And if the person doesn't answer the door, if they can't get them served personally in some other way, then they do post it on the door. I don't think they're going to be dishonest and sign it, saying I tried to serve by diligent efforts and then I posted it on the door, but when they're serving a regular civil lawsuit, they're not going to tell the truth. That's just not the way it goes. The-- the process works. It's honest. The tenant is getting served either personally or posted on the door and then it's getting mailed to them. So we really find it hard to believe that a resident does not know that they have a

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court hearing for an eviction. So with that being said, I just ask the committee to oppose LB46, and I'd be happy to answer any questions.

LATHROP: I don't see any questions. Thank you.

GENE ECKEL: Thank you, Senator.

ROBERT AMEND: Good morning. My name is Robert Amend, R-o-b-e-r-t A-m-e-n-d. I have been a Douglas County constable for ten years, and I am here to oppose LB46. Reasons are, it is extremely hard, if not impossible, to get personal or residential service on a summons of restitution when people can be simply avoiding service, they won't open the door. You can hear them inside there. They refuse to open it. They may be at work, they may be somewhere else. That property could also be completely vacant and has been vacant for weeks. But nobody can gain access until there has been service there. I would say out of the 10 years of me doing this, about 10 percent of the time I do get personal residential service. That number may be a little high, to be honest with you. That's simply, we only have three days to get this done. The attorneys do still mail one after we post it to the door, which is after two attempts knocking on the door two different times. And again, if they're not going to-- willing to be able to open the door-- they don't want to, they choose not to, they're, again, at work-- there's not much of-- that you can do after that. I guess that's really-- I just wanted to tell you how hard it is to get personal residential service when somebody knows they're being evicted; they know not to open the door. That is what I have to say.

LATHROP: OK. All right. I appreciate it. Just so people know, constables are the ones we send out to serve with these.

ROBERT AMEND: I apologize. Yes, I am the officer of the court that goes out to do the process serving and perform the eviction.

LATHROP: OK. Thanks, Mr. Amend.

DENNIS TIERNEY: Good afternoon, Senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I currently serve on the board of directors of Metropolitan Omaha Property Owners Association. LB46 would repeal the landlord's ability to use diligent efforts to serve a tenant in an eviction case. If personal service is required in every case, the tenant who suspects they're about to be evicted could dodge the

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process server for weeks and months to draw out the procedure. If the tenant could not be found at all, the landlord would need to get permission from the court for service by publication, which would take several more weeks before the matter could come to trial. Perhaps several weeks may elapse before the landlord serves the appropriate notice to end the tenancy. Then, from the time the landlord serves a notice until the case can be filed may take up to 30 days. And if LB46 passes, it might take several more weeks before the matter could come to trial. This adds up to additional weeks or months that the tenant would be allowed to live rent-free in the property. How long should the landlord be expected to go without any way to pay his or her expenses? The damage-- the amount of damage deposit is limited to one month's rent. So the damage deposit is usually already used up waiting for the eviction and lockout to occur. This leaves nothing for the actual damages to the rental unit. LB46 also allows no exception for the type of eviction being processed. It's one thing for a continuance in the case of late-- of the late payment eviction. If, however, the tenant is creating a dangerous situation in the rental unit and needs to be evicted for a clear and present danger, for example, if they-- for example, delays due to the inability to perform personal service could create a dangerous situation for other tenants. If LB46 were to pass, the cost of providing for the possibility of being denied rent for longer periods of time would need to be factored in. This would likely cause stricter screening procedures, possibly denying some people the ability to rent. Another likely cause would be higher rents for all tenants. Landlords operate within tight budgets, with principal, interest, taxes, insurance, and maintenance costs built in. They will not be able to simply absorb this new cost without passing it on to the tenants. I urge you to oppose LB46.

LATHROP: OK.

DENNIS TIERNEY: Happy to answer any questions.

LATHROP: I don't see any, Mr. Tierney, but thanks once again for your testimony.

DENNIS TIERNEY: Thank you.

SCOTT HOFFMAN: Scott Hoffman, testifying and opposing LB46. I guess a confusing thing is, is one of the Senators brought up here, we send a seven-day notice in the mail. So obviously the tenant knows he hasn't

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paid the rent. We sent the seven-day notice and then, if they don't pay the rent, we send out the constable. And I believe-- I really appreciate an actual constable showing up today, telling you his experiences when he testified. And then one says-- one proponent said, well, sure, there's going to be testifiers that think they're going to dodge. Well, that's exactly what they're going to do. OK? And he testified, claiming that's exactly what he's experienced, doing it for 10 years. So we-- I don't know. We-- we-- we live in one of the states with the highest property taxes in the nation. It takes two to three months rent just to pay the property taxes. And we just got reevaluated because you have bills that says properties have to be marketed at 100 percent. So all this revenue, three months of it goes to the school coffers that we help support. And we got to keep that going. And everybody's trying to say, well-- and then Senator Hansen, even on LB45-- which I wanted to testify, but I didn't get a chance-- this is not criminal court. This is personal property owners that are held accountable to you to pay the property taxes through the rents that we collect. And in addition to the maintenance, not to mention if they don't pay the rent, we also have landlord revert, where the utilities go back, especially in this case Black Hills Energy or LES. The utilities can be changed back into our name while they're living in the property. So we're also not losing rent, but we're also paying for the utilities. So I don't think-- you know, I-- I would be all for to move up the time frame. But we're-- we're dealing with reducing our grace period-- went to a 3-day, to a 7-day's, and then another 14 days for a trial. So the fact is, how long is this going to take for the people? And a lot of people work during the day. So yeah, that's a good reason not to get posted. So but yeah, I-- the post has to-- has to be remaining in effect, in order for us to-- you know, people know that they're not paying the rent. We send them a 7-day notice and they're well aware of it. So that's about the scoop there, so--

LATHROP: OK. All right. I don't see any questions for you.

SCOTT HOFFMAN: Thank you, Senator.

LATHROP: Thank you. Welcome.

BRAD GREINER: Hello. Thanks for letting me speak today, Brad Greiner; and that's G-r-e-i-n-e-r, a constable here, out of Lancaster County Court-- 20-plus years. And I oppose LB46 as, out in the field, I can say our job is to stay as a disinterested, neutral party, not showing

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favoritism to either side. So I am interested in hearing the arguments here today in that capacity, too. But opposing it, based on the fact that we have a really good working relationship with the eviction attorneys, the landlords, and managers in this town for various other types of documents that we have to be on their property to go serve. So I can say, in opposition to this, we really go out of our way to get keys, codes, access to properties. Our goal is to be there during safe times of the day. So we're not out at these properties in the later evenings. And rather, somebody's work schedule might dictate whether they're going to get served or not. But that's not the server's responsibility, nor landlord. And there should not be, in my opinion, a different process, moving forward. I've only done this 20 years, but I see it as a very efficient process, the current statute. And just to give you an idea, I did a little study, based on cases that have-- received by our agency since December 1. We have caught the defendants, 65 percent of them-- we've caught them personally or residentially on that first or second attempt. Not trying to, you know, miscue anybody here, that number could flip-flop, and so we don't even need to technically do the mailing and posting on 35 percent. I feel that the 35 percent, though, that we're not going to catch if this law does or if this bill gets passed, I don't feel the landlord should have to wait any longer when we're not going to potentially catch those 35 percent, any rate. I only have one other concern-- is will there not be a writ of restitution finally issued in the event we can't catch one out of the three defendants? Where's the boundary line is my only question. So that's all I really want to provide to you today.

LATHROP: Well, we appreciate hearing from you.

BRAD GREINER: Thank you.

LATHROP: Thanks for coming in. Oh, hang on one second. Senator McKinney has got a question for you.

McKINNEY: Thank you for coming, and thank you for your testimony. During your testimony, you stated that you try to stay neutral but, during your testimony, you said you have a great relationship with the landowners and attorneys for these property management groups. Who is making the effort to build relationships with tenants to better understand tenants to make this process a lot easier? If you're neutral, are-- are you guys trying to do-- are you guys doing things

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to create better relationships with the tenants and not just the
property management groups and the landowners, if you're neutral?

BRAD GREINER: OK, so I would say to more define what I'm saying by
good relationships, meaning when it's a noneviction case, that we may
have to be on that property for the managers or landlords of Lincoln.
They know which constables are appointed by the courts here, by the
judges. So they're aware of our names and we're already in a working
relationship to have those keys and codes. So primarily I'm just
basing all-- the keys and the codes would substantiate why we're
getting such a good service when opposition here might be saying the
tenants are saying they're not getting served. So I guess that's what
I meant by we have a good working relationship. We don't really have a
very big percentage of landlords and managers that won't allow us into
their building. So--

McKINNEY: All right. Thank you.

BRAD GREINER: I hope I answered that correctly.

LATHROP: OK, thank you.

BRAD GREINER: Yep.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary
Committee; My Name is Justin Brady, I am testifying as the registered
lobbyist for the Nebraska Realtors Association in opposition to LB46
and would ask that this testimony and opposition be made part of the
committee statement. LB46 would eliminate the ability to automatically
serve a tenet who is being evicted, by mail. LB46 would either require
services in person or an additional court proceeding to have the court
grant the ability to the property owner to serve the nonpaying tenet
by mail. Why should we add this additional cost onto a property owner
who is not currently being paid for the use of their property? The
requirement of service in person would allow for an individual to
avoid or extend eviction just merely by being good at hide and seek.
This does not seem to be a standard that we want to promote in
Nebraska. As was stated in the Statement of Intent there are other
civil procedures where service to the person themselves is required,
however I would argue that when someone has current unlawful position
of your property the method of service in Nebraska should favor the
property owner and not the individual in unlawful possession of the

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property. This will result in longer and costlier proceedings for the property owners as well as a loss in revenue to the property owner, who now must wait to evict a nonpaying tenet even longer. The long-term outcome from this will be high rents to everyone. You will/have heard from the property owner's association that can/did provide more details about the hardship this will add to property owners across the state of Nebraska. We respectfully ask for this committee to IPP LB46. Thank You.

***BUD SYNHORST:** As President & CEO of the Lincoln Independent Business Association, I represent over 1,000 businesses whose mission is to communicate the concerns of the business community to elected and appointed officials at all levels of local government. Nebraska has enjoyed long-standing economic growth in the face of a recession, record flooding, and a worldwide pandemic. According to the Bureau of Economic Analysis, over the last ten years Nebraska's economy has grown by more than 21%. Business friendly policies continue to promote regional investment and encourage population growth. Moreover, opportunities for Nebraska's workforce are plentiful. According to the Bureau of Labor Statistics, Nebraska's unemployment rate in December 2020 was tied for the lowest in the nation at 3% which matches pre-pandemic levels. With more money in the average Nebraskan's pocket, rent has stayed affordable across the majority of the state. Over the past ten years, the annual rent as a fraction of income in Nebraska decreased by 0.28% and continues to stay well below the national average. Now is not the time to pass legislation that would hurt landlords and ultimately their customers. Strong property rights have always been the foundation for economic growth and a healthy housing market. We should not pass legislation that seeks to fundamentally reform existing landlord and tenant policies when those policies are working as outlined above. This bill is a solution in search of a problem. Affordable housing should be a priority to encourage our young people to stay in Nebraska and to lower the pressure many working-class families face making rent payments. However, this bill does not get us closer to that goal and would make it less desirable for landlords to offer affordable housing in an already distressed housing supply market. Government regulations don't always fix the issues they are intended to fix. California has one of the most regulated housing markets in the country, yet it has the highest homeless population and ranks 49th in housing supply per capita. As Milton Friedman once said, politicians have a bad habit of

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judging "policies and programs by their intentions rather than their results." LIBA stands in opposition to this bill in order to protect property rights of businesses, and so rent stays affordable for those that need it the most.

LATHROP: Anyone else here to testify in opposition? Seeing none, anyone in a neutral capacity? Seeing none, Senator Hanson waives closing. We do have some additions to the record on LB46. We had eight position letters: seven proponents, one opponent. And we had two testimonies submitted this morning by two lobbyists: Justin Brady, B-r-a-d-y, representing the Nebraska Realtors, in opposition; and Dallas Jones, also in opposition, representing the Lincoln Independent Business Association. With that then, we'll close our hearing on LB46 and our hearings for this morning. For those of you who are going to testify this afternoon, we'll be back in session-- or we'll be back here at 1:30.

[BREAK]

LATHROP: [RECORDER MALFUNCTION] note that four requirements must be met to qualify to be on the committee statement. And I just realized that we have five requirements here. Submission of written testimony will only be accepted the day of the hearing between 8:30 and 9:00 in Judiciary Committee hearing room 1113. This room. Individuals must present their written testimony in person and fill out a testifier sheet. The testifier must submit at least 12 copies. Testimony must be written-- a written statement no more than two pages, single-spaced or four pages, double-spaced in length. No additional handouts or letters or others may be included. This written testimony will be handed out to each member of the committee during the hearings and will be scanned into the official hearing transcript. That means that if you just want to drop, and I hope a lot of people are watching this on TV, if you just want to drop off your testimony in the morning, it'll actually be in our transcript. We'll just take that information and, and include it, just like if you were here testifying. The second is in-person testimony. And as always, individuals attending a public hearing will have an opportunity to give verbal testimony. On the table inside the doors, you'll find yellow testifier sheets. Fill out a yellow testifier sheet only if you are actually testifying before the committee and please print legibly. Hand the yellow testifier sheet to the page as you come forward to testify. There is also a white sheet on the table if you do not wish to testify, but would like

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to record your position on a bill. This sheet will include as an exhibit-- be included as an exhibit in the official hearing record. If you are not testifying or submitting written testimony in person and would like to submit a position letter for the official record, all committees have a deadline of 12 noon the last workday before the hearing. Position letters will only be accepted by way of the Judiciary Committee's email address posted on the Legislature's website or delivered to the Chair's office prior to the deadline. So sending me an email or sending Laurie an email won't get it done. It will have to go to the Judiciary Committee email. Keep in mind that you may submit a letter for the record or testify at the hearing, but not both. Position letters will be included in the hearing record as exhibits. We will begin each bill today with the introducer's opening statement, followed by proponents of the bill, then opponents and, finally, anyone speaking in a neutral capacity. We will finish with a closing statement by the introducer if they wish to give one. We will ask that you begin your testimony by giving us your first and last name and spell them for the record. If you have copies of your testimony, bring at least 12 copies and give them to the page. If you are submitting testable-- testimony on someone's behalf, you may submit it for the record, but you will not be allowed to read it. So we don't have people coming down and I want to read a letter from my friend or my boss or something like that. We will be using the three-minute light system. When you begin your testimony, the light on the table will turn green. The yellow light is your one-minute warning. And when the light comes on, we ask that you stop. As a matter of committee policy, I'd like to remind everyone the use of cell phones and other electronic devices is not allowed during public hearings, though senators may use them to take notes or stay in contact with staff. At this time, I'd ask everyone to look at their cell phones and make sure they are in the silent mode. A reminder that verbal outbursts and applause are not permitted in the hearing room. Such behavior may be caused to ask you to leave the hearing. Since we've gone paperless this year, the Judiciary Committee-- in the Judiciary Committee, senators will instead be using their laptops to pull up documents and follow along on the bills. You may notice committee members coming and going. That has nothing to do with how they regard your bill or the bill under consideration. But senators have other bills to introduce in other committees and have other meetings to attend to. And with that-- and some of you heard this this morning, I will say it again, the Judiciary Committee normally has 27

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days to process the bills that have been introduced. We have a typical number of bills, which is about 150 bills that have been introduced, but only 16 days to process. That's sort of a-- I won't go into the long division, but it's a COVID accommodation. So we will be limiting hearings to 30 minutes for proponents and 30 minutes for opponents in addition to the introducer's opening and closing. And then if we have neutral testimony, we'll give a few minutes for that as well. Before we begin, we'll have the committee members introduce themselves and we'll start with Senator DeBoer.

DeBOER: Hi, my name is Wendy DeBoer. I represent District 10, which is parts of northwest Omaha and all of Bennington.

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

MORFELD: Adam Morfeld, District 46, northeast Lincoln.

McKINNEY: Terrell McKinney, District 11, which is primarily north Omaha.

GEIST: Suzanne Geist, District 25, which is the east side of Lincoln and Lancaster County.

LATHROP: And assisting our committee today are Laurie Vollertsen, our committee clerk, and Neal Erickson, our legal counsel. Our pages are Ashton Krebs and Samuel Sweeney, who are both students at UNL. They're the young people you'll give your testifier sheet to and who will be sanitizing the chair and the table in between testifiers. And with that, we'll begin our testimony and our bills for the afternoon by the number beginning with LB205. Senator Hunt, welcome to the Judiciary Committee.

HUNT: Thank you, Chairman Lathrop. Good afternoon, colleagues. My name is Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. Today, I'm presenting LB205, which would set a reasonable and consistent standard for late fees that landlords can charge for unpaid rent. It also requires clear guidance and information be provided to tenants about late fees and eviction notices. This bill was suggested to me by the Tenants' Rights Project at the UNL law school. Currently, there is no restriction on the amount of late fees that can be charged for unpaid rent in Nebraska,

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except that it cannot be, quote, unconscionable, unquote. Data collected by the UNL Civil Clinic shows late fees landlords charge tenants for unpaid rent often exceed the amount of rent due. Further, landlords can currently assess late fees on late fees that are unpaid, even if the tenant is current on rent. This leaves tenants struggling to catch up in an endless cycle of unlimited fees at the landlord's discretion and contributes to evictions in a time when so many are facing insecurity in employment and housing because of the pandemic. A reasonable cap on late fees provides predictability and consistency in the rental housing market and clear standards provided for the assessment of fees or initiation of eviction proceedings due to unpaid rent helps both landlords and tenants know how to proceed in these situations. When a tenant is late on rent, LB205 provides that a landlord can choose to either impose late fees or begin eviction proceedings. If the landlord opts to charge late fees, they may do so after a grace period of three days. Late fees assessed must be based on actual damages sustained as a result of the tenants' nonpayment. The bill sets the cap at a maximum of 1 percent per day of the periodic rent due not to exceed \$100 or 5 percent of the total rent due, whichever is less. We landed on these amounts following research and a 50-state survey conducted by UNL law students as a moderate average of what other states' limits are. Under this bill, any payments made by the tenant must first be applied to unpaid rent, then to any fees to avoid tenants getting charged late fees on late fees. The bill notes that landlords cannot assess late fees if they are terminating the rental agreement or if they have otherwise violated the rental agreement. It specifies that no other type of fees can be charged other than late fees, as described in the bill. As our testifiers may note, we've heard accounts of landlords charging illegitimate, quote, reinstatement fees, unquote, or other made up types of additional late fees. Currently, there is no restriction on this practice. Housing advocates report seeing a flood of problems faced by renters who have been struggling to pay rent due to the pandemic. Some have been charged exorbitant late fees that they are unable to get caught up on, resulting in evictions. And of course, you know, all of this is public record. And you can look at eviction notices and see how the fees have been assessed and how, how they compound upon each other. If the landlord opts to initiate eviction proceedings rather than issue late fees, they may, after seven days, issue a notice of unpaid rent to the tenant stating the landlord's intention to terminate the rental agreement if the rent is not paid

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within seven days, including the date by which rent must be received and where the rent must be delivered. A certification of service is required to ensure that the tenant actually receives the notice as opposed to the landlord just sticking a note on the laundry room door or something like that. We also hear stories of that, that without clear guidance about how notices must be served, sometimes it's a Post-it Note, sometimes it's a flier posted in a communal area. And we often hear from tenants regardless of their socioeconomic status, that they just didn't receive the notice. The reason for the subsection is that advocates have found hundreds of cases where tenants were improperly evicted after receiving notice of intention to terminate that was inaccurate, ambiguous, or didn't adequately inform tenants of the steps they can take to prevent the eviction. Tenants have a right to be put on notice with sufficient information for them to know what they need to do to remain housed. To recap, LB205 places reasonable limits on late fees that may be charged by a landlord and requires accurate and sufficient information to be provided to the tenant in termination notices. This bill will finally provide clear guidance for landlords and tenants and prevent evictions based solely on unpaid, unfair late fees. Opponents may suggest that this bill is anti-landlord, but that is simply not the case. This bill retains and codifies clearly landlords' right to evict tenants or charge late fees when rent has not been paid. With LB205, we are simply ensuring that this process is fair and consistent for all, all tenants and all landlords, and that landlords must stick to a reasonable and standard limit on late fees and that tenants understand what they need to do if they are facing eviction due to unpaid rent. In the midst of a crippling global public health crisis, it's only fair that tenants know what to expect when it comes to their housing should they have difficulty paying rent, which so many facing unemployment and other challenges do right now. I'll turn it over to testifiers now, and I'd be happy to take any questions at closing. Thank you.

LATHROP: Thank you, Senator Hunt. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Senator Hunt, for bringing this bill. I'm a little confused on the certification of service. Does that mean that the tenant would have to sign the document or what is certification of service?

HUNT: It would, it would work the same as certified mail.

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BRANDT: Oh, OK. So if I was a landlord and I served somebody with, with a, a document or it has to be certified mail?

HUNT: I can, I can ascertain that for you. But I think that it would be kind of a rebuttable presumption, like if that went to court, that would be when that is determined.

BRANDT: And then I guess the second question, and it's a little confusing, is you've got-- we've got three different devices of arithmetic here on the rent that's due. First, it's 1 percent per day of the periodic rent due, and then it's cannot exceed \$100 in total or 5 percent of the periodic rent in total. I guess my recommendation would just pick one and go with it rather than-- because there-- if you use \$1,000 and they owe 15 days, use that example, all 3 of those numbers are different numbers. And I, I think that would just give it clarity, so.

HUNT: I agree that I would like it to be more clear. The reason we did it this way is because-- well, as you know, you could pay \$200 in rent or you could pay \$4,000 a month in rent. And so we wanted it to be-- we wanted it to scale depending on what a person pays. And so it could be a flat percentage or it could be a flat amount. But this is kind of the mean, the moderate average that we took from all 50 states that have law-- or all the states that have laws like this. And so that's kind of where we settled on. But I'm happy to amend it if there's something that's more agreeable to opposition or something that we all agree makes more sense. I'm always willing to work with stakeholders on that.

BRANDT: All right. Thank you.

HUNT: Um-hum.

LATHROP: I don't see any other, any other questions. Are you going to stay to-- well, I guess you got the next bill. You'll be here to close?

HUNT: Yes, thanks.

LATHROP: OK. Thanks, Senator Hunt. We will take proponents-- proponent testimony. Welcome.

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TESSA LENGELING: Good afternoon, Chairman Lathrop and members of the committee. My name is Tessa Lengeling, T-e-s-s-a L-e-n-g-e-l-i-n-g. I'm a law student at the University of Nebraska College of Law and I'm testifying on LB205 as a citizen and not on behalf of the university. LB205 provides for critical amendments to the Nebraska Residential Landlord and Tenant Act. The first change makes it clear what late fees are permissible. Under, under Nebraska law, there is currently no restriction on the amount that a landlord can charge a tenant for late fees if rent is unpaid when due. There is a stark imbalance in negotiating power between a landlord and a tenant, which often leads to extraordinarily high late fees and penalties written into pre-drafted, landlord-generated lease agreements. Tenants are put in a difficult situation without the power to negotiate on these types of terms. In some instances observed in Lancaster County, landlords will impose late fees on top of late fees, leaving the tenant consistently in the red despite being current on rent. A sampling of eviction lawsuits reviewed by the UNL Civil Clinic revealed late fees ranging from \$300 to over \$1,300, while the monthly rental amount in most of these cases was only \$500 to \$700 range. So in some instances, the late fee was more than double the amount of rent. When unreasonably high late fees accumulate, the tenant is simply unable to pay them, which benefits no one, neither the tenant nor the landlord. LB205 ensures tenants are not made homeless for the sole reason of not being able to pay a late fee. A reasonable cap on late fees provides consistency in the rental housing market and gives tenants a fighting chance to make payments and remain in their homes. The second change LB205 makes is to clarify what should be included in a notice for nonpayment of rent for the notice to be effective. It should go without saying that any notice must be clear. The notice is necessary to alert tenants that they are behind on rent, but is also to inform them the steps that they must take to cure the default and by when they need to do so. LB205 provides both landlords and tenants with clear instructions for creating lawful notices. This is a reasonable change, and Nebraska residents deserve clear and correct notices, especially when the outcome can ultimately be homelessness. I urge the committee to consider moving this bill forward and can take questions if you have any. Thank you.

LATHROP: OK. I do not see any questions, but thank you for your testimony.

TESSA LENGELING: Thank you.

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LATHROP: Next proponent. Welcome.

JENESSA CRUZ-ALFARO: Good afternoon, committee members. My name is Jenessa Cruz-Alfaro, J-e-n-e-s-s-a, last name, C-r-u-z hyphen A-l-f-a-r-o. I'm a staff attorney on Legal Aid of Nebraska's Housing Justice Project. In my position, I regularly represent low-income tenants, many who are facing eviction. Legal Aid supports LB205 in its entirety. However, there are a few key parts of LB205 that I would like to address here today. The COVID-19 pandemic has heavily impacted many Americans. In response to a large number of Americans facing eviction, the CDC issued an order temporarily halting nonpayment of rent evictions for covered individuals. However, the CDC order did nothing to stem the sometimes astronomical late fees that continue to build for many tenants, making it virtually impossible for them to catch up on their rental obligations. I've personally seen daily late fees as high as \$25 per day. I've also seen flat fee late fees as high as \$175 per month, or approximately 18 percent of the monthly rent. These are late fees charged to low-income individuals on units with monthly rent of \$925 or less. And these are the type of late fees that LB205 would cap. When landlords charge these type of late fees, they hurt tenants, nonprofit organizations, and the entire community. These late fees are often paid by nonprofit organizations and even government funding. In fact, one landlord received over \$2,000 in late fees from CARES Act funds for one tenant. Allowing landlords to charge unreasonable late fees limits the number of tenants that can benefit from available funding and impacts everyone in the community. Another practice that is unfairly prejudicial to tenants and would be prevented by LB205 is the landlord's ability to continue to charge late fees during the eviction process, when the tenant is powerless to stop the accrual of these additional late fees. Finally, I'd like to address the provision in LB205 which prevents a landlord from being able to evict on the basis of failing to pay accrued late fees. Nonpayment notices are sometimes not issued for small amounts, which can result from failure to pay additional charges or failure to pay the full rental amount. Instead, a monthly late charge accrues and a tenant is eventually issued a seven-day notice for hundreds of dollars. Allowing tenants to pay the original amount to prevent immediate eviction and pay late fees over time encourages landlords to communicate underpayments to tenants immediately and allows rental assistance to keep more individuals housed. Low-income tenants often struggle to find affordable housing and, thus, are sometimes forced by

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circumstances to agree to these unconscionably high late fees and face
eviction when the same late fees make it impossible to catch up. Legal
Aid supports LB205. Thank you for this opportunity, and I would be
happy to answer questions.

LATHROP: Good. Thanks for your testimony. I don't see any questions
today,--

JENESSA CRUZ-ALFARO: Thank you.

LATHROP: --but thanks for being here.

JENESSA CRUZ-ALFARO: Thank you.

LATHROP: Next proponent.

RYAN SULLIVAN: Members of the committee, Ryan Sullivan, R-y-a-n
S-u-l-l-i-v-a-n. I'm testifying in favor of this bill and I'll be
brief. I submitted a letter previously but wanted to follow up on
Senator Brandt's question regarding just the certificate of service.
All that would require is on the notice for it to include a
certificate of service, just like any other notice document that would
state who did the serving, how it was served, and when it was served
so that that, that piece of evidence could be used at court by the
landlord to establish who made the service. I, I don't think it
really-- I think it's a very neutral term to require that. Most of the
notices that I've seen in representing tenants already include that
where it does actually benefit those who represent tenants is if
notice was not provided or if a tenant asserts that notice was not
provided, the landlord provides evidence saying, here's the notice,
here's the certificate of the service. It would state on there, the
facts would be necessary for the tenant to be able to fairly dispute
that. And if there's an individual named on there, that person may
need to be there to show that that, that that requisite element had
been satisfied before moving forward with eviction. We were finding a
lot of instances, most-- in most instances tenants are receiving their
notice, but there are more than you would expect where tenants are not
receiving the notice, and that's a defense to an eviction. With that,
I'd entertain your questions if there are any follow ups.

LATHROP: Senator Pansing Brooks.

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PANSING BROOKS: Professor Sullivan, I just wanted to say quickly that, you know, usually when your fabulous students come here, we do a better job of asking them questions and engaging. And due to COVID, I think there's less of a willingness or the, the goal is to make sure people get to have their voices heard. So could you let your students know that, on at least some of our behalf, that we would normally be engaging more with them because we're grateful to have them here. And every time they come up, I want to tell them good job and ask a question and make them feel like they're participating. So please let the students know that.

RYAN SULLIVAN: I will, I will pass that along. And I think a lot of them are, are watching and, and heard you say that. And I'm sure they appreciate that, Senator.

PANSING BROOKS: OK, thank you.

LATHROP: All right. I don't see any other questions.

RYAN SULLIVAN: Thank you.

***ERIN FEICHTINGER:** Chairperson Lathrop and members of the Judiciary Committee, Together is a social service organization located in Omaha whose mission is to prevent and end homelessness and hunger. Two of our programs deal directly with issues of housing stability and with people either on the verge of losing their housing or coming out of homelessness. Our Crisis Engagement team works to prevent people from entering the homeless service system by intervening, often financially, to keep people in their homes. Our Horizons program is a rapid rehousing program providing intensive case management to people coming out of homelessness. Our vast and varied experience in housing allows us the opportunity to see the full spectrum of barriers that keep people from finding housing stability. One of these barriers is unreasonable late fees and penalties, and we are fully in support of LB205. Our case managers are familiar, then, with the types of late fees and penalties charged by many of the landlords who rent to our low-income neighbors. To provide just one example of why the cap on unreasonable late fees is necessary - one particular company in Omaha charges an initial \$75 for late rent, followed by \$5 a day per day that rent is late. Tenants are required to payoff the late fees by the beginning of the next rent period, or they are charged late fees on top of their late fees. This allows the landlord to net up an

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additional \$225 per unit, per month, which is about 30% of the total initial rent. In the words of one of these tenants, "It's \$75 after the 3rd of the month and \$5 a day until you get caught up. It's extremely hard to pay an additional \$175 if you are already struggling to get the original \$800 due." The other important aspects of LB205 are barring a landlord from evicting a tenant for unpaid late fees, and ensuring that any fees and penalties are outlined in the lease. Two of our case managers had clients receive an eviction notice solely for unpaid late fees, while another three had clients receive eviction notices for nonpayment of rent and late fees. We have seen instances of landlords charging late fees without informing the tenant, and others where a client was erroneously charged late fees despite having paid their rent. In 2019, we spent a total of \$122,777.49 to keep people housed - rent, utilities, late fees, IDs, birth certificates. In 2020, we spent an estimated \$30,000 to \$50,000 alone going to cover people's late fees. Our support for LB205 also recognizes the function of late fees as an incentive to pay rent, and also that many landlords who work with our Horizons program have waived late fees while our community struggles under COVID-19. Our concern for this issue deals specifically with the devastating consequences that unreasonable and excessive late fees and penalties can have on a person's ability to find and maintain safe, affordable housing now and in the future. Excessive late fees, rather than incentivizing a person to pay rent, instead lead to further financial strain and, often, an eviction that will diminish future housing options and contribute to homelessness. Thank you for your consideration of this issue and please reach out should you have any additional questions or need any more information.

***KELSEY WALDRON:** Dear Chairperson Lathrop and members of the Judiciary Committee, The Women's Fund of Omaha writes in full support of LB205, to prevent exorbitant late fee rates and the charging of late fees during an eviction. We recognize that this bill is critical when investing in the economic security of Nebraskans and keeping families housed. Now more than ever, as a global pandemic has turned economic crisis, affordable housing is a matter of health and safety. This pandemic has had broad and deep impact within our community, increasing housing insecurity felt across Nebraska. During this pandemic, over 86,300 Nebraska families who are renters have experienced job or income loss. On July 14, 65 percent of renting households with children reported concern about being able to afford next month's rent. Where the state and municipalities have invested in

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supporting renters and property owners alike, continued late fee charges have stifled progress of Nebraska's COVID-19 rental assistance programs. While supporting advocacy for COVID-19 rental assistance in Douglas County, the Women's Fund witnessed continued crisis for individuals eligible for such assistance but continuing to accrue very high late fees while awaiting assistance. Douglas County reported that when someone eligible for rental assistance applied, they would experience a 2-week processing and approval time on the application before the individual received assistance. This meant late fees continued compiling every day that the application was processed, at times with accrual exceeding 100% monthly rent. From the time an applicant initially submitted their application with the amount owed to their landlord, to the time the landlord was paid within this two-week waiting period, continued late fee accrual meant county payments were insufficient to account for all fees due, and renters remained out of compliance with their lease. This practice inhibited county investments in keeping Nebraskans housed and perpetuated housing insecurity felt by our community. LB205 addresses this problem by capping late fee rates and total accumulation to reasonable portions of someone's monthly rent. It additionally ensures late fees may only be assessed on rent owed with payments applied to base rent first, eliminating previous practice of accruing late fees for unpaid late fees even after base month rent was paid, a practice seen through the implementation of Douglas County's COVID-19 rental assistance program. This bill will also ensure that renters may not be charged late fees for nonpayment of rent when property owners intend to pursue eviction proceedings, preventing a renter from both paying late fees and still subsequently experiencing eviction. Provisions of this bill will ensure state and county investments in rental assistance, that support renters and property owners alike, are implemented closer to their intent, magnifying the positive impact of these funds. This bill ensures late fees may be focused to incentivize timely payments of rent, rather than trapping renters in cycles of debt and perpetuating noncompliance with lease agreements. As Nebraska looks to respond to this unprecedented housing crisis, we are reminded the cost to state and local governments of homelessness are almost 4.5 times the cost of keeping residents in their rental units during this pandemic. Exorbitant late fees pose real and tangible threats of eviction and housing insecurity to renters, increasing homelessness experienced across our state. This bill provides common sense caps to that risk.

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The Women's Fund respectfully urges this committee's support of LB205
and vote to General File.

***KASEY OGLE:** Chairperson Lathrop and members of the Judiciary
Committee: My name is Kasey Ogle and I am a staff attorney at Nebraska
Appleaseed for Collective Impact Lincoln. Nebraska Appleaseed is a
nonprofit organization that fights for justice and opportunity for all
Nebraskans. Collective Impact Lincoln is a partnership between
Nebraska Appleaseed, Civic Nebraska, and the South of Downtown
Community Development Organization that works with residents of six
Lincoln neighborhoods to build community, develop neighborhood
leaders, and take action on policy that is responsive to their needs.
I am writing to you today on behalf of Collective Impact Lincoln in
support of LB205. Collective Impact Lincoln advocates for better
housing quality, more affordable housing, and fair rental practices
for low-paid Lincolniters. We support LB205 because it aligns landlord
tenant law with existing state contract law and establishes fair
limits on late fees. Currently, landlords are able to charge
exorbitant late fees the day after rent is due without giving tenants
any additional time to come up with their rent. Some landlords charge
a one-time fee for late rent, whereas others charge a daily fee for
late rent. Still others charge both a one-time late fee and a daily
late fee when rent is not paid on its due date. Landlords can charge
these late fees and still seek an eviction against the tenant. Unpaid
late fees can even be the basis for an eviction. The Landlord Tenant
Act allows tenants seven days to pay their rent before a landlord can
file an eviction action. But because late fees can be charged the day
after rent is due, if the tenant manages to pay their rent within
seven days but is unable to pay the late fees that have accrued, their
landlord can still seek eviction. Current law does not impose limits
on the amount of late fees landlords can assess. As a result, these
fees can amount to 150% of rent due for falling even a single day
behind. LB205 addresses these inadequacies. The bill would impose a
three-day grace period before late fees can be charged. This gives
tenants a little bit of extra time they might need to be able to pay
their rent. After the three-day grace period, LB205 would also limit
the total amount of late fees a landlord can charge to \$100 or 5% of
periodic rent, whichever is less. However, if rent remains unpaid
after seven days and the landlord chooses to file for eviction, the
landlord would not be able to pursue any late fees. Additionally,
LB205 would ensure that any late fees charged must be based on actual

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damages the landlord sustains as a result of the tenant's nonpayment. By requiring late fees to be based on actual damages, this bill makes clear that late fees in rental agreements are subject to Nebraska contract law regarding unenforceable penalty provisions. According to Nebraska contract law, "parties to a contract may override the application of the judicial remedy for a breach of a contract by stipulating, in advance, to the sum to be paid in the event of a breach." There is a difference, however, between an agreement for liquidated damages and an unenforceable penalty provision. The Nebraska Supreme Court has explained: The question of whether a stipulated sum is for a penalty or for liquidated damages is answered by the application of one or more aspects of the following rule: a stipulated sum is for liquidated damages only (1) where the damages which the parties might reasonably anticipate are difficult to ascertain because of their indefiniteness or uncertainty and (2) where the amount stipulated is either a reasonable estimate of the damages which would probably be caused by a breach or is reasonably proportionate to the damages which have actually been caused by the breach. For a late fee to be a permissible liquidated damages provision, actual damages must be difficult to ascertain and the late fee must either be a reasonable estimate of or reasonably proportionate to what actual damages would be. Unfortunately, too many rental agreements contain late fee provisions which are completely divorced from actual damages a landlord might reasonably anticipate as a result of late payment. Too often rental agreements allow for exorbitant late fees that far exceed any damages incurred by late payment of rent when damages are not indefinite or uncertain. By requiring late fees to be based on actual damages, LB205 aligns the Landlord Tenant Act with existing Nebraska contract law. This bill provides much needed guardrails around late fee practices and we urge this committee to advance LB205.

LATHROP: Thank you, Professor. Any other proponents? OK, we will move to opponent testimony. If you are opposed to the bill, you may step forward.

LYNN FISHER: Good afternoon.

LATHROP: Welcome back.

LYNN FISHER: Thank you. Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Real Estate Owners and Managers Association. We're also affiliated

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with the Statewide Property Owners Association. We represent tens of thousands of tenants in all of our businesses, and we serve them to the best of our ability and, and treat them with great respect and appreciation for what they do for us. LB205 is-- we, we oppose, we're in opposition to this bill. When a private lease contract is negotiated, the tenant has full knowledge of the terms, including the amount of a late fee. If the late fee is deemed unreasonable by the tenant, they are free to renegotiate or not accept. All our good tenants are accepting of the late fee structure in our lease. Often because of special circumstances, we waive late fees and we do this for, for all reasonable situations. But when a late-- when there is a, a, a late situation and there's no good reason for the rent to be late, it's-- the late fee, is there, in order to offset additional costs incurred by not getting the rent collected on time, but more importantly, to remind tenants of the importance of paying rent on time. LB205 would prevent landlords from incentivizing tenants to pay rent on time to the best extent reasonable. When tenants pay rent on time, landlords are able to keep expenses under control, provide the most affordable housing possible. With the low late fees required by this bill, some tenants will purposely pay late because the late fee is not a disincentive. LB205 also mandates a grace period before a landlord could, could collect a late fee. It also limits late fees to actual damage-- damages sustained. This again, would be impossible to determine and could prevent the disincentive aspect of having a late fee. If this bill passes, landlords would necessarily raise rents to the detriment of all good paying tenants. When a tenant pays any amount to the landlord, the oldest amount due is the first amount to be paid. This is standard accounting practice, so past due rent and late fees are the first to be paid and not current rents. This bill would prevent landlords from collecting late fees almost at all and indefinitely, which is counter the terms of most leases. We must be able to serve good tenants with the lowest possible rents, and this bill would make rental housing less affordable. If this passes, rents will have to go up and it's a form of rent control. This is just the beginning, unfortunately, of what we're seeing from a lot of these bills. And I've also heard comments about in other states, it's done such and such a way. We're in Nebraska. The reason we're in Nebraska and the reason I live in Nebraska is because we're not other states. We don't do things the way other states do, and that's why we have the good life here. So having another state be our guide is not something I think we should succumb to. Any questions?

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LATHROP: OK. Any questions? Senator McKinney.

McKINNEY: Thank you for your testimony. Can you explain to the committee what is a good reason to-- for a late fee? And if there is a good reason, is the late fee waived?

LYNN FISHER: Sure, there are lots of circumstances. Some of it has to do with navigating our payment system. If somebody is a new tenant, for example, and they haven't figured out how to set up online payments or something like that, we'll certainly give them the, the leeway of not having a late fee. If somebody has a family emergency and they were not able to implement the payment of rent on a timely basis and they can give us a good reason for why they weren't able to and they bring the rent in, we'll be happy to, to waive the late fee. We have tenants who-- and I know we, we talked about late fees on late fees. We have tenants who just absolutely refuse to pay a late fee even when we consider them very reasonable. And they agreed to that late fee structure. And when they won't pay that late fee, we, we certainly are able to and we do put an additional late fee the next time they pay just the rent amount if they don't include the late fees.

McKINNEY: In your, your testimony, you also said that tenants are free to renegotiate or not accept.

LYNN FISHER: Correct.

McKINNEY: What if a tenant isn't, you know, knowledgeable on the negotiation process?

LYNN FISHER: Well, I'm glad you brought that up, because one of the solutions to I think a lot of the problems that are trying to be addressed by this bill and others here this morning is tenant education. I think oftentimes tenants really lack the willingness or maybe they, they don't understand the importance of actually understand what they're, what they're agreeing to. For that reason, we sit down with our tenants other than with COVID, but we sit down and actually go over the lease in detail with them and read item by item what they're agreeing to. And it's not unusual for a tenant to say, I don't agree with this and that for whatever reason and if we can accommodate them, we will, or they simply just refuse to, to rent our place and don't agree to the terms. And that happens too.

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McKINNEY: All right. Thank you.

LATHROP: OK.

LYNN FISHER: Thank you.

LATHROP: Thanks. Good afternoon.

GENE ECKEL: Good afternoon, Senator Lathrop, members of the Judiciary Committee. My name is Gene Eckel, that's G-e-n-e E-c-k-e-l. I am the board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. I'm here today to oppose LB205. And really the associations just have a couple of things that they just want to point out to the committee on why they oppose it. With regard to the late fee provision, it is vague about what actual damages mean. And that would need to do some clarification because it's kind of open up to interpretation. When we look at the breaching of the rental agreement, and you cannot charge late fees for breaching a rental agreement that's going to cause trials on every eviction hearing that we have, because then there's going to be a dispute as to whether or not the landlord breached the rental agreement. That's going to take up a lot of time in the courtroom. The Landlord Tenant Act already has a provision. If a landlord is going to violate the rental agreement, then there is a provision for the tenant to say, hey, you violated it, you have 14 days to cure it. And if you don't, I'm going to terminate this lease 30 days from the date I give you this notice. So there's already a remedy for a tenant who has a dispute with the landlord for violating the terms of lease. So there really is-- should be no reason to not be allowed to charge late fees if the landlord has a, you know, allegedly violated that agreement. It also indicates that if you terminate the agreement that you cannot collect late fees. When you serve a notice for nonpayment of rent, it says if you do not pay within seven days, the lease is terminated. So by the stat-- by this language of this, of this legislation that means a landlord could not even charge late fees after serving a seven-day notice for nonpayment of rent. I also want to just point out that, you know, if you eliminate other fees, which it does talk about, I think it's in subsection (2) (a) when it talks about that a landlord cannot-- actually I apologize, it's later on in the statute but it talks about you cannot charge any other fee that's, that's not set forth in the, in the Act. There's other fees that landlords do charge that are valid: pet fees, which is going to cover the damages caused by a pet,

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that a pet deposit is just not going to cover; risk mitigation fees where the landlord will purchase a liability insurance policy to cover the liability caused by a tenant so the tenant doesn't have to get their own liability insurance. And then you have the buyout fees where the tenant and the landlord will come to an agreement contractually to say, I want to terminate my lease early for whatever reason, and I'm agreeing to pay this buyout fee so I can terminate the lease early. The provision in this legislation would prevent a landlord from doing that because that's not set forth in the Landlord Tenant Act. That's our, our main points of why we oppose LB205. And I'd be happy to answer any questions that you may have.

LATHROP: OK. Senator McKinney.

McKINNEY: How many evictions did you file on behalf of your tenants and how many of those evictions had late fees attached to them?

GENE ECKEL: I, I, I wouldn't be able to. Again, I'm, I'm talking on behalf of the association. I'm not-- and, and right now, I don't know how many of my members were filing evictions for nonpayment of rent that would have late fees associated with it. I wouldn't be able to answer that question for you.

McKINNEY: Do you usually see a lot of those?

GENE ECKEL: It's, its-- I mean, typically if you're going to do a nonpayment of rent eviction, there is going to be late fees of some sort that's going to be added on because that was the obligation of the tenant to pay rent as it was due. I will point out, though, this provision, this legislation says a three-day grace period, the industry standard is five days grace period to, to pay rent. Not that that helps answer your question, but I wanted to point that out.

McKINNEY: So I guess my next question is, if my rent is \$600, but you charge me \$1,200 in late fees, do you think that's, do you think that's OK?

GENE ECKEL: In, in that scenario, I would say that's outrageous. I would agree with you. If you're going to-- if the rent's \$600 and you're being charged \$1,200 for late fees. Yes. Yeah, that would be outrageous. But that's not what I've ever seen from our members that they charged, you know, that egregious of amount of late fees.

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McKINNEY: What's the most you've seen your-- the individuals you represent charge?

GENE ECKEL: Yeah, it, it--

McKINNEY: What, what-- what's-- is, is it double or, or--

GENE ECKEL: It depends on each person's lease. The standard for the, the national association's apartment lease, it's typically maybe about \$75 flat fee, late fee.

McKINNEY: Is that per day or in total?

GENE ECKEL: No, a flat \$75.

McKINNEY: Have you ever seen cases where individuals are charged-- because I've seen this before where if you're late one day it's \$50, the next it's \$100, the next day it's \$150, the next day it's \$200 and it just keeps tacking on. Do some of your clients do that?

GENE ECKEL: Again, I, I don't know if any of the members of the Apartment Association have any leases that would ask for that much in late fees.

McKINNEY: Do you think it would be good to know before coming to speak against something that's common to many individuals and communities across the state?

GENE ECKEL: We're only here testifying on behalf of the Apartment Association of Nebraska and its members. And again, most of them use the National Apartment Association lease, which, again, cuts at about \$75 for a flat fee. So I can't speak to what other landlords might do, but our members are using a lease that sets it forth and limits it to a certain amount, which would not be multiple amounts for each day that it's, it's late. That's all I can talk about.

McKINNEY: All right. Thank you.

GENE ECKEL: Thank you.

LATHROP: Senator Brandt.

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BRANDT: Thank you, Chairman Lathrop. Real quick question. So when I sign a lease, the late fee is typically outlined in that lease, is it not?

GENE ECKEL: That is correct. I mean, at least the leases that, that we have. Yes, it's outlined.

BRANDT: I mean, everyone I've ever signed usually has a section on late fees. And, and it may differ by landlord, but it, it should be outlined for that tenant what he would pay then, is that correct?

GENE ECKEL: That'd be correct.

BRANDT: OK.

GENE ECKEL: If it's not in the contract, then you, you can't assess it towards a tenant.

BRANDT: OK, thank you.

LATHROP: OK, thanks, Mr. Eckel.

GENE ECKEL: Thank you, Senator.

SCOTT HOFFMAN: My name is Scott Hoffman, S-c-o-t-t H-o-f-f-m-a-n. I've heard a lot of testimony referring to COVID, we know this is going to pass and we're talking about passing legislation that's going to obviously be permitted for some time. It's becoming to be kind of redundant. I just want to let everybody know we have a vaccine. This is going to pass and we shouldn't be relying on COVID to drive the passage of these, of these bills. Getting to the-- change the speed on it, getting to the point of how much I charge. I didn't charge anything for 35 years until you changed the, the, the seven days-- three days to seven days. And I said, you know what, I'm not going to do that anymore. We used to give people three to five days. After that, you know, we gave them a-- the three- or seven-day notice. We didn't want to deal with it because all it made tenants do was procrastinate. We don't want them to do that. We don't want to create up havoc. We have waived late fees. What I currently charge right now is rent's due on the first and then it's \$10 a day up until that seventh day. And then that's it. Which kind of when he said the \$75 flat fee, I'm charging \$70. So I don't know, it's a private contract. If people are signing contracts and leases where we can charge you

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\$100 a day, I mean, that's insanity. I mean, that really is. We're, we're, we're not doing that. And if anybody is entering a lease and they're paying that, maybe it's time to just take a hike and get out of the property. Why, why are you renting to this person? We have had numerous times where people have fallen down. They lost employment. We let them out of their lease, you know, well, can you find another place to live? Because you obviously can't afford to live here. And I've got expenses to pay. And, two, is a lot of us landlords have mortgages. We can't go to our bank and say how much, you know, are you going to give us a break on the interest that we're using that rent money to, to pay the mortgage payment? In addition, this bill is complicated. Not a lot of landlords are going to know \$100 maximum, 3 percent-- Senator Brandt, you mentioned this. It's complicated. I mean, the only thing that's really understanding in the bill is that you can only charge a half months rent for pets deposit. That we know as far as you're giving percentages. But when you start introducing these percentages, it makes it very complicated and everybody is not going to know how to force and nobody wants to show up in court. Well, didn't you know? I go-- an ignorance in law is, obviously, no excuse. But yes, we need to simplify it, you know, in, in how much and, you know, that things can't be-- and I've heard in court, not like me personally, where landlords have gone and tried to collect late fees and the judge threw it out because he thought it was excessive. We have heard that numerous times. So, again, this comes to the judgeship who is accepting this, looks at that and goes, I'm not going to allow you to charge that. So-- and that's something that could be debated in court if it does evolve into eviction. So.

LATHROP: OK.

SCOTT HOFFMAN: Any questions?

LATHROP: Senator McKinney.

SCOTT HOFFMAN: Yes, sir.

McKINNEY: If we work off the notion within this bill that'll charge \$100 flat fee, are you aware that you'll make \$30?

SCOTT HOFFMAN: I'm sorry, I didn't understand the question.

McKINNEY: In, in this bill, if we, if we keep it to charging \$100.

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SCOTT HOFFMAN: OK, yes, yes.

McKINNEY: And you currently only charge \$70, you'll make \$30.

SCOTT HOFFMAN: Yeah, but that's--

McKINNEY: You're--

SCOTT HOFFMAN: --that-- you're just putting a maximum on it. I, I still wouldn't do that. I mean, even, even if you didn't even put that in there. I'm just talking about making a hardship for a tenant and a lot of us, as Mr. Fisher mentioned, a lot of times we waive the fees. In fact, I've only had to implement a couple of times. A lot of it has to do with, hey, my car broke down, had to put some work into it and I don't get paid until next week. Sometimes I'll waive it, you know, sometimes, you know, I'll say, give me, you know, 30 or 40 bucks. But that's, that's about it. But, yeah, I mean, you-- you're, you're, you're doing the hundred, but you're also putting other percentages, too, and you're making it complicated. [INAUDIBLE]

McKINNEY: So what if it was just \$100, would you be OK with that? If it was just \$100 flat fee, would you be OK with that without the extra percentages?

SCOTT HOFFMAN: Well, right now, I'm charging \$70. So to, to answer that question, probably yes. But at the same time, I don't think every situation with every landlord's different, depending on what he wants to do with his property and how you want to enter a contract and what he wants to charge for those late fees. And some of them can be egregious. But to actually put a cap and to actually let landlords know that there is a cap, that's-- that, that can bring up some legal repercussions, which I think Mr. Eckel, Mr. Eckel reciprocated, saying that that could be a problem when they go to court and find out the landlord was not aware of that. So hopefully I answered your question.

McKINNEY: Thank you.

LATHROP: I don't see any other questions, thanks.

SCOTT HOFFMAN: Thank you, Senator.

LATHROP: Welcome back.

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DENNIS TIERNEY: Good afternoon, Senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I serve on the board of directors of the Metropolitan Omaha Property Owners Association. The use of late fees is an important management tool for the landlords. Without the incentive of avoiding late fees, the tenant could pay a little later each month until they have gained an entire month on the landlord. LB205 seeks to limit late fees to the lesser of \$100 or 5 percent of the total amount owed. The ceiling is arbitrary and would be inadequate. The bill further provides that late fees cannot be assessed if the landlord is in breach of the rental agreement or has terminated the rental agreement. All the tenant would need to do is to allege a breach of the rental agreement to avoid the late fees. This bill would cause much uncertainty, as it would likely require a court determination to know whether the landlord has breached the lease. Also, once the rental agreement has been terminated for failure to pay rent or other violation of the lease, the late fees would magically disappear. Why should tenants be allowed to wait-- to wipe away late fees when parties to other civil cases would not have this, this privilege? This bill seeks to eliminate provisions landlords and tenants already have in their leases and would prohibit them from negotiating terms in future leases. We oppose this change because of the many uncertainties this change would cause for our members who are trying to do business in Nebraska. The additional costs of doing business would likely be passed on to the very people I believe this bill is trying to help. If the cost cannot be passed on to tenants, the landlords business cannot stay profitable. He or she will go out of business reducing the availability of rental units. We do care about tenants because they're our customers. Late fees are not something unusual in business. I get lots of bills that have late fees put on if we do not pay on time. Every single mortgage payment I get from a bank, there's a late fee if I do not pay on time. Lawyers charge late fees if it's not paid within a certain amount of time. So late fees is not an unusual part of doing business. You know, landlords are not unusual in wanting to have late fees, just like a lot of other businessmen do. Be happy to answer any questions.

LATHROP: OK. I don't see any. Thanks.

DENNIS TIERNEY: Thank you.

LATHROP: Appreciate your testimony. Next testifier. Good afternoon.

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DORA STUCH: Good afternoon. My name is Dora Stuch, spelled D-o-r-a,
last name, S-t-u-c-h.

LATHROP: Dora, can I have you get a little closer to the mike. You,
you speak softly and it's hard to hear.

DORA STUCH: Sorry, OK.

LATHROP: That's OK

DORA STUCH: Is this better? OK.

LATHROP: Yes.

DORA STUCH: I am with Commercial Investment Properties locally here in
Nebraska and I just wanted to point out my story and my perspective of
being in property management for over 30 years in different states. I
think in the bottom line it comes down to late fees being assessed.
It's clearly outlined in our Blue Moon lease agreement to all of our
tenants prior to moving into their apartment. It outlines the
responsibility and accountability that the tenant and the landlord
has. So to kind of share the story in the, the format of how we go
through our lease agreement, when someone is moving in, the lease
agreement is reviewed by both parties. It is agreed by both parties.
And during that lease agreement, is outlined on the provision of the
term of the lease and payment. Payment agreement is assessed, we give
them five days. Rent's due on the first. You have up until the fifth
to pay the rent. After the fifth, it is clearly outlined in the lease
agreement of what those fees would be. I do agree with some of the
other testimonies that I've heard today, not when it comes down to
responsibility and accountability, but how problematic it is when late
fees, when rent is not paid on time and late fees do occur, owners are
not getting their late fees waived or offset because mortgages are
late. Mortgages are due either on the first of the month to the third
of the month. So it is essential that we have that money in our bank
so we can pay the mortgages. If a resident disagrees upon the move in
of the late fees, then they have choices and options, they can move
forward with the lease agreement or they can decline the lease
agreement and not sign it. I want to take this opportunity to outline
our procedures in notifying our residents of when they're late, when
the rent is not paid. I've heard a lot of interesting testimonials of
how residents are being notified. Now I understand residents when they

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move in, they may forget the lease agreement. We send out friendly reminders when the rent's due again and when it's late. When a rent is late, we notify them by phone, email. We also send a letter, a seven-day demand letter in the mail directly to their home. One reason is why we're trying to find out is there reasons why their, their rent is late and what we can do to help them. We don't want to charge late fees for no reasons at all. Have we waived late fees? Absolutely. The essential of life is to give them the quality of life in an apartment which they consider their home, which is our home. We're not here to make money off of late fees. But once again, it is very essential that we have the rent paid because not just for mortgages, but for operation expenses. I do agree that there are some residents that just simply refuse to pay rent on time. A lot of it is because either the fees are too low and they feel that they can just pay other unnecessary bills and pay the rent late. I will give you my perspective that we have waived late fees if was a first- time offense or if there was a reason that we can validate. Now I've heard a lot about COVID. During COVID, CIP, Commercial Investment Properties, we waived late fees. We worked with our residents so they can pay the rent. What I can see now, someone embarking of coming out of COVID is that they're getting transparent and not paying late fees. And to me that's very scary and problematic because all the admin costs behind that when people don't pay their rent and pay their rent on time. With that being said, just want it to be heard that if we do put a cap or we don't charge late fees, how it can be problematic in the industry of apartment community. And I would tell you, I've never seen a late fee that exceeded 50 percent of the rent, nor do we want to file evictions, nor do we want to evict our residents. So with that being said, I'm open to any questions.

LATHROP: Senator Morfeld.

MORFELD: Thanks for coming in today. You said you're with CIP?

DORA STUCH: Yes, sir.

MORFELD: And you're one of the largest landlords in Lincoln, aren't you?

DORA STUCH: That is correct. Yes, sir.

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MORFELD: OK. How many, how many tenants do you have or units
available? However, you want to--

DORA STUCH: Great question, sir. Thank you. CIP, we actually own over
6,200 units.

MORFELD: In Lincoln?

DORA STUCH: Well, it's Lincoln and Omaha and partly in, in Iowa. Yes,
sir.

MORFELD: OK. And, and maybe you don't have this data with you, but
perhaps you can get back to me. How-- on average each month, how many
late fees do you usually assess with all those tenants?

DORA STUCH: You know, in my position as a senior regional manager, I
can probably give you a pretty good number. We don't really-- it
depends on the property. And I would be very candid and very honest
with you is that your top A property is most of your clientele will
pay on time. OK. Very few would be probably less than half a percent.
Then on some of your B properties or C properties, a little bit more
problematic and you may have probably about 5 percent--

MORFELD: OK.

DORA STUCH: --or probably 10 percent of the property.

MORFELD: OK.

DORA STUCH: A lot of it is based on the demographics.

MORFELD: OK. And so generally you're going to assess the late fee and
then if they don't pay rent, then you'll go into eviction proceedings?

DORA STUCH: Another great question, yes, we send a seven-- after the
fifth day of the month, we will send them a seven-day demand letter.
We'll do our-- being very proactive to try to get in touch with them
to find out the reasons why they haven't paid rent. We have actually
worked with them until the 15th or the 20th of the month to pay their
rent before we do the eviction process.

MORFELD: OK.

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DORA STUCH: So once again, we're being very proactive not to put that stigma on the record by doing eviction.

MORFELD: And since COVID started in March, how many eviction proceedings have you instituted in, in Lincoln or Lancaster County?

DORA STUCH: You know, I can tell you, one. And I would love to share that story with you if you'd like to hear it.

MORFELD: One?

DORA STUCH: Just one.

MORFELD: Just one?

DORA STUCH: Just one in my portfolio. I think overall, CIP, probably less than three.

MORFELD: OK, thank you very much.

DORA STUCH: OK.

MORFELD: I appreciate it.

LATHROP: Senator McKinney.

McKINNEY: First, first question, what are unnecessary bills that tenants might have that would cause them to be late?

DORA STUCH: Cause them to be late on rent?

McKINNEY: Yes.

DORA STUCH: OK, I just wanna make sure I heard your question, sir. Great question, again. A lot of-- I'll just give you some of the scenarios that I've heard. Either something happened to their bank and it didn't-- they didn't get paid or something happened to their bank, it didn't get deposit, or they ran into financial problems. And it could be a personal reason, but those would probably be the few that I have seen or they've lost their job and they started a new job. And they're just getting-- they need a week, an extra week to pay rent. Is that what your question was to me?

McKINNEY: Are those unnecessary reasons?

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DORA STUCH: No, I think they are logical reasons. OK. I think they are reasonable reasons. I mean, the bottom line, they are reasons why they can't pay the rent. We don't want to put a stigma. We don't want to say, well, you-- we're going to waive late fees because you fall into this categories. The thing is, is that it comes down to communication. They have to communicate with us that, you know, if they haven't paid rent, why have they not paid rent? So we can determine, can we work with them? And I think furthermore, sir, you know, we've worked with a lot of our residents. The first time that they are late, we do waive the late fees. But we need to have that open dialogue in communication so we know why the rent was not paid.

McKINNEY: Could you-- last question, could you give me a, a possible estimation of how much in late fees does your company take in each year?

DORA STUCH: In a company, I couldn't give you the amount, but I can tell you, you know, our late fees are like-- our late fees are \$75 and that's clearly marked on our lease agreement. I couldn't give you that number offhand, but I will tell you is that our, our mojo is not to have late fees and not to charge late fees. So I couldn't give you any global perspective of CIP, how much we take in. I can tell you on my portfolio, I don't get a lot of late fees.

McKINNEY: All right. Thank you.

DORA STUCH: OK. Once again, too, I just want noted, just depends on, on the property and the demographics though, too. OK.

LATHROP: OK. Thank you for your testimony.

DORA STUCH: All right. Thank you.

LATHROP: I think we have time for one more opponent if they're out there.

DOUG LANE: Doug Lane.

LATHROP: Welcome back.

DOUG LANE: Thank you. I'll make it-- I'll try to make it short.

LATHROP: We're going to still have to have you spell your name for us.

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DOUG LANE: Oh, Doug Lane. OK, Lane is L-a-n-e.

LATHROP: OK, go ahead.

DOUG LANE: OK. Let's see, late fees on top of late fees, I guess, I haven't heard that. Not saying it doesn't happen, but I guess I have been doing this for 28 years and a number of friends of mine are also in the property management business and I guess I haven't heard that, so. But not to say it doesn't happen. I don't believe any other laws should be enacted today or soon because of COVID, which is hopefully going to be gone soon. That's just a point I wanted to make. The day of-- the date rent is due and the date late fees start and the amount are gone over at, at length at the signing of the lease. So there's no surprise on any of that. So after you've, you've obviously paid the first month's rent and deposit, you now have a 30-day notice that next month's rent is due. It says so right in the lease. I would rather collect rent on time by far than to have to hand out late notices and try to collect late fees. It's, it's not worth the stress. For years, I had it at \$40 for the late fee. People were just blowing that off, didn't seem to care. So I raised it to \$100 dollars to try to get their attention. It's getting their attention. Well, when I, when I raised it a few years ago, it started getting their attention. But it's getting their attention less and less. So I'm still good with \$100 today, but at six months to a year from now, I don't know. You know, as inflation comes along and I don't know, people. I would, I would be crazy, I would just drive me nuts to have to pay a late fee, whether it's \$10. I was like, why are we paying a late fee? How come we didn't pay that on time? But that's, that's me. So anyway, any questions about any of that?

LATHROP: Senator McKinney.

DOUG LANE: OK.

McKINNEY: Thank you for your testimony. I just have one question. Are you aware of issues with late fees persisting prior to the pandemic?

DOUG LANE: No, I-- what kind of issues with late fees?

McKINNEY: I guess my question is--

DOUG LANE: That I'm, that I'm having with people or--

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McKINNEY: Not, not you, just in general, just issues with late fees
existing prior to the pandemic?

DOUG LANE: No.

McKINNEY: Never heard of any prior to the pandemic?

DOUG LANE: I haven't heard. But I'm not the president of a landlord
association or anything like that. I have friends that are in the
business as well. I used to have a real estate license as well. But
no, I have not, have not heard of any issues.

McKINNEY: All right. Thank you.

DOUG LANE: OK.

LATHROP: OK. Thank you, Mr. Lane.

DOUG LANE: All right. Thank you.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary
Committee; My Name is Justin Brady, I am testifying as the registered
lobbyist for the Nebraska Realtors Association in opposition to LB205
and would ask that this testimony and opposition be made part of the
committee statement. LB205 does several things that harm a property
owners' ability to enforce the contract between the tenant and the
property owner. First, it says that you can charge a late fee but only
if you are not going to opt to terminate the rental agreement. Second,
it says that a late fee if charged is limited to no more than \$100.
Third, LB205 further states that any payment that you do eventually
receive goes for rent and not for the late fee which, if you already
have a tenant who is consistently late, you are never going to collect
your late fee. All these combined erode a property owners' ability to
enforce contracts that were signed between two willing parties. You
will/have heard from the property owner's association that can/did
provide more details about the hardship this will add to property
owners across the state of Nebraska. We respectfully ask for this
committee to IPP LB205. Thank you.

***BUD SYNHORST:** As President & CEO of the Lincoln Independent Business
Association, I represent over 1,000 businesses whose mission is to
communicate the concerns of the business community to elected and
appointed officials at all levels of local government. Nebraska has

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enjoyed long-standing economic growth in the face of a recession, record flooding, and a worldwide pandemic. According to the Bureau of Economic Analysis, over the last ten years Nebraska's economy has grown by more than 21%. Business friendly policies continue to promote regional investment and encourage population growth. Moreover, opportunities for Nebraska's workforce are plentiful. According to the Bureau of Labor Statistics, Nebraska's unemployment rate in December 2020 was tied for the lowest in the nation at 3% which matches pre-pandemic levels? With more money in the average Nebraskan's pocket, rent has stayed affordable across the majority of the state. Over the past ten years, the annual rent as a fraction of income in Nebraska decreased by 0.28% and continues to stay well below the national average. Now is not the time to pass legislation that would hurt landlords and ultimately their customers. Strong property rights have always been the foundation for economic growth and a healthy housing market. We should not pass legislation that seeks to fundamentally reform existing landlord and tenant policies when those policies are working as outlined above. This bill is a solution in search of a problem. Affordable housing should be a priority to encourage our young people to stay in Nebraska and to lower the pressure many working-class families face making rent payments. However, this bill does not get us closer to that goal and would make it less desirable for landlords to offer affordable housing in an already distressed housing supply market. Government regulations don't always fix the issues they are intended to fix. California has one of the most regulated housing markets in the country, yet it has the highest homeless population and ranks 49th in housing supply per capita. As Milton Friedman once said, politicians have a bad habit of judging "policies and programs by their intentions rather than their results." LIBA stands in opposition to this bill in order to protect property rights of businesses, and so rent stays affordable for those that need it the most.

LATHROP: That will end our opposition testimony. Is there anyone here in a neutral capacity on LB205? Seeing none, Senator Hunt to close. And while she's making her way to the chair, we have 20 position letters and all 20 are proponent. We also have written testimony that will be included in the record from the following: as a proponent, Kasey Ogle, O-g-l-e; Kelsey Waldron, also a proponent, W-a-l-d-r-o-n, Women's Fund of Omaha; Erin Feichtinger, F-e-i-c-h-t-i-n-g-e-r, with Together, she is a proponent; Bud Synhorst, S-y-n-h-o-r-s-t, Synhorst

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is opposed and he represents the Lincoln Independent Business Association; and finally, Justin Brady, a lobbyist, opponent to LB205 representing Nebraska Realtors Association. Senator Hunt, you may close.

HUNT: Thank you, Chairman Lathrop, and thank you, members of the committee for your time today. I want to disabuse everybody of the idea that this bill would prevent property owners or landlords from charging late fees. It will not prevent them from charging late fees. It will not prevent them from evicting tenants for nonpayment of rent. There's nothing in this bill that says you can't manage your property in a way to make sure that your tenants pay their rent on time. What it does is it, it clarifies this really weird word that we have in statute right now, which is unconscionable. What is an unconscionable amount of fees. We've heard from the Clinic, the Law Clinic, that they've had tenants come in and they are owing 300 percent on their rent. I would say that that's pretty unconscionable. And maybe a landlord would say, well, they should have looked in the, they should have looked in the contract. They should have looked in the lease agreement and not signed it if they thought that that was unconscionable. Well, three things about that. One, a lot of contracts don't include information about late fees. And we know that a lot of tenants don't have any legal representation or any experience reading contracts, me included, for one. And finally, we know that a lot of the tenants that are targeted by this type of landlord, which is not most landlords by far, are people in the immigrant and refugee community, many of whom struggle with English or struggle to receive services, especially during the pandemic that would give them legal assistance with getting into agreements like this and prevent them from being targeted by landlords who have repeatedly done this. And we know that it's repeatedly done because we see it in the public court filings. We have opponents to this bill who are here today who are charging fees on fees, who are charging more in late fees than is owed in rent, even when tenants are making payments on rent. And I'm not going to bust them out about that because they know who they are and anybody can know who they are because these filings are public. And then finally, this bill is not about COVID-19. We do have a responsibility in the Legislature this year to prioritize legislation that will help people recover from this pandemic, just like we had a responsibility to help people recover from the flood or any other disaster that befalls Nebraskans who we are trusted to care for.

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People were struggling with late fees before the pandemic. It's going to get-- it's going to continue after the pandemic. But right now, this is a glaring problem that tenants are facing in Nebraska. They have been begging for help. Advocacy organizations are spending hundreds of thousands of dollars every year to help these tenants to pay off their late fees so they can stay housed in this Nebraska winter. And so I think that this is something that we should see as a priority and that we should move forward from committee. Thank you very much.

LATHROP: OK, that will close our hearing on LB205 and bring us to LB358. We'll give people a chance to move in and out of the room, Senator Hunt. OK, you may open on LB358. Welcome.

HUNT: Thank you, Chairman Lathrop and members of the Judiciary Committee. My name is Megan Hunt, M-e-g-a-n H-u-n-t, and I represent District 8 in midtown Omaha. Today, I'm presenting LB358, which would expand upon existing protections we have in state statute for tenants against retaliation from their landlords. Under a current loophole in our law, landlords cannot retaliate against their tenants if the tenant reports a code violation to the city. But they can retaliate if the tenant complains directly to the landlord about a code violation or a violation of the lease agreement. This has caused a lot of landlords to unfairly retaliate against tenants who raised issues they don't want to address by raising their rent, threatening eviction, or by evicting them. Under current legislation, a landlord cannot retaliate against a tenant for two reasons. One, for joining a tenants' rights organization, and two, for filing a housing code complaint with a government agency. LB358 would expand on this list by adding a landlord cannot retaliate by increasing rent, decreasing services, or evicting a tenant when: one, a tenant notifies the landlord of a housing code or noncompliance with the lease. And two, when the tenant has exercised or is attempting to exercise a right under the lease agreement or provided for under current law. This is an issue that is disproportionately affecting immigrants and refugees in my district. In 2018, the Yale Park Apartments, located in District 8, were found to have 1,962 code violations and we all remember that, including gas leaks, faulty wiring, bedbug infestations, and mold. At that time, there were approximately 500 refugees, primarily from Myanmar, residing in those apartments. These residents were not only given just a few hours notice of their eviction, the landlord threatened to keep their security deposits in exchange for waiving

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their cleanup fees. And of course, the cleanup fees are ones that he caused. As a longtime renter myself, I found that the first and best recourse for resolving disputes or issues is often open communication between landlords and tenants. This is what we've heard opponents to the previous bill say it's-- well, when tenants talk to us, we're willing to work with them. We're always lenient. No one's ever done anything wrong. However, it's not always safe for tenants to speak with their landlords about these things. A tenant approaching a landlord directly with a complaint is not currently protected under the anti-retaliation portion of landlord tenant law in Nebraska. Without a reassurance of their safety and security and that they won't be evicted for making a complaint, these problems can persist, and tenants may be forced to go directly to the city with complaints, which is probably not really what the landlords want to happen. I think most landlords, if they have the opportunity, would like to resolve that themselves. But that's not the incentive that law currently provides for. The system of enforcing housing codes and general upkeep is based solely on tenants coming forward to bring attention to these issues, which makes it even more important to enforce anti-retaliation measures. Although tenants are not legally protected from eviction or rent increases if done, Lincoln requires all tenants to first go to the landlord before filing complaints with the city. Cities with this policy and a lack of anti-retaliation policies are failing to protect their citizens from safe, secure housing. If there is evidence that a tenant engaged in a protected activity within the preceding six months of retaliation, a presumption of landlord retaliation is assumed. Landlords have the ability to refute the allegation if they're able to provide evidence that the alleged retaliation was for a valid reason. This bill should in no way negatively affect landlords who are already following the law. I think that a lot of landlords who may be opposed to this are telling on themselves a little bit more, saying, you know, I should be able to retaliate. I should be able to evict people for coming to me with complaints. Because the landlords that are already following the law and already being good landlords, this won't affect them. Under this bill, they will, in fact, be better able to communicate with tenants who feel safe to come forward and communicate issues with them directly, as opposed to getting the city involved when maybe the city doesn't need to be involved. In my district, we know that it's been primarily immigrants, refugees, and people of color who disproportionately experience this retaliation and are forced to find

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new housing. Once again, how do I know this? Is it anecdotal? No, it's from public filings in court. These groups have also been disproportionately harmed by the pandemic and are more likely to suffer homelessness and unemployment in addition to lasting health impacts of COVID-19 exposure. Not only can we do the right thing for tenants with this bill, we can protect public health and safety by keeping folks from needlessly ending up in shelters or on the street. Many of these people are essential workers who have kept the economy running and provided a degree of normalcy for the rest of us in the midst of a global emergency. Colleagues, LB358 will not harm landlords who operate in good faith. But it will make a world of difference for tenants who simply need to raise issues of public safety with their landlords. I'll end my opening there and take any questions you may have.

LATHROP: Senator Geist.

GEIST: Thank you, Senator Hunt. I appreciate you bringing this to us and this is probably just my what if, but I want to-- I would like to pose a what if. What if in an apartment complex, when you sign a contract, typically it will say every year or every other year, we reserve the right to raise rent a specific amount of whatever. A complaint has come in, let's say, in November, that, that is in the contract, the tenant may or may not remember or know, but that that rent will be raised in January. Would that be perceived as retaliatory if it's in the contract or maybe not the specific amount of rent is in the contract, but a increase is in the contract, would that be perceived as falling within this statute?

HUNT: Thank you, Senator Geist. If it says in the lease agreement that rent could increase, I mean, my lease agreement says that, that's really, really common. If the tenant wanted to take the landlord to court and if we started with a rebuttable presumption that it was retaliatory, the landlord would be able to prove that it wasn't retaliatory, it was in the lease. And honestly, I would think any attorney that would take that case from that tenant, it probably wouldn't make it to court because they would say, oh, no, see, in your lease, it says that January they can increase the rent. And so this is a good what if question, but if it's in the lease, then it doesn't apply.

GEIST: OK.

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LATHROP: Senator Brandt.

BRANDT: Thank you, Senator Lathrop. Thank you, Senator Hunt, for bringing the bill. I guess, oh, a couple of questions. And I think maybe the example you used would be more of a slumlord example in Omaha. That was really a bad situation. And I think all of our landlords would agree with that. I would hope that that landlord faced prosecution on what happened there. He may have. He may not have. But I guess my question is, under existing law, if with the housing authority and all the protections that are currently in place and I'm living in an apartment and it's substandard and my landlord didn't do anything so I report him to the Omaha Housing Authority or maybe the Lincoln Housing Authority, because those are probably the only two housing authorities in the state, and they come in and say, yeah, there's bugs or, or unlivable situation. Under existing law, it might not, and then it appears the landlord is going to come after me. Do I have protections under existing law? I could go to an attorney and, and then he would, he would say, well, go to my landlord and say, you know, file something and say, you're just retaliating. Mr. Brandt went and, and, and filed the housing complaint against you. I mean, I don't know if you're aware or not. I'm, I'm asking.

HUNT: We-- yeah, I am aware. We do see cases where-- well, for example, one case that was filed-- I might even have it here in my binder, but in, in the Omaha Authority that inspects these housing code violations, we see reports where several, several times a year the code enforcement agency goes into to, to check out the place and the tenant's are not there anymore. And then it has a note on the thing that's like, oh, tenant was evicted, you know, three weeks after filing the complaint because the date's on there. So you can kind of line up the dates. And so under current law, that is a right. I don't-- I think that they would have a case if they were evicted in that case for retaliation. But what they aren't protected from is if they go to that landlord themselves and say, you know, hey, hey, Megan Hunt, we've got a lot of bedbugs in here. We've got mold. Can you fix it? And if that landlord, if I said no, and since you complained to me, you can hit the road. A big problem with this also is like this is what causes all of this turnover in apartments. A lot of landlords, none of whom are here today I'm sure, would rather kick the tenant out and then find a new tenant, because they know that there's always going to be people desperate enough to rent in these, in these places. And then this also kind of perpetuates unfortunate stereotypes that

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afflict parts of my neighborhood in my district, parts of north Omaha, parts of south Omaha, where these places get this reputation for being rundown or in disrepair or attracting the, quote unquote, wrong kind of people because the landlords just keep cycling through tenants and they never fix the issue. Because under law right now, they can evict people for complaining.

BRANDT: OK, thank you.

LATHROP: I think that's it. Thank you.

HUNT: Thanks.

LATHROP: How many people intend to testify in support of this bill? Three. And how many in opposition? I'm sorry, I can't see around the page. Two, four, six, OK. We still got to do the 30 minutes a side thing, but we'll begin with the proponents. Welcome.

CAITLIN CEDFELDT: Good afternoon, I'm Caitlin Cedfeldt, C-a-i-t-l-i-n C-e-d-f-e-l-d-t. I'm an attorney with Legal Aid of Nebraska's Housing Justice Project, and I have extensive experience in representing low-income tenants. Legal Aid of Nebraska is the only statewide nonprofit law firm providing free civil legal services to low-income Nebraskans. Thank you for the opportunity to appear today in support of LB358. Because housing is such a precious and sometimes precarious necessity for our clients, Nebraska tenants often are dissuaded from seeking improved housing conditions for fear of retaliation of their landlords. Substandard shelter for many of my clients is better than nothing at all. LB358 would foster housing stability by preventing Nebraska tenants from being unnecessarily evicted for seeking improved conditions. This bill provides tenant protections from retaliation by their landlord if they report concerns about their housing conditions, report lease violations, or otherwise exercise rights available to them already under Nebraska law. Furthermore, under LB358, tenants that are sued in retaliation will now have an affirmative defense not available under current law with such robust power. A landlord is obligated under the law to maintain a fit and habitable premises. In Legal Aid's experience, many tenants who call us live in substandard housing or housing in need of major repairs. Our clients frequently tell me about things like habitability issues ranging from furnaces that do not work, plumbing that leaks or often backs up, mold infestations, and many other issues. These same clients also tell us

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that they are afraid to communicate their concerns to their landlord. These clients are afraid that their landlord would just as soon be rid of them and their family rather than address any repairs or housing code violations. And unfortunately, these fears are real. I have to tell clients all the time that there is a risk that a landlord could try to evict them or take other adverse actions if they complained to their landlord or code enforcement. One recent Lincoln tenant we represented was forced to move by her landlord after she initiated a code enforcement inspection that revealed necessary repairs. We were unable to do much for her because as the law is written now, there's nothing guaranteeing that a tenant can make necessary and lawful demands without reprisal. Moreover, habitability and code issues should be addressed by the landlord pursuant to their rental agreement and Nebraska law. A tenant gives money each month to their landlord, and the landlord should be obligated to provide not just a physical structure to stay in, but a home that meets basic standards of habitability. The passage of LB358 will help us at Legal Aid to help tenants facing substandard housing and to deal with retaliatory action by landlords. Legal Aid supports the passage of LB358. Thank you for the opportunity to speak with you today, and I'd be happy to answer any questions you may have.

LATHROP: I got a couple. So generally in the law, if I want to make a claim for retaliation, it's my burden of proof.

CAITLIN CEDFELDT: Yes.

LATHROP: Right? So as a-- as the person advancing that proposition, I have the burden of proof. A rebuttable presumption would, would place that burden-- I met my burden of proof the day I walk in and prove that I made a complaint to my landlord within the last six months. That's all I have to prove.

CAITLIN CEDFELDT: Yes.

LATHROP: Then the burden of proof would shift to the landlord to overcome a presumption that the reason I'm being evicted or my rent went up is because I made a complaint of some, you know, the railing was broken in the hallway or something.

CAITLIN CEDFELDT: Yes.

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LATHROP: Right? Who-- who's responsible for showing that it's a good
faith complaint and what's that look like?

CAITLIN CEDFELDT: A complaint for--

LATHROP: So I have to make a good faith complaint. But what if I'm--
where in the process of this-- these proceedings that we're talking
about now where the landlord has the burden to overcome a presumption,
who has to prove that the complaint was good faith? Is that part of
the plaintiff's claim?

CAITLIN CEDFELDT: So how I would see this working is probably as an
affirmative defense on the part so plaintiff-- that the tenant makes
the complaint, right, at some point prior to any kind of eviction
proceedings being on the radar. And then once we get there, I think
you could do it out of two ways. You could do an affirmative defense
that the tenant raises and then the landlord has the burden to prove.
Right? Or the landlord can say in their complaint that this has-- is
not a retaliatory action for a complaint.

LATHROP: But if, if I want to, if I want to claim retaliation, whether
it's a defense or whether it's an affirmative claim, I would have to
prove that, that I made a complaint and that it was good faith.

CAITLIN CEDFELDT: Yes.

LATHROP: Right? So what's, what's good faith?

CAITLIN CEDFELDT: So, I mean [INAUDIBLE]--

LATHROP: What if I call, what if I call with something every, every
month or every, every couple of weeks, I call and I say, you know
what, the light bulb isn't working in the hallway. And I-- and the
landlord goes out and there it's working?

CAITLIN CEDFELDT: Yeah, I think--

LATHROP: Do we look at the history? I'm just-- this is a-- is this a
workable process?

CAITLIN CEDFELDT: I think honestly, with the advent of smartphones,
which a lot of people have, even low-income folks. Like you can take
pictures and show and document what's going on. Right? So you can back

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yourself up. I mean, even in cases where, like, my client doesn't have the burden, I tell them you need to have documentation and show it to me, frankly, because I will not assist in presenting something that is not candid with the court. So I-- so what would constitute a good faith showing of that? I don't think that the burden should have to be on the tenant. I think that maybe is where you're going here. I think that should be on the landlord. Right? And if--

LATHROP: You think the landlord should have the burden to prove that it was a not a good faith? I, I misunderstood you or I didn't hear you.

CAITLIN CEDFELDT: So I think that the landlord should have to show that it wasn't in good faith. I think there should be-- the rebuttable presumption is that it was in good faith by the tenant. Right? And I just, as a practical matter, I just find it, like, really odd to think that a tenant could just, like, call every couple of weeks about something small. The tenants that I deal with, Senator Lathrop, are calling about things like plumbing backing up sometimes for weeks on end. They're calling about things like infestations. They're calling not about just little piddly things that don't matter. They're calling about stuff that makes them sick. I can think of a refugee client who called me and actually told me the story later about a landlord who they for months and months talked about how there was mold and it was one of their younger children was having asthmatic issues. And then they finally, like, went to his office to have a meeting. And this landlord, who's a large landlord in a metropolitan area on the east side of the state, told them, I don't want to hear it, get out. And in that refugee's country, get out means leave now. So they packed up all their stuff and I had nothing to do with that.

LATHROP: OK. I, I don't think anybody has a-- even after listening to landlords all day, I don't think anybody has a problem with the fact that there are bad ones. Right?

CAITLIN CEDFELDT: There-- I'm just saying is that--

LATHROP: There, there are ones that don't take care of their place and there's ones that are harsh and treat their-- I'm just trying to figure out whether it's workable when we start using good faith instead of has a-- an identifiable and-- well, an identifiable code violation as opposed to good faith. Good faith goes to what am I

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thinking and how am I feeling before I do something as opposed to
whether or not it's, you know, the railing's not on the, on the
stairwell.

CAITLIN CEDFELDT: And I, I suppose that-- and maybe I did not
communicate this very well, is that my point is, I am saying that the
contents of what the complaint is can also tell you a lot about
whether it's in good faith or not. Right? Like, so in your example,
like complaining about a loose railing maybe is not-- that might be an
indicator.

LATHROP: OK. Well, thank you for answering my questions.

CAITLIN CEDFELDT: No problem.

LATHROP: I don't see any other questions. Thank you.

CAITLIN CEDFELDT: Thank you.

LATHROP: Good afternoon.

RYAN SULLIVAN: Good afternoon, members of the committee. Ryan
Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I just wanted to make a couple of
points. First, I would put on the record that it's my belief that most
landlords are not in the business of retaliation. I think it's, it's a
very small minority of, of when this occurs. We do see a lot more in
the immigrant and refugee populations. But I, I agree with what I
imagine a lot of the opponents are going to say, that they're working
with, with their tenants. They're not doing this kind of conduct. This
law isn't really to, to deal with, with landlords that are doing the
right thing. It's to deal with the ones that may not be. Now those in
this room, if you take them at their word, they're treating their
tenants as they should be. This law really shouldn't even apply to
them. But there are over 10,000 landlords in Nebraska and they're not
all here today. And those are-- there's-- even if it was just a
handful, I think it's more than a handful. That's who we're trying to
protect our public from. In talking with landlords about this
particular bill, there was a big concern and, Senator Lathrop, maybe
you've kind of alluded to this a little bit, that a landlord-- or a
tenant can just avoid eviction by, by just making a complaint and then
just avoid eviction and cannot be evicted. And I've heard that over
and over. And most the landlords I talked to after we had a

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conversation it became clear that that's, that's not what this law does. It's, it's incentivizing communication, but it's "deincentivizing," "deincentivizing" retaliation for that, that type of communication. This really only comes up in the eviction setting and it is an affirmative defense. So it's not going to cause any additional court costs, not going to be any additional filings. If the landlord wants to evict, if there's a good-- if there's a basis for eviction, they can move forward with eviction and then it would be assured as an affirmative defense if there was a complaint. I, I believe that it would be the tenant's obligation to prove that it is a good faith and maybe there's better terminology we could use in the bill that it's a legitimate complaint. So it isn't a complaint just to avoid an eviction. But then it would shift the burden to the landlord and then the landlord just as in-- as we see in all sorts of discriminatory matters in housing is then it would shift to the landlord to just present at least some basis for the eviction that's nondiscriminatory or nonretaliatory in this case, and then it can move forward in eviction. The last thing I'll point out is, if, if there's a-- if the tenant's already in, in violation of the lease for another reason or if they're behind on rent, this statute doesn't even apply. So they can't get out of not paying their rent or not being evicted because of by filing a complaint, because that completely negates the entire statute.

LATHROP: OK. Any questions for Professor Sullivan?

GEIST: I do.

LATHROP: Senator Geist.

GEIST: I do. And thank you, Mr., Mr. Sullivan. Is that appropriate?

RYAN SULLIVAN: Sure.

GEIST: Just make sure you're not a doctor, so.

RYAN SULLIVAN: No. Well, I'm sure it's a doctor.

GEIST: I, I guess-- I'm, I'm sitting here, I've tried to listen most of the day, close to most of the day, and especially this particular issue just feels like even to going to what you said, there are 10,000 landlords. And even if there are a few. So I feel like the, the look, the tone and the look of this is to penalize all because of the few.

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And I wonder if there is a more localized way of accomplishing the same thing without making a law for everyone that penalizes or assumes. I mean, I read this if I were a landlord, I would think that the assumption is I'm going to retaliate. Now maybe that's not the intent, but I guess that's what-- how I read it. And I just wonder if there is a way to accomplish this in a, in a city and a county and a municipality by penalizing the right people, because I have no qualms about penalizing the right people, because I think that needs to be done. And some of the things that have occurred in Senator Hunt's district are appalling and need to be addressed. But I just wonder if this is the most effective way to address something that might to others who are trying to do the best they can, makes-- it makes them feel that they're being penalized as well.

RYAN SULLIVAN: Well, I don't dispute that it-- it's open to revision. Right? I'm sure Senator Hunt's office would, would take any feedback from either side on this to try to make this bill is as, as tight as it can be. It doesn't need to be overly broad. I do think it should apply to everybody. I don't think it's going to penalize everybody. It's only going to penalize those that violate the statute. And so those that are in that majority who are not violating the statute, it shouldn't affect them whatsoever. It should-- it would only-- just like any criminal laws, only going to apply to those that commit the crime, even though it really applies-- the law applies to everybody and disincentivizes us to commit that crime. So this would really apply to everybody, but it would really only punish, to use your word, those that violate the law. And so hopefully and maybe with some revisions, which would narrow it in to where we just are encouraging all landlords to not violate this statute and not retaliate.

GEIST: We'll agree to disagree, but thank you.

LATHROP: So I-- I'm listening to you and I'll just make this comment. If you're a landlord and you have a good reason to get rid of somebody as a tenant, this does punish the good ones. Because if, if somebody's made a complaint, if somebody's made a complaint and you're getting rid of them because they brought a cat in or their cat is making the place, the apartment complex have an odor and they've complained about the light in the stairwell or the railing or anything. You can be one of the great tenants or the great landlords in the state. And now, now we've made a presumption about why they're getting rid of somebody, that it's retaliation when they may have a good reason. And I guess

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I'm, I'm struggling with how tightly this is tailored, because I think
you're going to pick up a lot of people that don't have it coming.

RYAN SULLIVAN: Well, I think--

LATHROP: When you create a presumption that's completely disconnected,
perhaps from the experience of the landlord and the tenant in an
individual circumstance.

RYAN SULLIVAN: Well, I think in your situation there, though, if
you're saying they have a good reason, that would overcome the
presumption. So and I've, I've been in, I've been in court on this, on
this particular issue a dozen times.

LATHROP: But, but here's the difference. If I, if I-- and I don't mean
to be argumentative. The difference is, is that I go as a landlord
from turning somebody loose because I can smell their cat when I walk
in the hallway to now I got a-- now I've got to go to court and
overcome a presumption. And have some kind of a proceeding and maybe
not be able to get rid of a tenant because I, you know, I don't
overcome the presumption. But, but I'm turning-- we're turning it into
a court proceeding where there's a presumption that my motive was to
get rid of a tenant because they complained about the light being out
in the stairwell when, in fact, I got a different reason. And instead
of just being able to get rid of them for whatever reason I may
choose, it's that their 12 months are up and I'm done smelling the cat
in the hallway. Now I got to go to court where there's a presumption
that my motive was something other than some behavior or just wanting
to get rid of a, get rid of a tenant for an entire variety. Maybe
they're creating problems for the other tenants in the parking lot.
This one, this one-- we listened to a bunch today, this one, I have
some concern I'll just express, that it's not tightly tailored and
you're going to catch the good people who are doing things the right
way and burden them with a presumption that's going to take them down
to the courthouse to sort out.

RYAN SULLIVAN: Well, I'm open to working with the senator's office or
any senators here that have those concerns and any of the gentlemen
sitting behind me that I'm sure are going to express some concerns for
about 30 minutes.

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LATHROP: And once again, it's always the bad ones that, that, that create this. And, and our job is to make sure if we're coming up with a remedy to help tenants who are being retaliated by the bad ones, that we don't unnecessarily cast the net too broadly.

RYAN SULLIVAN: Yeah. Yep. Narrow, narrowly, narrowly tailoring it is a good idea. I agree.

LATHROP: OK. Thanks, Professor. I appreciate you being here. Welcome back.

RYAN SUMP: Thank you, Chairman Lathrop, members of the Judiciary Committee. Once again, my name is Ryan Sump, R-y-a-n S-u-m as in Michael -p as in Paul. I am a volunteer attorney with the Nebraska State Bar Association Tenant Assistance Program, but I am testifying today just on my own behalf. And I just wanted, I just wanted to come today for in support of this bill and just give a couple of words kind of with, with some examples, with a case I dealt with a couple of weeks ago. A couple weeks ago, I dealt with a case where this young man was convinced to move into an apartment that, frankly, was not fit for human habitation with the kind of-- with, with sort of the promise of the landlord that, don't worry, I'll take care of these issues. I'll take care of these issues further down the road if you, if you sign and move in now. So he probably shouldn't have. But this gentleman said, OK, I'll do that. You know, months, months go on, no changes get made. He eventually gets fed up and reports the violations-- and reports the code violations and the, and the unit to the city. The city, the city sends him as well as the landlord some letters, you know, saying there are these code violations. The gentleman gets called in to the landlord's office. To which the landlord says, why did, why, why did you go to the city? And then, you know, just, oh, coincidentally a week later, landlord is moving to evict this guy. So I guess I, I would testify in support of this bill just because, for one, I think it is important that we further incentivize communication directly between tenants and landlords, because when the gentleman was telling me the story, the landlord sounded almost more upset than anything else that he felt, he felt the tenant was kind of going behind his back talking to the city. And I agree that there is some benefit in making sure that tenants-- excuse me, just there, there is benefit to making sure that tenants should be protected talking directly to the landlord, rather than having to either risk talking to the landlord or just going above them to the

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city. And also, I see I'm running low on time. So just real quick, when I dealt with him as well, when he brought to court the letters from the city, some pictures he'd taken and things like that. And so I told him in, in this case, I thought he had a pretty good case if you wanted to raise a retaliation defense because he had these letters and other documentation. But if something happened where he had misplaced the letters from the city or, you know, something else to happened to them, then all of a sudden it, it-- there's a case where it's just his word and some pictures against the landlord's. And it goes, you know, from being, in my opinion, pretty easy defensive retaliation to something where it's much more my word versus yours and who knows which way that would have gone. So I see I'm out of time. So just to kind of summarize what I'm trying to say here, I think instituting this presumption for cases of retaliation is also a good change to the law as well, just because it protects people who can't provide the hard documentation, such as the letters that this gentleman that I was working with had.

LATHROP: OK. Any questions for Mr. Sump? I don't see any today. Thanks for your testimony.

RYAN SUMP: Thank you.

***ERIN FEICHTINGER:** Chairperson Lathrop and members of the Judiciary Committee, Together is a social service organization located in Omaha whose mission is to prevent and end homelessness and hunger. Two of our programs deal directly with issues of housing stability and with people either on the verge of losing their housing or coming out of homelessness. Our Crisis Engagement team works to prevent people from entering the homeless service system by intervening, often financially, to keep people in their homes. Our Horizons program is a rapid rehousing program providing intensive case management to people coming out of homelessness. We support LB358 because strengthening anti-retaliation protections will help tenants feel safe advocating for the safety of themselves and their families. To give you a sense of the health and safety issues that go unresolved because of a fear of retaliation, I want to share with you the voices of those whose housing stability is threatened because of those issues "Our heating unit goes in and out, the kitchen counter top is broken in front of the sink" "Squirrels in my ceiling, flickering lights, drain problems, had to replace air filter after we moved in because it was moldy, water coming from the fridge, trash in the hallways and no lights in

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the hallways." "Plumbing issues, mold, bats in walls, broken appliances, broken doors, broken smoke detectors, no hot water some days." "Ceiling leak, pests." "Broken doors, cupboards, baseboards, cabinets also an unlevelled toilet and poor insulation. "Mold, mice, roaches" "Cracked, broken, or boarded up windows, pests, major plumbing issues that aren't repaired and HVAC issues that don't get addressed in a timely fashion." "And when tenants did complain, they faced retaliation that looked like the following: "Had us living with a flooded kitchen for over 6 months-- they had to repaint after we left and charged us for it when they said we would get our full deposit back." "So much work to do, maintenance couldn't keep up and were constantly quitting. Had a main break in our apartment, 3 plumbers confirmed it, they didn't offer to move us and still expected rent. We lived in a literal swamp for 8 months. When we finally got through to them, they offered us worse apartments and told us if we wanted a refurbished apartment like the one we had, it was \$100 more. We left due to poor living conditions with things not being repaired has caused health issues which led to mental and financial issues for me and children. However it will be over soon now relocating." Our case managers have also seen retaliation against their clients, even with a small army of advocates trying to intervene: "Refusing payment, charged extra for regular maintenance, selling home while still occupied, ridiculous compounding late fees and refusing to rent to other clients" because we complained. "Raised rent \$300 on a month-to-month lease forcing the person to move." "Harassment, eviction" At Together, our mission is to prevent and end homelessness. In order to fulfill that mission, we need to ensure that everyone in our community feels safe enough to advocate for the health and safety of their homes. Strengthening the anti-retaliation statute will do this. Thank you for your time and consideration, and please reach out if you have any questions or would like any additional information.

***KASEY OGLE:** Chairperson Lathrop and members of the Judiciary Committee: My name is Kasey Ogle and I am a staff attorney at Nebraska Appleseed for Collective Impact Lincoln. Nebraska Appleseed is a nonprofit organization that fights for justice and opportunity for all Nebraskans. Collective Impact Lincoln is a partnership between Nebraska Appleseed, Civic Nebraska, and the South of Downtown Community Development Organization that works with residents of six Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that is responsive to their needs.

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I am writing to you today on behalf of Collective Impact Lincoln in support of LB358. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolniters. We support LB358 because it ensures that tenants are protected after they exercise their rights. LB358 takes important steps to protect tenants against retaliatory actions from their landlords. Tenants are currently protected against retaliation after they join a tenants' union or after they complain to a government agency about a material risk to health and safety. These protections guarantee that landlords cannot increase rent, decrease services, or threaten or file for eviction after a tenant exercises these rights. However, tenants more often complain to their landlord than to a government agency when there is a problem with their unit or the landlord is otherwise out of compliance with the lease. Currently, if a tenant complains of a broken toilet, a mold infestation, or a lack of heat, their landlord could increase rent, decrease services, or even evict them. The same is true of tenants who otherwise exercise their rights under the law or their lease agreement. This bill ensures that the same protections are in place for those tenants as for those who join a tenants' union or who complain to a government agency about the condition of their unit. LB358 also establishes an important burden-shifting framework. It presumes that any unreasonable increases in rent, unreasonable changes in services, or legal action against the tenant is retaliatory if, within the previous six months, the tenant complained to the landlord or a government agency. Landlords can overcome the presumption if they show that the alleged act of retaliation was not a result of the tenant's complaint. This rebuttable presumption also does not apply in situations where the tenant has complained after they have been notified of a rent increase or of a decrease in services. This burden-shifting framework allows tenants to pursue their rights more effectively. While a tenant currently has a defense that their landlord is retaliating against them in an action filed by the landlord, it is the tenant's burden to establish the landlord's action as retaliatory. This is difficult for tenants to prove because landlords hold the evidence that their conduct is retaliatory. Comparatively, the burden-shifting framework provided by LB358 presumes that the landlord's conduct is retaliatory and allows the landlord, who holds the evidence, to prove that there is another explanation for their conduct. Through Collective Impact Lincoln's work, we have talked with countless community members who have faced retaliatory action from their landlord because they have

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complained about unlivable conditions in their rental unit. Tenants try to get landlords to perform their duties under the lease agreement only to be evicted for reminding them of their obligations. LB358 helps fix this problem and ensure that tenants can pursue their rights without facing adverse action from their landlord. For these reasons, we urge you to advance LB358.

LATHROP: Anyone else here to testify in favor of the bill? All right, we will now take opposition testimony.

LYNN FISHER: Thanks again. Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Real Estate Owners and Managers Association. Senator Lathrop, you have it exactly right. And Senator Geist, thank you for asking the correct questions. The problems that this bill proposes to, to resolve are really an issue of code enforcement and utilizing current law and current statute to do what it's intended to do and to weed out and take care of these issues that the bad-- the small minority of bad landlords out there deserve to be used against them. I mean, this is-- Yale Park is a horrible example, but that's a code enforcement issue. And you're right, Senator Lathrop, that we good landlords would be caught up in this situation where, for one, we can't evict somebody because we feel like we want to evict them. There has to be a reason, we can't go to eviction court because we don't like someone. We have to have a reason for it. And those reasons are laid out in the Landlord Tenant Act. If, if the, the lease is month to month or in some cases week to week, if it's a, if it's a weekly lease, we have that right to be able to give a notice to let someone know we're terminating the lease for no reason whatsoever. And that's the current law and that's the way it ought to be. Just like a tenant can give us a notice to move when they're month to month for no reason. It's not our business to ask them. They can move. They have that right. And we need that right as well to be able to terminate a lease when it's in that month-to-month situation, regardless of the reason. And you're right, if there-- if there's a tenant, Senator Lathrop, that we feel we can do better by finding somebody else that's not going to be smoking or having their parties or harassing their neighbors or, you know, having their, their cat there that they're not supposed to. All those different reasons are legitimate reasons, but we don't have to have one in order to utilize the-- our right to recover that property from someone for no reason whatsoever. And so this, this bill really needs to be not passed because there's plenty of opportunity. The example that the previous gentleman cited of the fellow that, that had

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a horrible place that he made a complaint to the city about, that's exactly what should happen. And that's, that's why there are city codes. That's why there's the health department and the building and safety folks to help those people out. Frankly, I don't know why he would want to live there. If it's that bad, why would he want to continue to live there if he's got such a bad landlord, that, that guy needs to, to find a different place to live. And one of the things that's available out there, and I haven't mentioned it before, but I've been volunteering for over ten years in the RentWise program here in Lincoln, and we've educated over, over 10,000, probably closer to 15,000 tenants on how that they can utilize the resources out there and, and protect their rights to have a good, safe home that they can live in and be proud of. And there are ways that that can be done with current law and current help that's out there, so. Be happy to answer any questions.

LATHROP: I do not see any questions, but thank you.

LYNN FISHER: Thank you.

SCOTT HOFFMAN: Testifying in opposition of LB358. It is Scott Hoffman, H-o-f-f-m-a-n. Senators, if you've got your pen, if you could write this bill down or this current [INAUDIBLE]. It's 76-1419, it's 76-1419. What you're asking is redundancy in the bill. This specifically refers to landtort-- landlords maintaining a fit premises. We dealt with this bill and this is what I talk about coming back every single year. Senator Hansen brought this up two years ago and we said-- I said the same thing, you know, irreconcilable differences between a tenant and a landlord, you know, where somebody's not getting along or somebody's a chronic complainer. And if it's, it's a valid complaint, yeah, sure, we go over. Mostly what I maintain are homes. And I got two duplexes and houses, so it's pretty much confined. It's not an apartment complex. And I can tell you right now with property values, I've already sold three of them. If I could sell them all tomorrow, I would if I didn't have to pay any capital gains, believe me. Our values of properties are skyrocketing. We've had some houses go up \$30, \$40,000, which relates to another \$600 to \$800 a year in property taxes. Who should pay that? I rose-- I raised all my rents this year and some of them were barely enough to cover the property taxes. Last year, talking about COVID, I didn't raise any of my rents because I didn't want my tenants scattering and I didn't want to make any hardships on them. But now that this is somewhat

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pacified and going down, we're coming back with this bill where we're accused of retaliating when you've got 76-1419 talking about a landlord dealing with a 14/30, which a tenant can give the landlord, I'm moving, if you don't take care of this. We do that to the tenant, the tenant's able to do that to us and we should be able to have that opportunity to use that specific law to-- for, for-- or they can use specific law against us. The other thing is I read the last part of Senator Hunt's bill, and I even emailed her. I can't understand a word of it. I mean, you got to be an attorney, presumption, synonym of assumption. I mean, we all know what happens when you assume things. So somebody is, you know, I'm getting accused of something, wait a minute, wait a minute, that's not what happened. Which what you mentioned about the cat. This is reason why we're getting it. And if they're not happy living there, and I've had this happen before, I told them, look, if you're not happy, I'm doing everything I possibly can, then move and I'll let you out of your lease. You can move. OK. But it's not something I'm not willing to do or they're asking so much to do. Recently, last year in the city of Lincoln, they wanted to pass additional licensing requirements. Right now, it's triplex or above. They wanted to pass additional licensing for duplexes and homes, which is what I've got. And I've tried to avoid the licensing registration because I simply don't want to deal with code sometimes. And sometimes it's insignificant. If we didn't want to-- we'd have to pay annual fees and everything. But the way they revised it and they met us halfway, they said if you get reported, then you will have to become licensed. And, and to this point, that's never happened. I've never had complaints. But I'm done speaking here. I didn't know if you had any other questions.

LATHROP: OK. Let me see if anybody does. Senator McKinney.

McKINNEY: I've got a few questions. The first, what if within this bill, there was a penalty for false claims?

SCOTT HOFFMAN: False claims given by who?

McKINNEY: As far as the, the tenant making a false statement saying that the landlord retaliated, which the landlord didn't. What if there was a penalty within this, that would disincentivize tenants from making claims that aren't true? Pretty much.

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SCOTT HOFFMAN: Well, you know, we're all here today mostly talking about tenants not able afford to pay rent. And now we're going to want to penalize the tenants because they said something about the landlord. Is that what you're saying then?

McKINNEY: No, I'm saying, because I understand both sides. So I think that there should be something for tenants that are retaliated against, but I also understand a landlord's side that this might-- may create unnecessary, you know, claims and instances in court. What if there was a penalty within this that would disincentivize tenants for making statements or presumptions that aren't true?

SCOTT HOFFMAN: Really, you know, most of these bills are creating hardship for landlords. I don't want to turn around and turn this back to my tenants. If they're unhappy about something that I'm doing, which I really think I'm doing the best that I can. In fact, if you really want to know right now, I got a text. I had to step out because one of my tenants is mad at my duplex because the guy shoveled all the snow behind her car. OK, so I've got to go do that after I'm done here. OK, so the problem is, is whose fault is that? But you, you just tell people, this is all about irreconcilable differences, two people's personalities, their demeanor, they're not getting along. You know, move on, find another place to live, which is what Mr. Fisher talked about. If they're not happy with their living conditions, move on. And that's, that's described in the, the ordinance, 76-1419.

McKINNEY: Right.

SCOTT HOFFMAN: Yeah.

McKINNEY: Another question. What if there was, what if there was a requirement for tenants to show that they are in good standing before making this presumption? You must be able to show that your rent is current. You don't have any late fees before you can make these claims. Would that be OK?

SCOTT HOFFMAN: Well, with-- again, it's complicated, complicated. Each individual circumstance is going to be different between that tenant and that landlord and how that other tenant may be affecting other tenants in the apartment complex. So sometimes it's there's third parties involved. So like I said, it's the retaliation against landlords when we're trying to do the best we can. And we-- we're

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under a maintained fitness and this is what this is all about and somebody's making a complaint, they can do a 14/30. Look, I don't want to live here anymore if you're not going to fix this and they should be able to move out. And then they could still turn it into codes and codes could still make that landlord enforce it and then this guy moves on to the, the next place.

McKINNEY: All right, my next one. What if there was a one-claim limit, like you can only make a claim once a year?

SCOTT HOFFMAN: You mean a, a complaint or--

McKINNEY: A complaint as far as presumption of--

SCOTT HOFFMAN: Well--

McKINNEY: --just one time, you only got one shot.

SCOTT HOFFMAN: If someone-- I mean, I guess you would have to-- we're talking about light bulbs in the hallway. OK. I've got one house where the sewage backs up, OK, because there's tree roots and it's a clay sewer line. OK. That tenant lived there for ten years and she'd call me and I'd get my guy right over there. Sometimes he'd be busy. We'd get it taken care of. That's, that's a, a big, major situation where we're going to want to take care it and not ignore it, mainly for health reasons. But it's inevitable that it does happen, eventually, so it would--

McKINNEY: I, I ask these questions because I think we should create balance in, in--

SCOTT HOFFMAN: Sure.

McKINNEY: --the laws and policies that we make. And right now the balance is shifted one way and not in the other. It doesn't seem balanced. I understand the, the landlord side, but on the tenant side, if I make a claim, I'm in good standing in my apartment and I make a claim and I get put out the next day, where's the balance there? That's all I'm saying. But thank you for your testimony.

SCOTT HOFFMAN: You bet, you bet. Thank you.

LATHROP: I do not see any other questions.

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SCOTT HOFFMAN: Oh, I'm sorry.

LATHROP: No, you're fine, you're fine, thanks.

DENNIS TIERNEY: Hello again. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I currently serve on the board of directors of the Metropolitan Omaha Property Owners Association. LB358 would amend the current statute 76-1439 to provide that within a six-month period following the tenant making a, quote, good faith complaint regarding a violation of the housing code or noncompliance with the lease, if a landlord takes action against the tenant, the landlord will be presumed to have illegally retaliated against the tenant. Current law already prohibits the landlord from retaliating by increasing rent, decreasing services, or bringing or threatening to bring an action for possession in cases where the tenant has complained to a government agency or a joint tenants' union or similar organization. It's already on the books. If LB358 passes, it appears that all the tenant would need to do is to make a complaint of a housing violation every six months and they could never be evicted for any reason. Normally, the burden of proof is placed upon the tenant, or in other words, the person wanting to prove the case-- or the plaintiff, or in other words, the person wanting to prove the case. The plaintiff must meet the burden of proof. LB358 would shift this burden of proof by creating the presumption that the landlord is at fault, requiring the landlord to prove that retaliation didn't happen. This is a bizarre twist in how lawsuits are normally tried. It would create an unlevel playing field in favor of the tenant and an incentive for the tenant to sue the landlord to collect three months period rent and attorney fees. If LB358 were to pass, the cost of providing for the much greater possibility of being sued for retaliation, paying liquidated damages and attorney fees would need to be factored in, causing stricter screening procedures, which would create the inability of some tenants to find places to live and higher rents for all tenants. Landlords operate on tight budgets with principal, interest, taxes, insurance, and maintenance costs built in. They will, they will not be able to simply absorb this new cost without passing it on to tenants. I urge you to oppose LB358.

LATHROP: OK.

DENNIS TIERNEY: Any questions?

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LATHROP: Any questions for Mr. Tierney? Senator McKinney.

McKINNEY: Thank you for your testimony. I'll ask you the same three
questions again. If there was a penalty attached to making claims that
aren't true, would you still oppose this bill?

DENNIS TIERNEY: It depends on the penalties and how clear it is that,
that the penalty could be applied and what the criteria actually is on
what's a good faith complaint. There already are laws preventing
retaliation. It just doesn't make it that it's six months that the--
that a landlord is unable to, to evict a tenant. A tenant could do
this every six months and never get evicted. So essentially, the
landlord has no control over his property because every six months the
tenant can make a complaint.

McKINNEY: So what if there was a limit to only do this once a year, if
that? Would you still oppose this bill?

DENNIS TIERNEY: That would help. But still, you've got six months that
the landlord has no control over his property. The tenant can do
whatever they want in that property for six months. Nothing you can do
about it. You can't get rid of that tenant--

McKINNEY: What if--

DENNIS TIERNEY: --because it's presumed that you're a bad actor.

McKINNEY: What if I'm current on my rent and other fees, I don't owe
you anything, and I make this claim, and a week later, a day later,
I'm served with the eviction notice or I'm told to get out,--

DENNIS TIERNEY: You can't--

McKINNEY: --what am I supposed to do?

DENNIS TIERNEY: --under current law, you cannot be. Current law
prevents that. There are current laws preventing landlord retaliation.
They're on the books already.

McKINNEY: Then why is this still occurring?

DENNIS TIERNEY: I'm sorry?

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McKINNEY: Then why, why are these situations occurring?

DENNIS TIERNEY: They had-- they don't occur because this law isn't enforced. There are bad landlords. None of us good landlords want bad landlords around. But a landlord can be cited for retaliation. If the, if the person doesn't want to cite that the landlord for retaliation, that's their choice. But the law is in, is in place to prevent retaliation. Now do all tenants claim retaliation when they, when they should? Apparently not. But the law is on the books.

McKINNEY: Thank you.

LATHROP: I do not see any other questions. Thank you, Mr. Tierney.

DENNIS TIERNEY: Thank you.

GENE ECKEL: Senator Lathrop, members of the Judiciary Committee, my name is Gene Eckel, that's G-e-n-e E-c-k-e-l. I'm on the board of directors for the National-- sorry, the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska, and I'm here to oppose LB358. I think some of the comments that Senator Lathrop made and some of the other senators here on this committee made on their concerns about this bill, it's the same that we feel. You know, there should not be rebuttable presumption that a landlord has retaliated against a tenant. With landlords, currently, they-- we have to prove our case when we get to court. It's not presumed that the, that the tenant didn't pay rent or that the tenant violated the terms of the lease agreement or that the tenant committed a criminal act. We have to prove our case. And the same should be for a tenant. If the, if the tenant's going to claim retaliation, they should be able to prove that instead of the, the landlord having to prove that they didn't retaliate. And that's the main part of our opposition to this, to this bill. I will point out, though, you know, the scenario could be where the tenant does make a complaint about some kind of code violation and a landlord can go in and fix it. But then the landlord finds out that the tenant maybe was committing a criminal act on the premises, files a lawsuit. It's presumed that the landlord was retaliating and then the landlord then will have to prove, well, no, I fixed it. And second of all, I was doing it because they committed a criminal act. And so it shouldn't be that way. We should allow the landlord to have the opportunity to sit back and watch the tenant to put up evidence that they retaliated at that

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point. And then if they want to make a defense of that after the tenant has put up their evidence, then that's the way it should be. But we should not have a situation where the landlord has to prove that they didn't retaliate at the beginning. So we would ask the committee to oppose LB358. And I'm happy to take any questions.

LATHROP: OK. I see no questions, Mr. Eckel, thank you--

GENE ECKEL: Thank you, Senator.

LATHROP: --once again for your testimony. Any other opponents?

PIERCE CARPENTER: Hello, I'm Pierce Carpenter, P-i-e-r-c-e C-a-r-p-e-n-t-e-r, and I oppose this bill. It a, it a-- I wrote this up. In the, in the Landlord Tenant Act, Section 76-1411, it states-- it talks about good faith. When I, when I first had my first rental, I wrote the lease out and signed it and waited for people to come in and the lady asked for a copy of it and I gave her a signed copy of the lease and then she called back and said, I've got it because I have a signed copy of the lease. And the lawyer explained to me that part of being a landlord and a tenant is good faith. And something about, you know, there has to be some sort of agreement you can't just take advantage of the other person. And where has that gone? Because this LB5-- 358 is an abomination to good faith. I mean, imagine if you're in a marriage and your spouse doesn't believe you're doing things right so she calls the Orwellian police, and they come up with a whole list of dos and don'ts you have to follow and then they order you to stay in the marriage for six years. That's what this does. This is insane. You decide it's time to divorce or vacate, but LB358 says you have to stay. Part of the Landlord Tenant Act is good faith and if you don't have good faith, it's time to leave. It's not time to reprimand the landlord. To really drive home the unfairness of the legislation, imagine if a tenant was bad and the law and court ordered the tenant to stay and pay rent for six months beyond the end of the lease. You know, when you put it in from that perspective, I mean, nobody would ever allow that. The whole thing is ridiculous. Increasing rent is a routine business matter. So you wouldn't be able to increase the rent on your tenants except you'd increase all the rents on all the tenants except one tenant who'd be immune from rent increases. That's not right. Providing services is a function of time, money, and availability. If there's chipped lead paint inside of a house and the tenant wants it painted, I would have the tenant move out because the

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cost to paint it is so great. But if a tenant complained about the lead paint and then you try to get her to move out, well, now she's, she's got a retaliatory charge. You can't get her to move out, you're going to spend \$10,000 painting the inside of a house. Initiating or threatening eviction is a landlord's only tool in controlling an unruly or nonpaying tenant. This law would give the tenant the upper hand and they would not have to pay six month's rent since the eviction would be, would be considered retaliatory. One last comment. You know, once again, we're stricken by the well-dressed, lawyerly type people who are pushing this legislation against the hardworking landlords who are actually businessmen trying to save their businesses from this litigation-- legislation, excuse me. Thank you. Does anyone have questions?

LATHROP: Any questions for Mr. Carpenter? I see none.

PIERCE CARPENTER: Thank you.

LATHROP: Thank you. Any other opponents?

DOUG LANE: I just go on record as being opposed to LB3--

LATHROP: Let's have your name, though. Let's start out with that so I keep a good record here.

DOUG LANE: Doug Lane, L-a-n-e.

LATHROP: You just want us to know you're opposed.

DOUG LANE: And I go on record that I'm opposed to LB358 for many of the reasons that were stated.

LATHROP: OK.

DOUG LANE: OK.

LATHROP: Any questions for Mr. Lane? I see none. Thank you.

DOUG LANE: OK, thank you.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary Committee; My Name is Justin Brady, I am testifying on behalf of the Nebraska Realtors Association in opposition to LB358 and would ask

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that this testimony and opposition be made part of the committee statement. LB358 attempts to address retaliation by property owners against tenants. The Nebraska Realtors do not support retaliation against tenants if there is a violation of the housing code nor if a property owner is not in compliance with the lease agreement. The opposition by the Nebraska Realtors is because of the games that could be played by a tenant if this bill were to pass. I will give you an example, you come in you sign a year lease there is a pretty good chance you know at the end of that year lease your rent is going to go up, generally across the board. Prior to you completing your first lease and renewing you make a good faith complaint to the landlord of a violation of a housing code. Under this bill that property owner cannot give you any rate increases for the next six months without there being a presumption that it was done retaliatory. Now the property owner is faced to go to court to prove that it was not retaliatory. An unforeseen outcome of LB358 would be you could see many leases going to 30 days or one week because at the end of each lease the parties would have to sign a new one or the tenant would have to move out it. This is one way that property owners could protect themselves against the games that could be played under this bill. I know the Nebraska Realtors and I do not think this committee is interested in making people live on a week or month lease agreement. You will/have heard from the property owner's association that can/did provide more details about the hardship this will add to property owners across the state of Nebraska. We respectfully ask for this committee to IPP LB358.

LATHROP: Anyone else here to testify in opposition? Anyone else here in a neutral capacity? All right, Senator Hunt, you may close. And as she approaches, I'll read into the record on LB358. We have 18 position letters: 17 are proponents, 1 is an opponent. And we have three letters that were-- or three documents that were brought in, testimony that were offered this morning and will be made part of the record: one is a proponent letter from Kasey Ogle, O-g-l-e, from Collective Impact Lincoln; and another proponent, Erin Feichtinger, F-e-i-c-h-t-i-n-g-e-r, with Together. Senator Hunt.

HUNT: Thank you, Chairman Lathrop. Senator McKinney, I appreciate some of your suggestions you had to maybe find some kind of compromise for this bill. But it's my view that this bill does penalize the right people, because if a landlord is not doing retaliatory things, then this won't apply to them. It won't affect them. And I want to bring in

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a little bit of a reality check to the committee and also to those listening, because I don't know if folks understand the burden of debt that people in my generation face. We have student loans. We have medical debt. We have credit card debt from trying to get along in this society anyway, and I can't imagine a tenant bringing a case that they weren't confident that they could win. The cost is just too high. There's just too much at risk. The court costs, being evicted, possibly. I just don't think it's realistic to say somebody is going to be doing this every six months so they never get evicted. And also, once again, opponents are bringing up things that this bill doesn't do. This bill doesn't prevent landlords from evicting people. It doesn't negate anything else in our Landlord Tenant Act. We do know that retaliation is happening. And we do know that there is a loophole in the law that many bad faith actors are exploiting in order to get people out of their units. And that's something that we have to do something about. We had one opponent against this and he said that this should be a city issue, that, that it should be that they have to comply with the local ordinances. But then he said that he doesn't comply with the local ordinance about rental enforcement and code enforcement. We had another opponent who has sued the city of Omaha twice to stop code enforcement. The fact is, we do not have proactive code enforcement in Nebraska. We don't have proactive code enforcement in Omaha. And we know that retaliation is happening and we need to do something about it. So I would ask the committee to consider the burden that's on renters who are targeted by these bad faith actors and consider the reality of any tenant abusing this law. The burden of proof is on the landlord to prove that the retaliation happened. But I really can't think of any tenant who wants to go to court over things like this, let alone has, you know, the education or information to, to do that. It would just not be a super common thing. So once again, I'm willing to work on an amendment if it brings people closer together. But it's a good bill. It's a good policy, and it's something that we need to take seriously. Thank you.

LATHROP: Everything gets treated seriously in this committee, Senator Hunt. We appreciate you bringing it.

HUNT: Thank you.

LATHROP: We appreciate you being here today. Thank you. We're going to take a couple-minute break, say five minutes so that my staff can get up and walk around, have a little moment. We'll be back here at--

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[BREAK]

LATHROP: OK, we are back on and it is 10 to 4, we're on LB320, brand new bill. We just got done with two bills from Senator Hunt, and we have Senator John Cavanaugh's first appearance in front of the Judiciary Committee. Welcome, Senator Cavanaugh.

J. CAVANAUGH: Thank you.

LATHROP: You are free to open.

J. CAVANAUGH: Thank you, Chairman Lathrop. And this is my first appearance. I think I have 11 bills that are going to come in front of you this session, so we'll get very familiar. Good afternoon, Chairman Lathrop and members of the Judiciary Committee. My name is John Cavanaugh, J-o-h-n C-a-v-a-n-a-u-g-h. I represent Legislative District 9 in midtown Omaha. I'm here to introduce LB320, which expands the protections under the Uniform Residential Landlord and Tenant Act for victims of domestic violence. Acts of domestic violence are treated differently in many sections of our law than other crimes for a reason. Domestic violence is an intimate and it often happens in the home, leaving the victim not just physically injured but also psychologically. Victims no longer feel safe, nor are they safe in their home. This bill seeks to alleviate one part of the many problems facing victims of domestic violence, uncertainty in their housing. Under current law, the landlord has the right upon five days written notice to evict a tenant for criminal activity by, by the tenant or any other person under the tenant's control, or who is on the premises at the tenant's consent. However, if a person other than the tenant commits a crime on the premises and the tenant reports that activity to the police or seeks a protective order, restraining order, or similar relief, the landlord cannot use that crime as grounds for eviction. This bill would do two things as it pertains to this section. First, include other household members in the reporting section exemption, and add an additional reporting option in instances of domestic violence only. Currently, the exception only applies to the tenant. Other household members have no such protection. An example may be if the tenant's child is a victim of a crime while residing with a tenant. So even if the household member, child, reports the criminal activity to law enforcement or request a protective order and the tenant did not, the tenant and household member would be at risk of losing their home. In fact, the very act of

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reporting to law enforcement might make it more likely that they are evicted, which can and does lead to underreporting-- underreporting of crimes. Secondly, many victims of domestic violence are unwilling to report to law enforcement or seek protective orders out of fear of retaliation for their-- from their attacker. Under current law, if they do not, they could be evicted from their home because of the violence committed against them, rendering them homeless and allowing their attacker to victimize them, yet one more time. The current law also provides no mechanism for victims of domestic violence to be released from the rental agreement. So a tenant who escapes an abuser-- abusive environment may still be financially responsible even after leaving, which causes another opportunity for them to be victimized in this situation. LB320 seeks to address these shortcomings in the following ways. LB320 provides a definition of domestic violence for purposes of the Landlord Tenant Act as abused sex-- abuse, sexual assault, domestic assault, stalking, labor or sex trafficking, and knowing intentional abuse, neglect, or exploitation of a vulnerable adult or senior adult. It extends the existing protections of the law to household members defined as a child or adult, other than the perpetrator of an act of domestic violence who resides with the tenant. It provides a mean-- a means of certification of domestic violence with a qualified third-party nonprofit organization that provides services for victims of domestic violence and allows such certification as an alternative to a protected-- protective order or reporting to law enforcement. The form of certification is outlined in the public housing protections of Section 6 of the Violence Against Women Reauthorization Act of 2013. The third party as defined in LB320, would be a nonprofit domestic violence service provider. And it allows a tenant who is a victim of domestic violence or whose household member is a victim of domestic violence to obtain a release from the rental agreement upon at least 14 days but no more than 30 days written notice and documentation of protection order, restraining order, or other similar relief which applies to the perpetrator of the act of domestic violence or documentation-- documented certification by a qualified third-party domestic violence service provider. The tenant would also provide the names of any household members who are released in addition to the tenant. The tenant would remain liable for the rent of the month of termination, but would not be liable for rent or damages incurred after the release date or subject to any fees solely because of this termination. Other tenants would not be released from the rental agreement unless they

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were included in the tenant's request. This bill does not provide a blanket exemption for victims of domestic violence or give tenants carte blanche to terminate their rental agreement. It does not prevent the perpetrator of an act of domestic violence from being evicted or prevent a landlord from evicting a tenant for any other legitimate reason. This bill is designed for a very simple purpose to protect victims of domestic violence from losing their homes or risking their credit because they were victims of domestic violence. Thank you, Judiciary Committee. And I'd be happy to answer any questions you may have.

LATHROP: OK. I do not see any questions at this point in time.

J. CAVANAUGH: All right.

LATHROP: So we'll take proponents in a, in a moment.

J. CAVANAUGH: Thank you.

LATHROP: I just want to remind everybody of two things: we will take proponent testimony for 30 minutes and opponent testimony for 30 minutes if it goes that long; and remind those people and inform those who are testifying for the first time that we operate under a light system. Three minutes, you'll have a green light for two, a yellow light for one minute. And when the light comes on and turns red, please stop at that point. OK. With that, welcome.

JULIE LUBISI: Thank you. Good afternoon, Chairman Lathrop and committee members. I thank you for this opportunity to speak in favor of LB320. My name is Julie, J-u-l-i-e, Lubisi, L-u-b-i-s-i. I come before you today to share my deepest support for LB320 as a survivor of domestic violence. This bill provides immediate and long-term protection for persons experiencing domestic violence and their children. The central theme of this legislation is freedom. It paves the way for victims of domestic violence like me to safely leave an abusive situation without long-term financial consequences, nor the fear of not securing housing due to a tattered rental history. Unfortunately, I did not have the privileges that this bill would afford many victims and survivors in our state. Years ago, I made the decision to leave my daughter's father after being strangled and drug across the floor after one of his late night binge-- drinking binges. After he passed out, I quietly left with my daughter to seek safety. I

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called 911 in route to a safe destination. Although law enforcement could not locate my daughter's father, I knew that returning would not be a safe option. So I resigned from my job and fled the area to seek refuge. At the time, applying for a protection order and waiting for the wheels of justice to turn in my favor would have possibly left me vulnerable to further abuse by my father-- daughter's father, not to mention the continued disruption to the apartment community in which we were living. Upon safety, I contacted my landlord to explain my dire situation, yet they would not relieve me from my financial responsibility owed towards the remainder of my lease. The landlord said I was lucky that I was not being evicted, especially since my daughter's father left several holes in the wall from his episodic, abusive tirades. Being unemployed, I would have to forego paying the remainder of the lease for the time being. My decision to flee affected my financial status, which I worked diligently to grow and protect. At that point in my life, after earning baccalaureate and graduate degrees, I did not imagine that I would soon be filing for bankruptcy to address the debt owed to the landlord. The unpaid debt and negative landlord referral affected my ability to provide safe housing for my daughter and me. As you can see, the financial aftermath of my decision to flee for safety created a domino effect in my life. Often people across the economic spectrum will not have the ability to pay back the full amount of the remainder of their lease. It goes to collections, ruins their credit, and makes them high risk to new landlords and other forms of credit that our society deems as basic. Consequently, this does not help our economy nor the fabric of our human lives, but only disables economic opportunity-- opportunities for swathes of people and contributes to the cycle of violence by leaving families in unsafe situations. If you were in my shoes, what would you have done? It's a difficult one to answer, especially for those who are financially insecure and lack a viable safety net. This legislation ensures that people and their children do not have to continue to pay for their victimization long after their abuser is gone. Over half the states in our country have early release-- early lease termination laws that protect victims of domestic violence. By supporting this legislation, you will be supporting the future well-being of so many people and their children currently living in abusive situations across our state. Thank you for listening and considering my story. It's one of many.

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LATHROP: Thank you. Any questions for this testifier? I see none. Thank you for being here. I know these kind of opportunities to tell your story publicly are not easy. And so we appreciate you being here today.

JULIE LUBISI: Thank you so much.

LATHROP: Next proponent. Welcome.

CAITLIN CEDFELDT: Good afternoon. My name is Caitlin Cedefeldt, C-a-i-t-l-i-n C-e-d-f-e-l-d-t, and I'm an attorney at Legal Aid of Nebraska's Housing Justice Project and I have extensive experience representing low-income tenants as well as victims of domestic violence. Thank you for the opportunity to appear today in support of LB320. Unfortunately, Legal Aid of Nebraska's clients, often face-- that are facing housing issues are also often victims of domestic violence. Victims of domestic violence are four times more likely than their peers to face housing insecurity. This is because victims of abuse often live with their abuser or the abuse results in police attention, attention, disturbance of neighbors, or property damage. LB320 provides two points of improved protection for victims of domestic violence. First, it provides the ability to avoid eviction resulting from criminal activity if the act of the criminal activity is an act of domestic violence. Second, it provides the means to move out without severe financial repercussions from breaking a lease. These modifications protect tenants and their household members and are available to tenants regardless of whether they go to the police or file a protection order. In preparing this testimony, my colleagues and I recalled clients from across the state of Nebraska who would have benefited from LB320. One domestic violence victim we worked with was afraid to report that her abuser had assaulted her because her landlord threatened to evict her. If LB320 was passed, she would have been-- had that much more assurance that her landlord would not be able to evict her for the actions of her abuser. Another domestic violence victim from Omaha we recently represented was garnished for over \$4,000 in fees relating to having to leave a home for her and her child's safety. Had LB320 been a law when she needed to escape her abuser, our client would have been able to terminate her lease without the serious financial repercussions that she is now facing as she tries to rebuild her life. LB320 would have also helped another client in northeast Nebraska whose landlord used the threat of eviction to extract many concessions from her as she negotiated to stay in her

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home. This client was severely physically assaulted in the home by her abuser and would have had more leverage to negotiate with the landlord if she was not afraid of losing her family's shelter. I frankly could recount many more stories of victims who would have benefited from LB320. LB320 would provide needed assurance to anyone suffering from abuse that they cannot be penalized by their landlord for the actions of their abuser. And it will bring-- also bring Nebraska law into a-- more in line with the protections of the federal Violence Against Women Act, which, as it is now, only applies to public or federally subsidized housing. Legal Aid supports LB320. Thank you for this opportunity, and I would be happy to answer any other questions.

LATHROP: I do not see any questions this afternoon, but thank you for your testimony.

CAITLIN CEDFELDT: Thank you.

LATHROP: Good afternoon.

JENNIFER BULLINGTON: Good afternoon. My name is Jennifer Bullington, J-e-n-n-i-f-e-r B-u-l-l-i-n-g-t-o-n. I would like to thank you for this opportunity today to provide testimony in favor of LB320. I am the founder of Unbeatable Spirit, a group of survivors of trauma whose mission is to build up survivor leadership and be advocates for vulnerable women and children. I am a resident of Sarpy County and active with the Gretna Public Schools as a mother of six. I am also a survivor of domestic violence. I would like to share some of my story with you today. After having endured physical, sexual, financial, and emotional abuse for over a decade, I knew in order for my life and my children's lives to become healthy and healed, we could no longer remain living with our abuser. I had been cut off from my family for several years, but after another incident of violence where my abuser strangled me in front of my crying children, I secretly reached out to my brother to help us leave. I had no access to the family money since my abuser controlled it. So when my abuser left for work, my brother came and got me and my children. We all value safe and secure housing, understanding it to be a vital part of providing stability for Nebraska families. As a survivor, having been in this very situation, I see the problem of survivors being tied to the same living space as their abuser. I escaped from my abuser with my four young children, leaving all of my possessions and everything behind. We had to start all over with housing and the necessities of living. If I hadn't had

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this opportunity to leave, I'm not even sure I would be alive to testify to you today. Often survivors have small children just like I do, and risk homelessness in order to be free from their abuser. Women who have not been able to safely live in the same space as their abuser account for up to 57 percent of homeless women. When a survivor makes the decision to leave, it is almost always at the very last moment and with little notice. This bill provides protection, support, and hopefully a step up for survivors, which can provide them a way out without the fear of having nowhere else to go or having no money to do so. LB320 would allow survivors and their children to leave their abusive situation without having to be tied to their lease, thereby obtaining freedom from their abuser and providing a barrier to any further acts of violence perpetrated in the home. I firmly believe that you have an opportunity today to create legislation so that no women or children have to choose between freedom from violence or homelessness. I would like to ask you to vote yes on LB320. Thank you for your time today.

LATHROP: OK. I do not see any questions for you, but thanks again for coming in.

JENNIFER BULLINGTON: Thank you.

LATHROP: Appreciate hearing from you. Next proponent. Good afternoon.

KATIE WELSH: Good afternoon. Chairman and committee members, thank you for this opportunity. My name is Katie Welsh, K-a-t-i-e W-e-l-s-h, and I'm the legal director with the Women's Center for Advancement. We are a nonprofit organization that serves survivors of domestic violence and sexual assault in Omaha, Nebraska. We're proud members of Nebraska's Network of Domestic Violence and Sexual Assault Programs through the Nebraska Coalition to End Domestic Violence. I'm here today to express the WCA's support for LB320 and want to share an experience we had while serving a survivor of domestic violence. For purposes of this story, the survivor has asked me to refer to her as Brandy. Brandy called my office a few months ago and explained to me that she no longer felt safe in her apartment. She asked if I had any advice about how to talk with her landlord about her lease. She went on to explain that she had recently been physically assaulted by her abuser in her own apartment. She lived in this apartment alone, but the abuser knew its location. He had consistently contacted her by phone and in person leading up to the attack. And none of her attempts

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to ask him to stop and to go their separate ways were successful. The night of the attack, another tenant opened the door to the building for him without her knowing. He banged on the apartment door until she answered. In an attempt to get him to leave and not disrupt her neighbors, she came to the door and pled with him to leave her alone once and for all. He refused and an argument ensued, which quickly became physical. He slammed her to the ground, causing serious injury to her back. During the course of our conversation, Brandy went on to explain to me how she followed up on the situation by immediately reporting the incident to police and applying for a protection order. However, her abuser continued contacting her in direct violation of her protection order. She knew how easy it was for her abuser to gain access to the building and thus informed her landlord of the attack. Resulting from her abuser's unrelenting quest for control, she believed there was little to be done to make her feel safe in the building, which is why she decided to call me and my colleagues at the WCA for assistance. I advised Brandy that unfortunately there are no statutory remedies for her situation. All she could do was make a personal appeal, appeal to her landlord and hope for the best. Since Brandy did not have the benefit of remedies offered by LB320, Brandy paid the remaining six months on her lease and moved out. She had to relocate to Texas to receive treatment for PTSD. But despite her geographic separation, her abuser persisted. She believes he would still be reaching out to her today had he not been arrested and convicted of another crime. Existing laws allow survivors to report domestic violence to law enforcement or obtain a protection order, but neither was enough to keep Brandy safe. She utilized every safety tool available to her, yet her abuser presented a constant threat until she moved out. Brandy's circumstances are not unique. We received these calls from survivors in the same situation on a weekly basis. None of them should have to compromise their safety just because they do not have the financial resources to pick up and go. Without the protections offered by LB320, survivors will effectively be punished for the behavior of their abusers and subjected to further trauma. Therefore, we at the WCA, on behalf of survivors, ask that you support LB320 and advance it out of committee. Thank you.

LATHROP: OK. I do not see any questions at this point, but thanks for being here, Ms. Welsh.

KATIE WELSH: Thank you.

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LATHROP: Other proponents? Good afternoon.

RYAN SUMP: Good afternoon again, Chairman Lathrop, members of the committee. My name once-- one last time, is Ryan Sump, R-y-a-n S-u-m as in Michael -p as in Paul. I am a volunteer attorney with the Nebraska State Bar Association's Tenant Assistance Program, but I am just speaking today in an individual capacity. I'm lucky, I'm lucky enough that I have never dealt personally with any, any of the violence described in this bill personally, but I have, I have seen people who have been, you know, victims of this kind of violence and have-- face consequences from their landlords as a result, during my time with TAP, and I felt that I should try to share their stories a little bit if I can. I have seen women who have been threatened with five-day eviction notices for violence that happened in their homes. And I have seen women who have been served with five-day eviction notices based on violence in their homes. They were not perpetrators either time, but they were still either threatened or actually served with these notices. Additionally, I have seen-- I, I was witness to a case where a land-- where a landlord freely admitted that he had-- I should say, that the landlord had freely admitted that they had gone searching for a reason to evict the woman in question that we were representing, not necessarily because she was a bad tenant or she had done anything wrong, but because the landlord and everyone who lived around this woman were scared of her abusive boyfriend. And were worried that one day, they-- excuse me, and they were worried that one day, instead of someone walking into the apartment to find her, they would walk instead to find a body. There, there, there have been, you know, so many, so many stories shared by everyone today, and I hope, I, I hope that all of you can agree that this-- that, that the protections that this bill are seeking to codify are not just purely academic protections-- are not purely academic, you know, scenarios, protections, anything like that. They are happening. They're happening now and I-- you know, frankly, just don't think it's right, and I hope that this committee will agree and that this bill can hopefully be passed. Thank you.

LATHROP: OK. Senator Brandt.

BRANDT: Thank you, Chairman Lathrop. Thank you, Mr. Sump, for testifying. I guess I'm a little confused. I read the bill and it appears that the bill is to allow a victim of, of these atrocious acts,--

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RYAN SUMP: Yes.

BRANDT: --you know, that I think everybody here can agree upon to get out of a long-term lease--

RYAN SUMP: Yes.

BRANDT: --so that they are-- so if they have five months left on the lease, the, the language basically says, and, and it needs to be tightened up a little bit, but it basically says they have to pay the rest of the month and then they would be relieved of their lease. But now you're talking about a situation where somebody got evicted with only five days notice, which is sort of the opposite of what the bill is, is doing here. So, I mean, you're in support of this bill as it's written?

RYAN SUMP: Yeah, yes, I am, Senator. And I'm, I'm-- I, I, I apologize if I have sort of mixed up--

BRANDT: OK, well, you were telling a story about how the landlord evicted this individual. They had five days to clear out.

RYAN SUMP: Yes.

BRANDT: And, and because of the domestic violence and this is, this is sort of the opposite of that. So are we making, are we making landlords hold the bag for domestic violence with this in a way or not? I mean, should--

RYAN SUMP: I--

BRANDT: If, if, if the, if the contract was between a man and a wife and there was a situation, as has been outlined, shouldn't the husband be held liable on the lease also?

RYAN SUMP: Just, just to be clear, you're referring to a case where--

BRANDT: Where you have where--

RYAN SUMP: Where--

BRANDT: Yeah.

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RYAN SUMP: --where there's a husband and a wife and the husband is
abusive to the wife?

BRANDT: Yes. Yes.

RYAN SUMP: And I'm, I'm sorry, could you just kind of--

BRANDT: Well, and then I guess the previous testifiers testified that
the woman had to pay four or five months back rent and, and all this
stuff. And I don't think any reasonable person would want to see that
happen if they have to flee for their life or, or their kids' life.
But are we-- if they had a contract, if they both signed a contract to
rent a house or an apartment,--

RYAN SUMP: Sure.

BRANDT: --wouldn't the law go after that husband? Why are they going
after just the woman? I guess that's what I don't understand.

RYAN SUMP: Oh, you, you, you mean why are-- why, why, why is the
landlord seeking eviction against the woman?

BRANDT: Yes. Yes.

RYAN SUMP: Well, I guess, I guess I can't speak to the, you know,
individual reason why it happened in kind of the case I was referring
to. I guess I would say generally my guess would be in a situation
like that, it would be because, you know, if, if, if, if they were to
go after the woman or whatever party was being abused, shouldn't
probably-- shouldn't just say women, but if they go after the party
that is being abused, my-- just generally, I would guess maybe they're
doing that because they're, they're less likely to, I don't know,
destroy the premises or something, but I, I, I honestly don't think I
can really speak--

BRANDT: Maybe a better way for me to phrase my question. Is there no
remedy in law today to address this situation?

RYAN SUMP: There are. There-- I, I, I, I think I would say there are,
there are. I mean, that the landlord could probably, you know, give
the husband for, for example, a five-day eviction notice or something
like that kind of in the scenario that you're speaking of. So sure,
there certainly are options that, that currently exist. But I, I guess

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I would say I think this is still important to pass because it just gives some more, some more options and, you know, a little, a little more flexibility for all of the parties to kind of figure out what to do, if that makes sense.

BRANDT: OK, thank you.

LATHROP: I do not see any other questions. Thank you for being here today.

RYAN SUMP: Thank you.

LATHROP: Anyone else to testify in support? You know this is support.

GENE ECKEL: Yes.

LATHROP: OK.

GENE ECKEL: That sounded bad. Senator Lathrop,--

LATHROP: Welcome back.

GENE ECKEL: --members of the Judiciary Committee, this-- my name is Gene Eckel, G-e-n-e E-c-k-e-l. I'm a board member for the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. We are here -- we support the intent of this bill. We do want to speak with Senator Cavanaugh just to get some clarification and to maybe talk about some of our concerns. But overall, we support the intent. You know, it looks like this is just applying the protections on the Violence Against Women Act that only applies to properties that are receiving funds from HUD or the, or the public housing agency. So we understand the concept of it. But I just wanted to say that we're not opposing it. We had some questions, but we do support the intent of it.

LATHROP: OK.

GENE ECKEL: Any questions?

LATHROP: I don't see any.

GENE ECKEL: Thank you.

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***MICHELLE WEBER:** Chairman Lathrop and members of the Judiciary Committee: My name is Michelle Weber, and I am testifying on behalf of the Nebraska Coalition to End Sexual and Domestic Violence to express our support for LB320. The Nebraska Coalition is a nonprofit organization providing technical assistance and training related to domestic and sexual violence. Our membership includes nonprofit organizations that provide support services to victims of domestic and sexual violence. Paid employees and volunteers associated with domestic and sexual violence service providers are currently authorized by HUD regulations to certify that an individual receiving public housing assistance is a victim of domestic violence in order to receive federal protections available to victims. LB320 actually provides a more restrictive approach to who is authorized to certify than is currently allowed by this federal regulation. 24 CFR5.2007(b)(1) allows the certification to be completed by a victim service provider, an attorney, a medical provider, or mental health provider. LB320 allows a victim of domestic violence, as the bill defines the term, to seek certification from only a nonprofit victim service provider. LB320 is a significant piece of legislation that seeks to enhance victim safety. Nebraska Revised Statute 76-1431 currently allows a landlord to terminate a rental agreement by providing 5 days written notice to a tenant when certain crimes are committed on the property. While domestic and sexual violence are not explicitly identified, these crimes by definition would fall within this statute. This statute does provide a victim limited protection from the 5-day termination process if the victim either reports the crime to law enforcement or seeks a protection order. Unfortunately, 76-1431 fails to recognize that victims may in fact become less safe when reporting domestic or sexual violence to law enforcement or by seeking a protection order. In fact, the current pandemic has had a significant impact on the ability of victims to do either of these things. During 2020, after the start of the pandemic, the Coalition heard from several individuals who were told that law enforcement was not responding to calls related to domestic violence or violations of protection orders because the agency was not making arrests due to COVID-19. Victims and advocates expressed frustration and noted the impact these policies were having on victims. Others were calling to express difficulties obtaining or renewing protection orders during the last year. Courts across the state implemented emergency rules related to the pandemic, creating confusion for victims. Victims and advocates expressed concern over the ability to have their application

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for a protection order notarized. Businesses that usually offer notary services, such as banks and insurance agencies, were closed to the public. Even when a protection order form could be notarized, victims faced uncertainty when leaving their protection order in a drop box. These examples suggest that the current requirements in 76-1431 are insufficient. Additional ways to access relief from a 5-day termination of their rental agreement need to be added to the law. Allowing a third-party certification by an advocate within a nonprofit service provider agency would help survivors facing an eviction. LB320 also addresses a concern shared by victims who are unable to leave a leased home and share the experiences of two clients of Voices of Hope, located right here in Lincoln: Lindsey, an advocate, shared the stories of two individuals she had worked with. One individual had reached out to the crisis line at Voices of Hope. This caller told the advocate that she had been held hostage by her boyfriend, who physically assaulted her, strangled her, and broke her phone. When the victim was finally able to get free and end the relationship, she determined that the only way she could be free was to move away from her former boyfriend. She contacted her property manager and was told that she would be held liable for any unpaid rent unless the boyfriend agreed to release her from the lease and take responsibility. This individual was trapped and forced to return to the home where she continued to experience abuse. Lindsey also shared the story of another victim who would benefit from LB320 becoming law. This survivor was in a relationship and living with the father of her child. He became emotionally and verbally abusive after the birth of the child and over time the abuse became physical. She asked her boyfriend to leave their apartment, but he refused and said that it was his apartment too. This individual ended up moving out of the apartment and the landlord began eviction proceedings due to the noise caused during the abusive incidents. The landlord informed her that since the victim was on the lease she would be evicted too. As a victim of domestic violence, this individual is classified as homeless or near homeless by federal housing definitions. With an eviction on her record that could have been prevented, had she been able to terminate her rental agreement, this woman and her child are unable to find a place of their own. LB320 is an important bill. It provides victims of abuse with alternatives that reduces the risk of eviction by providing for a third-party certification of abuse and by allowing the victim tenant an opportunity to terminate the lease. The Coalition

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to End Sexual and Domestic Violence urges you to support LB320 and
advance it to the floor for further debate.

***ELENA SALISBURY:** Dear Chairman Lathrop and Members of the Judiciary Committee, thank you for the opportunity to submit my testimony today. My name is Elena Salisbury and I live in legislative district 27 in Lincoln. I am writing in support of LB320, which would be an important step in Nebraska's commitment to protecting survivors of domestic violence. Throughout my career as a clinical social worker, I have spent years working with survivors of domestic violence. There are many circumstances that trap people in abusive relationships, and many of these circumstances are financial. Abusers often spend years trapping their victims through subtle financial manipulation until they are unable to financially extricate themselves from the relationship. Whether tied together by children, a joint bank account, or a lease, survivors frequently feel that they have no chance to escape their abuser. It is critical that we allow those experiencing domestic violence to be released from a lease without penalty. This will help ensure that survivors are never forced to remain in an unsafe home because they are unable to break their lease. In addition to allowing survivors to be released from their lease without penalty, LB320 also provides protection from eviction. Currently, the Violence Against Women Act protects survivors of domestic violence from eviction related to their abuse if they live in housing that receives federal funding. Passing LB320 is necessary to extend protection to all survivors in Nebraska, regardless of if their housing is funded by the federal government. Evicting survivors of violence revictimizes them and throws their world into even more chaos. It is our duty to protect Nebraskans experiencing violence, not to contribute to their instability by evicting them from their homes. The current pandemic has exacerbated housing insecurity for survivors of domestic violence and trapped them in unsafe homes with their abusers. Data shows that, while intimate partner violence has not decreased, calls to services have decreased by nearly 50% in some areas. This means that victims have been unable to safely connect with services because they have been stuck inside with their abusers. This is just one way that the pandemic has increased safety risks for people experiencing violence at the hands of their partners. On average, nearly 20 people every minute are physically abused by an intimate partner in the United States. One in four women and one in ten men will experience intimate partner violence in their lifetime. This violence takes many forms and

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can be physical, emotional, sexual, or psychological. Economic instability, lack of stable childcare and social support, and unsafe housing all increase the risks for victims of domestic violence. Economic independence is a critical piece of violence prevention, and the pandemic has exacerbated victims' financial entanglements with their abusers by causing increased job loss and unemployment. Necessary public health restrictions to combat the spread of Covid-19 have also meant less access to alternative sources of housing such as shelters. Survivors of intimate partner violence already face enough obstacles. I encourage you to support LB320 and send a message to survivors that Nebraska cares about them and will protect them. Thank you for your time.

***KELSEY WALDRON:** Dear Chairperson Lathrop and members of the Judiciary Committee, the Women's Fund testifies in full support of LB320, providing greater protections to survivors of domestic violence in their rental units and promoting their housing security. As an organization advocating for freedom from violence, we understand safe housing to be a critical step in ensuring immediate protections for survivors of domestic violence. Economic stability is a primary barrier for individuals leaving an abusive relationship and economic hardship can continue long after the abuse ends. 99 percent of survivors of domestic violence will experience economic abuse from their harm-doer, including controlling one's ability to work, controlling how money is spent, limiting access to bank accounts or banking decisions, accumulating debt in the survivor's name, and more. For many reasons, ranging from economic abuse to gaps in our Landlord Tenant Act that penalize victims for violence inflicted upon them, survivors of domestic violence are more likely to experience housing insecurity. In fact, survivors of intimate partner violence are 4 times more likely to experience housing instability, and nearly half or all homeless women report that their homelessness is the direct result of domestic violence. Where survivors may already face economic uncertainty, our laws should work to minimize housing insecurity experienced as a direct result of violence. Presently, our statute threatens to perpetuate this form of abuse, evicting survivors of violence as a direct result of the violence they have experienced or keeping them in unsafe homes without the option for early termination of lease. This bill does not prevent eviction for nonpayment of rent, but it does work to prevent further perpetuation of housing insecurity as a direct result of violence someone has experienced. A 2005 study of housing

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advocates assisting domestic violence survivors found that 1 in 10 evictions and 1 in 4 future housing denials were the direct result of domestic violence experienced by the tenant. The three most common reasons for these evictions were calls to police for emergency assistance from violence, a harm-doers behavior or crime violating the lease, and a victim obtaining a protection order. Survivors are often denied future housing applications when identified as a domestic violence survivor due to landlord discrimination and stigma surrounding survivors in rental agreements. LB320 addresses one of these primary concerns, ensuring someone cannot be evicted for violence experienced when their harm-doer violates a lease through behavior and crimes committed. This bill additionally expands forms of documentation accepted to access such protections, allowing for certification from a domestic violence advocate. This practice is more trauma informed, recognizing that there are a multitude of reasons someone may not immediately wish to engage in the criminal legal system. Even for those ultimately wishing to report to law enforcement or seek a protection order, securing safe housing may be a necessary precursor to such engagement in the criminal legal system. The most dangerous time for a survivor of domestic violence is when their abuser feels a loss of power and control, and thus escalates violence. Often, this process coincides with, or is initiated by, contact with law enforcement and protection services, such as obtaining a protection order or reporting domestic violence to law enforcement. Even for survivors who wish to engage in these processes, obtaining immediate safe housing prior to doing so may be critical to remaining safe given likelihood in escalation of violence. By including certification from an advocate as a valid form of documentation, LB320 allows a survivor to ensure safety of housing prior to criminal legal engagement or without such engagement. Equally important to ensuring a survivor maintains housing stability in the aftermath of violence, is ensuring the safety of the housing situation. For some, safety may require a new housing arrangement and early termination of a lease. LB320 would allow a survivor to do so, ensuring their own safety and the safety of their household members without assuming undue economic hardship. LB320 is critical to preventing the revictimization through eviction of survivors, while also ensuring a survivor is never forced to remain in an unsafe home through undue burdens in lease obligations. To better support survivors of violence, the Women's Fund respectfully urges support of LB320 and advancement of this bill to General File.

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LATHROP: Thanks for being here. Anyone else to testify in support? OK,
we'll take opposition testimony next.

LYNN FISHER: Senator, I'm here as a neutral.

LATHROP: OK. Anybody here to testify in opposition? OK. Neutral
testimony.

LYNN FISHER: Lynn Fisher, L-y-n-n F-i-s-h-e-r, and I'm on this bill
not representing our association, I'm here on just my personal behalf.
As a landlord, I would, of course, always try to help the victim of
domestic violence as much as possible, let them out of a lease, do
whatever I could to help them. And have no problem with, with that.
And I-- Senator Brandt, I think your concern is one, too, that I would
have. And that is I would like to be able to bifurcate my lease in the
case of a married couple where the victim is left responsible for
damages and for whatever else that we can have to support the
obligations of the lease. And it would be great if we could do that
somehow. I don't know if this, this bill would have that provision, if
you could change it in such a way that that would be, that would be
helpful. We do have the clear and present danger part of it. Landlord
Tenant Act was passed, what, three or four years ago, that would allow
us to have a violent person or even someone doing drugs if they are
reported by someone else in the household. And I, and I think that's
one thing that would, would have to be maybe also put-- made clear in
this bill that if the victim actually makes a report to the police,
it's helpful for us to be able to utilize that clear and present
danger five-day notice provision. And so that's really important. So I
think the intent of the bill is great, but I'm neutral because I'm not
sure about how this would affect our ability to collect for damages
and to bifurcate the lease on a married couple. So any questions?

LATHROP: None. Oh, I'm sorry.

BRANDT: Really quick question.

LATHROP: Senator Brandt.

BRANDT: Would you be willing to work with Senator Cavanaugh--

LYNN FISHER: Absolutely.

BRANDT: --to clarify that?

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LYNN FISHER: Absolutely.

BRANDT: OK.

LYNN FISHER: Yeah.

BRANDT: Thank you.

LYNN FISHER: Thank you.

LATHROP: That was going to be my statement, too. All right. Thanks for
being here. Any other neutral testimony?

DOUG LANE: Doug Lane, L-a-n-e. I just want to ask one question here
regarding protections for the landlords, sometimes you find yourself
in the middle of a husband and wife squabble. I found myself in that
position about a year ago. Got a phone call, it's a duplex, the
neighbor-- the other half called, hey, they're fighting next door. So
I finished dinner, went over there and, gosh, the husband on the other
side is stone drunk, drinking vodka, smoking-- chain smoking. And I
found out later after at least to this individual, he actually burned
down, burned down the last apartment complex that he lived in. He
started-- he was the one responsible for a fire and burned down,
burned down an entire section of this apartment complex. And he is
just drunk, drunk. And the wife, I felt sorry for her, her heart was
still with him, but knew, and-- but her parents were not so much. And
yeah, she was in a bad spot. I really felt bad for her. But he, was he
was no good to anybody in the condition he was in. And he had
reverberated back to his drinking habits. And again, there's a young
family with little kids on the other half of this duplex. And I say,
well, you need, you need to leave tonight. You need to leave now. I
had to kick him out right then and there. And if it was going to
become a physical altercation then that's what it was going to be. And
I wasn't sure what my liabilities might be from a legal standpoint,
but I was kicking him out right then and there because I wasn't going
to wake up the next morning to find out something had happened. So
anyway, I would like to see some liabilities for landlords who have to
step into a situation like that.

LATHROP: OK.

DOUG LANE: Thank you. Any questions?

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LATHROP: I see no questions. Thanks for testifying.

DOUG LANE: All right. Thank you.

LATHROP: Anyone else in a neutral capacity?

PIERCE CARPENTER: Good afternoon, my name is Pierce Carpenter, P-i-e-r-c-e C-a-r-p-e-n-t-e-r. Initially, I was kind of opposed to this, but I've kind of taken a different position. I guess my-- I only have one concern. And when I read it, it seemed somewhat vague in how the determination that a domestic violence event had occurred or some criminal event. I just-- I would like it written so that if there's a way of clearly certifying that a domestic violence has actually occurred. I know, I know we have this, this thing going on with the comfort animals and for \$179, you can go out online and you can have a remote psychologist certify that it's your comfort animal. So now, you know, we've got Dobermans staying in my house. And I just think something like this, if it's not written right, might be involved into something like that. That's my only comment. Any questions?

LATHROP: OK. We have that bill coming up this year again on comfort animals. I don't see any questions.

PIERCE CARPENTER: Thank you.

LATHROP: Thank you. Anyone else to testify in a neutral capacity? Seeing none, Senator Cavanaugh, you may come to the chair and close. And as you do that, I will read into the record that we have 17 position letters that have been provided all in support. We have three testimony provided that will be included in the record, the first one's from Michelle Weber with representing Nebraska Coalition to End Sexual and Domestic Violence. She is a proponent. Also a proponent is Elena Salisbury, representing herself, that's S-a-l-i-s-b-u-r-y. And finally, Kelsey Waldron, W-a-l-d-r-o-n, Women's Fund of all Omaha, has also provided testimony as a proponent, and that will be included in the record. With that, Senator Cavanaugh, you are welcome to close.

J. CAVANAUGH: Thank you, Chairman Lathrop. And thanks again, members of the Judiciary Committee. I appreciate your time and attention today. I know it's been a long day already and I appreciate your diligence. There are a couple of questions raised during the neutral testimony, in particular. Well, first off, I'd just like to say I, I

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think-- I really appreciate the testifiers who came here today. I know it was hard for a lot of them to come and tell those stories, and I appreciate them putting that personal stake in the game that's going to help people down the road that face the same issues that they have faced. And I believe it was Mr. Sump pointed out, I think that was his last name. Sorry. This is something that would have a real effect on people's lives. This is not an academic question. And so I think it's important to consider. I do appreciate the neutral testimony. And I'll just take the kind of questions that came up in reverse order because I just happened to have them written that way. As to the certification process, so what this bill does, there's already an exception under the law for when the victim of, of domestic violence or any crime reports to law enforcement or obtains a protective order. What this bill does is adds a third outlet, which is by getting certified that they, that they are the victim of domestic violence from a certified nonprofit domestic violence provider as defined and as licensed under the Violence Against Women Act 2013. There is a-- I have-- I can show you the format. I didn't bring a copy of it, but there is a robust process that they will have to go through. So this is-- there's not really a risk of some sort of fly-by-night institution standing up to issue certifications of domestic violence. So that-- that's to address that question. As to, I believe was Mr. Fisher's concern, there is in the statute, I can just tell you the language says: other tenants who are parties to the rental agreement other than the household members of a tenant released under the section are not released pursuant to the section from their obligations under the rental agreement of the Uniform Residential Landlord Tenant Act. What that is intending to say, at least, and what I think it does say is that if the-- any other tenants, parties to the lease are not released from the, the-- of the lease as a result of this, unless expressly asked by the victim in this case. So that would mean that the in the circumstances he was addressing would be the assailant would not be released under this. But it could also mean roommates who were not of the child of the victim were in that household relationship. So I do think that addresses that. However, I will plan to visit with them to make sure that that alleviates that concern. And if we have to address it further, we will certainly do that. And Senator Brandt, I think you had a question, I didn't know-- that was kind of along those lines, but it's a-- well-- so the, the statute-- this bill is seeking to address two concerns. So I think that kind of where it got muddled is the one concern is it's expanding that original exception, protection

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for victims of domestic violence and just victims of domestic violence so not other crimes. This is creating a new method for victims of domestic violence to substantiate that they are victims. Because normally, if you're a victim of a crime, you would report it to law enforcement or get a protective order. Domestic violence is different than a lot of other crimes in the, the intimate sense of the crime, which means that the victims often have other concerns that they don't want to go to law enforcement. So this creates a substantiatable outside of the law enforcement mechanism that allows people to report which then they can use to shield themselves in that situation. It-- it's to create, to create that extra outlet in this particular circumstance, does not apply to drug or alcohol or theft crimes or other violent crimes. So that's, that's the one section. The other section where I think that you were addressing is this one where it creates a protection then for domestic-- victims of domestic violence, where they can get out of the lease, because in those instances where they want to get away from the attacker or if they need to move and change-- a change of situation. And that doesn't-- obviously, there's some cost associated with it, but it does create a very reasonable, laid out method by which you can obtain that release. Which is, again, this reporting to law enforcement, this protective order, or the certification. Then there's the minimum 14 days notice and you have to pay for that last month, of which you're living there for at least 14 days, but no more than 30 days. So it does give the landlords notice and opportunity to, to turn that apartment over to a, a new tenant after the fact. So I think it's a reasonable compromise that creates a new-- a needed protection for victims of domestic violence. It will help people that are having trouble in real situations. And I think I've addressed all of the questions. And so I would ask you to, to vote this out of committee. And if you have any other questions, I'm here for you.

LATHROP: I do not see any other questions. Thanks, Senator Cavanaugh. That wasn't so bad, was it?

J. CAVANAUGH: No, it was fun. Thanks for having me.

LATHROP: Good, good, good, good, good to have you here.

J. CAVANAUGH: We'll see you--

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LATHROP: That will close our hearing on LB320 and bring us to LB128.
And once again, we'll see Senator McCollister.

McCOLLISTER: Chairman Lathrop.

LATHROP: Welcome back.

McCOLLISTER: All of the other committees have adjourned for the day.
Before session, Senator Lathrop invited me to participate on the
Judiciary Committee and I declined. That was a wise decision.

LATHROP: We're all volunteers.

McCOLLISTER: Yes, indeed. Good afternoon, Chairman Lathrop and members
of the committee. I am John McCollister, J-o-h-n
M-c-C-o-l-l-i-s-t-e-r, and I represent the 20th Legislative District
in Omaha and today I'm introducing LB128. Everyone can agree that a
person's home is a sacred place. Unfortunately, due to many tragic
circumstances, some Nebraskans have been faced with losing his or her
sacred place in the last year or so. The U.S. Census Bureau
household-polled survey is an important instrument to measure how the
pandemic has affected current housing conditions. The most recent
polling data from Nebraska indicate a total of 22,242 respondents mark
that they are in renter-occupied housing units and are not current on
rental payments. Of these people, over half noted they are somewhat
likely to face eviction in the next two months. LB128, the Clean Slate
bill is a strong effort to protect every one of these people from
future housing insecurity. While it's safe to assume that some of
these tenants will be evicted with cause, I would argue that it's
equally safe to assume that the bulk of those facing eviction are
hardworking individuals who have temporarily, temporarily fallen
victim to bad luck. As so many have recently. Records of an eviction
proceeding are often the first disqualifier when tenants seeked new
places to rent. Even so, no writ of restitution is issued to the
property owner or the court dismisses the eviction proceeding, it
remains on the tenants record indefinitely. This means tenants who may
have never been evicted may have a record of an eviction proceeding
that was brought against them. The residential tenant Clean Slate Act
gives renters the opportunity to clear their record. Another crucial
thing this bill accomplishes, accomplishes is allowing tenants the
option to petition the court for a clean slate relief for a previous
eviction proceeding. This applies specifically to tenants who have a

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previous eviction proceeding that did not end in conviction and also applies to tenants that were evicted and three years had passed since their last eviction. This process involves all those involved in the eviction proceeding and would allow landlords 30 days to provide objections to any such petition. I urge the committee to advance LB128 to the floor so we can give renters an opportunity to clean the slate regarding blemishes on their rental histories. Thank you, Mr. Chairman. Happy to take any questions.

LATHROP: OK. I do not see any questions at this point, Senator McCollister, but perhaps after the testimony's been received, people may.

MCCOLLISTER: I, I think I will not stay for closing.

LATHROP: OK. OK, that's fine.

MCCOLLISTER: Thank you.

LATHROP: We will take proponent testimony next. If you are here to testify in support, you may come forward. Welcome.

SARAH O'NEILL: Good afternoon, Chairman--

LATHROP: Good afternoon.

SARAH O'NEILL: --Chairman Lathrop and members of the committee. My name is Sarah O'Neill, S-a-r-a-h O-'-N-e-i-l-l. I am a law student at the University of Nebraska College of Law. I am testifying in support of LB128, as a citizen and not on behalf of the university. The coronavirus pandemic has resulted in shocking unemployment numbers and severe hardship for millions. The impacts of the pandemic and the economic fallout have been widespread, but are particularly prevalent among black, indigenous, and Latino households. These disproportionate impacts reflect harsh, long-standing inequities, often stemming from structural racism in education, employment, housing, and healthcare that the current crisis is only exacerbating. Hardworking Nebraskans who were laid off or who have had their hours drastically reduced in the middle of this health crisis are struggling to put food on their tables and keep a roof over their heads. Although homeowners with mortgage payments have been protected during the pandemic, tenants have been expected to keep up with rent. And when they are not-- when they cannot, they are evicted. A process that takes only a few days

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but will leave scars that lasts a lifetime. In an effort to combat this very situation, the Centers for Disease Control attempted to temporarily halt evictions for nonpayment of rent. Unfortunately, landlords have found ways of getting around the CDC eviction moratorium by alleging the eviction is for a reason not covered by the CDC order, despite the underlying reason being that the tenant has fallen behind on rent due to the pandemic, which is clearly covered. As a result, thousands of Nebraskans now have an eviction on their record at no direct fault of their own. They, they did not cause this pandemic. They did not ask to be laid off and they did not choose to fall behind on rent or to be evicted. The shadow of an eviction on their record will loom over tenant for years, years and years after the pandemic is a thing of the past. Unfortunately, its effects will remain persistent, continuing to impact their economic mobility. Adopting the Residential Tenant Clean Slate Act would prevent the rippling repercussions of this difficult time from harming Nebraskans and their family's future access to clean and affordable housing for the rest of their lifetimes. Thank you.

LATHROP: OK. I don't see any questions. Thank you for being here, Ms. O'Neill.

SARAH O'NEILL: Thank you.

LATHROP: Next proponent. Good afternoon.

ABBY KUNTZ: Good afternoon, Senators. My name is Abby Kuntz, A-b-b-y K-u-n-t-z. I'm an attorney for Legal Aid of Nebraska with the Housing Justice Project, and I have experience representing low- income tenants. Thank you for providing me with the opportunity to appear before this committee today in support of LB128. When working with my clients through their housing issues, I consistently come across one recurring theme when making long-term plans for my tenants, rental histories that are burdening my clients' ability to secure safe, stable, and affordable housing. For this reason, we support the passage of LB128, which would much improve the ability for our tenants to secure housing with either clarified and/or clean rental history. Simply having an eviction filed against a tenant, even if the case never actually results in the actual eviction, can still be detrimental to tenants applying for new housing. This is because no matter the outcome of the eviction filing, it still can appear on their record. Unless the prospective landlord reviewing the record is

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specifically knowledgeable or diving into the deep details of each and every case, they may not be able to distinguish between cases that were dismissed, settled, vacated, or etcetera versus cases that the tenant actually resulted in an eviction and lockout. It is very common for tenants to be sued and not actually evicted. One of these reasons is because tenants are able to appear and assert a defense that results in the case getting dismissed. However, the vast majority of tenants I represent are able to work out settlement agreements with their landlords in order to avoid that eviction. When tenants are successful in completing their terms of the settlement agreements, this is not reflected in their records. Instead, it still appears as an eviction, despite their cooperation with their previous landlord. When the eviction filing does not actually end in eviction, there is no reason why a tenant should be-- continue to be burdened by that on their rental history and therefore creating a permanent hindrance in renting in the future. As Nebraska law is written now, tenants must contend with negative rental histories, even if they were never actually evicted. Lawyers in my office frequently have to write letters on behalf of tenants to prospective landlords trying to explain that their clients weren't actually evicted as a result of the filing and therefore it shouldn't be something that they should be concerned about in reapplying. I frequently hear from clients that have this difficulty renting because of the eviction filing that appears just by their names being searched. As we know this last year has shown numerous ways tenants can end up being evicted due to circumstances well beyond their control. But even if a tenant is evicted based on fault, whatever the reason may be, a tenant should not have to carry that weight of that eviction around for years and years to come. Tenant-- tenants deserve a fresh start. We've already seen the passage of similar laws related to criminal records, which do recognize the importance of an ability for a Nebraskan to start anew and be able to move forward. Tenants should be afforded the same opportunity in their ability to secure safe, stable, and affordable housing. The passage of this bill would provide tenants with that opportunity to regain control of their rental history and, and provide for accurate reporting of what results from their eviction filings. Legal Aid of Nebraska supports the passage of enactment of LB128. Thank you again for this opportunity to speak before you, and I'd be happy to answer any questions at this time.

LATHROP: OK. Senator Geist.

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GEIST: Yes, I'll make this short. I-- my concern about this that I see is just the landlords need to know and how do you balance that? What I see here is, is a little bit more skewed than what I'd like to see, which respects both sides of this issue. I see what you're trying to do in support of this bill, but are there some other practical ways besides simply changing the law in this case that someone could, for instance, attach a resume and have an explanation of their past history? Or is there something that, that could be done in this bill that balances the rights of both sides, I guess, the need to know for the, the landlord versus the need to move forward with the tenant?

ABBY KUNTZ: I understand the need to know for landlords of who they're about to rent to. But even in the cases that result in a-- or the cases where you wait three years to have an eviction be sealed, I, I don't believe that anything of an eviction older than three or four years should be something used against, against a tenant in a present. Three to-- three years is a long time. Circumstances change. So I guess the bill as is, I do think does provide for that need to know for landlords. Obviously, if they've had a slip up in the last three years, that should be telling to a landlord. But after three years, I think that gives a tenant plenty of time to regain control of whatever reason they may end up being evicted.

GEIST: OK, thank you.

LATHROP: I do have a question for you, and if you can't answer it, hopefully one of the folks that'll come up after you can. Not that I don't think you can, but do you have a copy of the bill in front of you?

ABBY KUNTZ: I do not.

LATHROP: OK, well, on page 3, it says, "If an objection is filed."

ABBY KUNTZ: Yes.

LATHROP: So this is somebody that actually got evicted and now they want, they want to get a clean slate.

ABBY KUNTZ: Correct.

LATHROP: It says, "If an objection is filed," presumably by a former landlord, "a hearing shall be held and the objecting party shall have

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the burden of establishing why clean slate relief should not be granted." So if I'm the judge in that case, what, what are the reasons why-- what am I looking for?

ABBY KUNTZ: I mean, I guess--

LATHROP: What's the criteria for finding the petition should be granted or determining that the petition should not be granted?

ABBY KUNTZ: I think it would--

LATHROP: I don't see a standard here.

ABBY KUNTZ: I guess my assumption would be that the standard would be the circumstances surrounding the eviction. I mean, if we have someone who got evicted during COVID due to a layoff and nonpayment of rent, that's different than someone who gets a five-day criminal activity notice because they commit a criminal act on a property. So I think a big part of it is just simply looking at the basis for the eviction.

LATHROP: But see, that's not spelled out here. And I get what-- I get what's trying to be done here. But it seems to me, looking at it from the point of view of a judge, I got to have some standard here to know who do I give relief to and what are the reasons why I can't give relief to somebody because the process is in here, just not the criteria or the standard for the court to apply in those kind of proceedings.

ABBY KUNTZ: I understand. And I do think that that would-- could be something that could be looked at.

LATHROP: OK, thank you.

ABBY KUNTZ: Thank you.

LATHROP: Good afternoon.

KAIT MADSEN: Good afternoon, Chairman Lathrop and members of the committee. My name is Kait Madsen, K-a-i-t M-a-d-s-e-n, and I am a senior certified law student at the University of Nebraska College of Law and I'm also part of the Civil Clinic's Tenants' Rights Project, and I'm here today as a citizen and not on behalf of the university. The importance of safe, affordable housing for families is clear.

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Children with unhealthy or unstable housing have higher rates of illness, emotional and psychological distress, worsened school performance, and behavioral issues. When families are evicted from their homes, they experience major housing instability. In Nebraska, there are an average of more than 15 evictions each day. That means that every day in our state, 15 more families experience the chaos and uncertainty of eviction. And every day, 15 more families get the black mark of an eviction added to their permanent public record. When a tenant has a housing record that contains prior evictions or even just prior eviction proceedings, it's much harder for them to find stable and affordable housing. Prospective landlords can look up a tenant's public eviction record and refuse to rent to them if they see some sort of prior eviction action. Right now, when a tenant is not actually evicted, the eviction proceeding is still part of their public record. This means that they can face discrimination from landlords based only on the fact that a previous landlord attempted to evict them. LB128 would automatically seal these eviction records when the eviction is dismissed and the tenant prevails. And for tenants who are actually evicted, LB128 gives them a chance to apply to have their record sealed if they go three years without another eviction. Over the past several years, this Unicameral enacted clean slate bills similar to LB128, but related to criminal records. Much of the same reasoning applies here. People and circumstances change. If a tenant makes it three years without another eviction, a record of their past eviction is no longer relevant or valuable. LB128 would still give landlords three years of access to eviction records, but it also recognizes that people should have the ability to improve their records and get a fresh start. This Act will remove a barrier to stable housing by ensuring landlords can't discriminate based on irrelevant or outdated information. It automatically seals the record when the tenant is not actually evicted and it gives tenants a chance at rehabilitation after three years without issue. I ask that you advance LB128. Housing is too important and too essential to family stability for a single eviction proceeding to haunt tenants for years. Thank you and I am happy to take questions.

LATHROP: Thank you. I do not see any questions at this time. Thank you,--

KAIT MADSEN: Thank you.

LATHROP: --Ms. Madsen.

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VIC KLAFTER: Good afternoon.

LATHROP: Good afternoon.

VIC KLAFTER: Members of the Judiciary Committee, my name is Vic Klafter, V-i-c K-l-a-f-t-e-r, and I'm a community organizer with Nebraska Appleseed for the program Collective Impact Lincoln. In my role as organizer, I get to talk with people who will be most affected by the various housing bills you consider in this and future hearings. To express our support for LB128, I'm relaying the story of a Nebraskan family I met recently that demonstrates both the necessity of this bill and that its improvements are a very moderate advancement toward housing justice. Before Sarah, Brad, and their three children were evicted, Brad had lost his restaurant job and numerous glitches in, in his-- in November delayed his unemployment. Months passed of working with the Department of Labor with no resolution. Then they received an eviction notice. They were told they did everything right and should be protected from the eviction. But even after selling belongings and scraping together all the owed rent and late fees, the landlord refused it at the courthouse. In Sarah's words, he was awarded the eviction anyway, the landlord, and my family is now out of their home. No one could tell me how or why he was able to do that. There's supposed to be a moratorium. He is able to say he never got the paper from us when he did. He can kick us out and gave us less than 12 hours to be out. I have five people in my household, my husband, myself, my 16-year-old daughter, and my 14-year-old twins that have autism. The twins are nonverbal and developmentally delayed. It is too dangerous to be homeless with them. The continued damage of this will affect my girls for years. They have been set back months and whatever small amount of progress I made while pretending to be capable of homeschooling during the pandemic, school normally takes a team of ten, is long gone. Skills they need for communication and personal hygiene, reading, self-preservation, gone. This isn't the same trauma my neurotypical teen is going through, which is sad and awful and not what should happen at the end of high school. It's different and very few, very few people understand it. The dull silver lining is we made it to Lincoln. We can access services for our girls we never had before. But we are in a hotel now until the small amount of money runs out the way-- and then we are in our van this Thursday, tomorrow. We have never been evicted before. We pay our rent. We are good people and good tenants. We have low credit scores and my husband has a bankruptcy from roughly six years ago due to identity theft. We

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have documentation of all of this if someone will just listen. Brad and Sarah have been looking for a new place to rent for more than two weeks. They've been trying to conserve their savings so they could offer double or even triple the security deposit if a landlord was just willing to take them. They have guaranteed rent payment through their daughters' disability benefits. Yet, landlords will not consider them because of the eviction on their record. Local nonprofits have offered the first and second month of rent, but there's no landlord to pay it to. LB128 wouldn't even help folks like Brad and Sarah until three years from now when they could appeal for the record to be sealed. If their eviction case had been dismissed, this bill would mean they could have at least been submitting rental applications to landlords who instead have said you need not apply. Brad, Sarah, and thousands of Nebraskans who have faced eviction need this reprieve. I urge you to advance LB128.

LATHROP: Very well.

VIC KLAFTER: All right. Take any questions.

LATHROP: Thank you for your testimony. Appreciate it. Any other proponent testimony? All right, we'll move-- oh, I'm sorry. Why he's coming up, I, I just want to thank everybody, a lot of people have been here all day, as the committee has, and I appreciate that everybody's wearing a mask and observing the social distancing and the rules. So thank you from the committee to those of you who are here today. Welcome.

MAHAMED JIMALE: Good afternoon, my name is Mahamed, M-a-h-a-m-e-d, my last name is Jimale, J-i-m-a-l-e. I'm from the East African Development Association of Nebraska. But I'm not on behalf of that organization, I would be on behalf of people who are low-income families. Those are from East Africa, Somalia and Sudan, Ethiopia communities. So I would like to address the issue of eviction. Last summer, we had 45 families had eviction letter from the court in Omaha, Douglas County. All those families are not able to pay that amount of money that they owe. So we work through a legal aid service and those families are not get evicted their apartment, but we are just asking for the state to not put the record because of the [INAUDIBLE] represent a lot of people who are low-income family. If [INAUDIBLE], many of them they lost job. If they could not able to pay for those months, they get eviction. If it went to the court, they

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would not be able to rent any more apartment or if they want to own a house. So this will be huge because they don't have any great credit history as they came Omaha's refugees. Some of them now, they're U.S. citizen. If this landlord get this opportunity to get out record-- their record, they will not be able to rent for apartment or house. So this will be more serious, those families I'm talking about on behalf of them. So I'm asking the state not allow them for the, the landlord to put their record. So this is a huge request from my community where I am representing. So I'm just asking if it's possible, do not allow them, the landlord. And also, I would like talk, talk about the other agenda about the landlords they come apartment without any note. They just come the door without any notes. So that would be a very shameful-- the community where I come from, it is a kind of shocked when someone come to your door, you don't know what they need. So many people are afraid for their landlord because they're using-- misusing the power for they are using. So I asking of another one, although I was not there at the time by that agenda for today. Thank you so much for doing a great job. I hope you will be moving forward this LB128.

LATHROP: OK, yeah, you were just referring to LB268, the access that we heard earlier today at the end of your testimony.

MAHAMED JIMALE: Yes.

LATHROP: Yeah, giving notice before landlords come over to the apartment.

MAHAMED JIMALE: Oh, OK, that would be great. So--

LATHROP: Yeah.

MAHAMED JIMALE: --the reason I'm saying that, we are East African community where we grew up in the community, we came from the, the countries. If someone come in your home, they give you a 24-hour note to come to your apartment. So most, most of these people wear a hijab. They are Muslim. If the man come to door while the women is not protected, so they feel guilty. They feel offense. So we explain them the landlord, but they not listen. They using the power because they are the one who own the apartment. So we ask them, the Senate, if they can go ahead not want to put place and stop for these things. Thanks so much for that.

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LATHROP: OK. Let me make sure there's no other questions before you
step away. OK. Thank you for being here today. We appreciate your
testimony.

MAHAMED JIMALE: Thanks so much.

PANSING BROOKS: I have a question.

LATHROP: Oh, I'm sorry.

PANSING BROOKS: No, I-- sort of a view of just-- if, if people come to
testify on two different bills, can we put their names on two
different--

LATHROP: That's why I brought it up, so that, so that if somebody does
a search they can at least see LB268.

PANSING BROOKS: So he's appearing on both basically. No?

LATHROP: He can, he can sign a form, but-- yeah.

PANSING BROOKS: It's just--

MAHAMED JIMALE: [INAUDIBLE] came, came today [INAUDIBLE], but I missed
the other one because I didn't get a chance to come inside.

PANSING BROOKS: It just helps things go faster if people--

LATHROP: No, no, absolutely. And I could tell he was talking about
LB268 which is why I made I made a note--

PANSING BROOKS: Yes.

LATHROP: --so that it shows up in the transcript. Did you fill out one
of those forms to--

MAHAMED JIMALE: Yeah, I did one, LB128.

LATHROP: Did you do one for LB268--

MAHAMED JIMALE: No.

LATHROP: --that we heard earlier?

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MAHAMED JIMALE: No.

LATHROP: I think-- can he fill out a white sheet, Laurie, on that?

PANSING BROOKS: We've got to be able to handle--

LATHROP: I'm-- oh, OK, yeah. If somebody does a search, it'll show up,
I think then. OK. Thank you, sir.

PANSING BROOKS: Thank you.

MAHAMED JIMALE: Thank you, all.

***KASEY OGLE:** Chairperson Lathrop and members of the Judiciary
Committee: My name is Kasey Ogle and I am a staff attorney at Nebraska
Appleaseed for Collective Impact Lincoln. Nebraska Appleaseed is a
nonprofit organization that fights for justice and opportunity for all
Nebraskans. Collective Impact Lincoln is a partnership between
Nebraska Appleaseed, Civic Nebraska, and the South of Downtown
Community Development Organization that works with residents of six
Lincoln neighborhoods to build community, develop neighborhood
leaders, and take action on policy that is responsive to their needs.
I am writing to you today on behalf of Collective Impact Lincoln in
support of LB128. Collective Impact Lincoln advocates for better
housing quality, more affordable housing, and fair rental practices
for low-paid Lincolniters. We support LB128 because it will ensure that
tenants who have faced eviction actions will not experience
unreasonable barriers to housing. Eviction records are public records
available to anyone who seeks out the information. These records are
available to the public regardless of whether the tenant prevailed,
the case was dismissed, or a writ of restitution was issued against
the tenant. Eviction records are routinely used to screen tenants
seeking housing. Unfortunately, these screening methods are not very
discerning. Often they do not distinguish between cases in which the
tenant prevailed and cases in which a writ of restitution was issued
against the tenant. This means that the very fact that an eviction
case was filed against a tenant can, and does, disqualify the tenant
from future housing opportunities. Regardless of how an eviction case
is resolved, the record of the case can cause barriers to housing for
years. LB128 remedies this problem by creating a mechanism for sealing
eviction records. It automatically seals eviction records if the
tenant prevails or the case is dismissed. This removes the barrier to

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housing that an eviction filing can cause, regardless of the outcome. LB128 also allows for tenants who have a writ of restitution issued against them to apply to have the record sealed after three years. This process would ensure that tenants are not forever barred from housing opportunities because of a past eviction. While it would allow landlords to use more recent evictions as a screening tool, it would also allow for tenants who have consistently demonstrated good renting practices for three years to remove that barrier from their future housing opportunities. Sealing eviction records in which a tenant had a writ of restitution issued against them would not be automatic. Tenants would have to petition the trial court to have the record sealed. The landlord in the case would be notified and have the opportunity to file an objection and prove why the eviction should remain public. LB128 also ensures that tenants cannot be asked about eviction records that have been sealed, and that sealed eviction records cannot be considered in an application for housing. LB128 provides much needed relief from unfair rental screening practices. For these reasons, we urge you to advance LB128.

***KELSEY WALDRON:** Dear Chairperson Lathrop and members of the Judiciary Committee, The Women's Fund of Omaha writes in full support of LB128, ensuring eviction histories do not follow tenants and impact future housing abilities long after the eviction occurred or when an eviction case is dismissed or ruled in favor of the tenant. As an organization promoting the economic security and well-being of Nebraska's women and girls, we recognize this bill as essential in supporting Nebraskans' access to safe and secure housing. Prior to the onset of COVID-19, 1 in every 17 renters experienced eviction nationally. Now, during the greatest public health crisis known to us, over 86,300 Nebraska families who are renters have experienced job or income loss. On July 14, 65 percent of renting households with children reported concern about being able to afford next month's rent. Many have subsequently faced eviction and homelessness. As our community continues to grapple with the economic impacts of this pandemic, and attempts to rebuild a stronger Nebraska, we must rebuild communities and prioritize access to housing. Now more than ever, it is critical we invest in the ability to secure future housing, ensuring previous eviction history never holds Nebraskans to homelessness. Entering eviction hearings, tenants are significantly disadvantaged as 90 percent of landlords have an attorney, a stark contrast to the only 10 percent of tenants with legal representation. This disproportionate disadvantage

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experienced by tenants follows them long after hearings, as eviction histories currently dictate much of their ability to obtain new housing and lead to future denial of housing applications. Eviction is not only a byproduct of poverty, but also a cause. Increased housing instability following eviction has tangible impact on someone's employment, with evictions increasing likelihood of job loss by 15 percent. These impacts fall heaviest on Black women, as landlords file evictions against Black female renters at more than twice the rate of white renters in Nebraska. LB128 better limits the lasting impact forced removal from housing has and time frame for which evictions can impact future opportunity by sealing public records after three years. Even for renters where a judge rules in their favor, finding they should not be evicted, or where cases are dismissed, the eviction case remains on public record and continues to impact future housing opportunities. This imbeds a presumption of guilt into our current housing system. LB128 addresses such injustice by including immediate seal of eviction records for tenants when cases are dismissed or ruled in their favor. Providing a clean slate to renters, this bill limits the perpetuation of poverty evictions and eviction cases have on Nebraskans. The Women's Fund respectfully urges this committee's support of LB128 and vote to General File.

***ERIN FEICHTINGER:** Chairperson Lathrop and Members of the Judiciary Committee, Together is a social service organization located in Omaha whose mission is to prevent and end homelessness and hunger. Two of our programs deal directly with issues of housing stability and with people either on the verge of losing their housing or coming out of homelessness. Our Crisis Engagement team works to prevent people from entering the homeless service system by intervening, often financially, to keep people in their homes. Our Horizons program is a rapid rehousing program providing intensive case management to people coming out of homelessness. Having an eviction on your record is perhaps one of the biggest barriers to housing stability in our community and, by extension, a significant and preventable cause of homelessness. We support LB128 because it is a reasonable and achievable solution to helping to end homelessness in our community, and allows people the grace they deserve to find a place to call home. Every single one of our case managers has worked with a client coming out of homelessness who has an eviction judgment and/or an eviction filing on their record that has made it more difficult to find housing. In their own words: "70% of property management companies

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will not rent to you if you have an eviction on your record." "[an eviction] shortens the list. Most apartment complexes won't consider you if you have a recent eviction." "There are landlords that will work with people [with an eviction on their record] but often they will have to pay a risk fee that makes the apartment less affordable. This is on top of my clients already living on SSI/DI and being rent-burdened without those fees." "With a proven history of not maintaining housing for whatever reason, most landlords are unwilling to take a chance of being stuck with unpaid rent ... Some will overlook evictions as they are with our agency and will be receiving ongoing case management to help them be better tenants. That is not always the case." "Landlords are less willing to work with individuals with evictions on their records. Then they have to find a private landlord that will charge more rent or hike up the rent." The type of housing available to people with evictions on their records is described as follows: "Poorly kept property or are in bad neighborhoods or, if you're lucky, overpriced property." "High priced or less than adequate - they would in some cases settle just to secure housing." "It is usually not a place that has been taken care of or has the minimal amount of repairs done to it." "Very little available and probably wouldn't pass inspection." "High-risk neighborhoods." "With private landlords that charge over market rent." People with an eviction on their record experience the following when searching for housing: "Highly stressful and discouraging, and oftentimes takes longer to find housing which results in staying with other people or being homeless for a time." "Less options, harder search, more likely to settle for something." "It's almost impossible. We recently were able to put some people in hotels so they could avoid going into shelter or remain on the streets. All of them were looking for housing and struggled to find a place. Many of them were in the hotel for about 2 months, and all of them had case managers from other agencies helping them." Allowing clean slate relief for evictions will decrease homelessness by allowing people more options for safe, affordable housing. Clean slate relief will also decrease the amount of time that a person experiences homelessness, which reduces chronic reliance on government or agency assistance. This is a reasonable solution to homelessness and housing instability that recognizes the responsibility of tenants while at the same time, protecting people from unnecessary stigmatization that jeopardizes their long-term stability. Thank you for your consideration of this important issue,

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and please reach out should you have any questions or require any
additional information.

LATHROP: Any other proponents? Anyone else wishing to testify in
favor? Anyone here to testify in opposition to the bill?

LYNN FISHER: Well, thank you, Senator Lathrop and all the committee
members. It's a long day. Lynn Fisher, L-y-n-n F-i-s-h-e-r. Here I am
representing the Real Estate Owners and Managers Association in
opposition to LB128. Only 2 percent of the tenants who were moved--
who have moved in the last year during COVID, moved because they were
evicted. Ninety-eight percent of the folks that moved in Lancaster
County, again, because they, they moved to a different apartment or
home, bought a home, or moved out of state. Currently, there's over
\$13 million available to pay rents for COVID victims in, in the, the
county and in the city of Lincoln. And those funds are being disbursed
as quickly as possible. Fortunately, some of my tenants have been able
to utilize those monies as well and avoid the issues that come with
eviction, which we always try to avoid. So they're not-- well, tenants
are not being evicted in large numbers. When we consider applications,
we consider all circumstances, including medical issues, COVID
situations. And we are looking for reasons to rent to people. We're
not looking for reasons not to rent to people. The whole point is
we're trying to fill a vacant unit and we want to find a way when
somebody applies to help them and we're not looking for ways to try
and not rent. However, we do have to have standards and criteria, and
we have to be able to, to use our best judgment to make sure that we
are not taking a risk of not getting paid, or more importantly, to, to
protect the peaceful enjoyment of the property by other tenants and
make sure the property is protected and isn't damaged. So we look at
rental history, we look at all kinds of information. We look at
people's income history and their job stability. We want to know about
things in the past, like any notices that they were given. We, we try
to find rental history information by contacting current and past
landlords and get all the information we can so we can make our best
judgment to determine whether we're going to be able to have a good
chance of having that person be a good tenant and have it as
fortunately as it is almost all the time, a good relationship where
everybody's happy. But on those rare occasions when we do have to go
through the notice and eviction process-- and again, we try to avoid
that at all, at all costs and, and work out special circumstances so
that we can have a payment plan or we can help people find and, and

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locate the assistance they need, particularly with COVID now, we can connect them with the, the different folks that have this \$13-plus million to help them out. So what, what this bill does, though, is it, it, it puts blinders on us when it comes to certain aspects, particularly about someone who's been through the eviction process, even through the notice process. And it also ties our hands or will tie our hands on being able to negotiate with someone if we feel that we can make a deal and avoid the actual writ of restitution judgment and, and, and stop the eviction process. If we know that they're going to be able to get this clean slate thing put into place, we're going to be less likely to stop the eviction process. If we have the ability, we're going to finish it out. So I think it's, it's a bad bill. So any questions?

LATHROP: Senator McKinney.

McKINNEY: Are you aware of any cases where applicants have evictions on their record?

LYNN FISHER: Oh, absolutely.

McKINNEY: And I've, I've-- and are, are-- and because of this they're required to pay more in rent because they have eviction on their record to be accepted to, to stay at the apartment or house.

LYNN FISHER: We never do that. We advertise rent. It's the same rent whether you have the best credit or just barely able to get by. It's not fair to have different rents for different situations. We set our criteria and our standard below which we won't rent to folks as a, as a general concept. And then above that criteria set, we will rent to people for the same rent.

McKINNEY: If you had a eviction on your record, but it was dismissed, do you think it would be fair for the landowner or property management group to judge you based on a dismissed eviction?

LYNN FISHER: Well, we want to know the circumstances, and that's why we encourage people to, to tell their story. We want to know what happened. If, if, if they, if they-- it was a COVID situation, for example, or the example of the family where they lost the, the job. Those are the things we want to know. And even if there was an eviction on their record, that doesn't mean we're not going to rent to

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them, especially if they have good stable income. Otherwise, they
have, you know, a good story to tell.

McKINNEY: What I'm saying is sometimes it's hard for individuals to
say these stories because it-- they're traumatic. Getting evicted for
a lot of families is traumatic and require them to relive a traumatic
situation that was dismissed, it's hard for some people. And I'm not
really understanding why we would want individuals that go through
traumatic situations like eviction to keep repeating traumatic stories
after traumatic stories because you want to know a story that
essentially was dismissed by the courts.

LYNN FISHER: Well, we want to know as much about someone as we can so
that we can make a judgment as to how we can help them if we can help
them. And it would be sad if somebody is unwilling to tell their
story.

McKINNEY: Thank you.

LATHROP: Senator Pansing Brooks.

PANSING BROOKS: Thank you. Thank you for coming and being here so
long, Mr. Fisher. How, how long do you feel that a, that a record of
eviction should be-- should follow a person?

LYNN FISHER: Well, I don't think there should be a limit on knowing
what's happened in the past, whether it be a bankruptcy or an eviction
or, you know, any kind of action for bad behaviors or anything like
that. But what happens is in the, in the real world, as, as history is
older and older and older and people have proven that they're a good
tenant by paying rent recently in the last few years. And everything
else looks good more currently, then we're going to probably not even
consider something that's an old situation. But I don't think that
the, that the law should prevent us from knowing everything that's
possible to know about someone.

PANSING BROOKS: So you said probably not even consider, which means
you probably will consider. So I'm also wondering, you said that, that
2 percent of people were evicted, but worse-- that's 2 percent of what
you said. It's not a big number, but I-- it's, it's not a big
percentage, but I don't know what the number is.

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LYNN FISHER: I don't know the exact number. I think it's in, it's in
the, the low hundreds.

PANSING BROOKS: Per month or--

LYNN FISHER: For the year.

PANSING BROOKS: So some of the previous testimony said that in
Nebraska, there are an average of more than 15 evictions each day. So
that include-- that means families are being evicted, 15 families are
being evicted each day in Nebraska. So that to me, seems like a big
number of families and children without homes. And the problem is that
in a way, it seems to me as if you're your own worst enemy because the
goal is business and thriving and, and being able to move forward. But
you set arbitrary barriers up in a way.

LYNN FISHER: Not arbitrary at all. We need to be able to protect the
property and protect the neighbors against folks who are misbehaving
and if the rent's--

PANSING BROOKS: After--

LYNN FISHER: --not paid--

PANSING BROOKS: --after three years.

LYNN FISHER: --we need to be able to pay our, our bills.

PANSING BROOKS: But after three years. So that's why I'm wondering,
ten years, do you think that-- at some point people ought to be able
to move on and not have that following them around.

LYNN FISHER: People are able to move on by their behavior by, by
proving that they're a good risk.

PANSING BROOKS: Thank you.

LYNN FISHER: Thank you.

LATHROP: OK. I don't see any other questions. Thanks, Mr. Fisher.

LYNN FISHER: Thank you very much.

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DENNIS TIERNEY: Good afternoon again, Senators. Dennis Tierney, D-e-n-n-i-s T-i-e-r-n-e-y. I currently serve on the board of directors of the Metropolitan Omaha Property Owners Association. This bill, LB128, would adopt Residential Tenant Clean Slate Act. It would require the court to seal the record of a case that had been dismissed or writ of restitution had not been issued for any reason. It would also allow the tenant to seek to have his or her record sealed after three years had passed since issuance of a writ-- of the writ of restitution. There are many cases where a case may get dismissed as a result of a settlement between the parties, even though the tenant was in, in violation of the lease for failure to pay their rent or other reasons. The parties work things out rather than go to trial. This is a good thing as many times it benefits the interest of the tenants and it should not be discouraged. If this bill passes, the landlords might have less latitude to work with tenants. They might need to press on to obtain the judgments. Our association emphasizes the importance of proper screening of tenant applications. Without proper scrutiny, the landlord would not be able to do his or her duty in protecting the property and other tenants on the property. If the records are sealed, the landlord will be severely handicapped and their ability to responsibly manage the business. It's akin to telling a bank or a car dealer that they have to make a loan without access to a borrower's credit report. You saw the devastating effect that poor loan procedures had on the banking industry with the resulting financial crisis of 2008 to 2010. You'd be putting a landlord in a similar situation if he or she can't have access to the knowledge that a tenant represents a poor risk due to multiple evictions. There are also equal rights considerations with this bill. Other parties to, to civic-- to civil litigation do not have the right to seal their records. Why should tenants be allowed this privilege? If we oppose this change-- we oppose this change because of the many uncertainties this change would cause for our members who are trying to do business in Nebraska. The additional costs of doing business would have to be passed on to the very people I believe this bill is trying to help. If the costs cannot be passed onto the tenants, the landlord's business cannot stay profitable and he or she would go out of business reducing the availability of rental units. We do care about it-- the tenants because they're our customers. One other note, I might make. At least five or out of the six proponents for this bill mentioned COVID is the reason that you should, that you should pass this bill. As a licensed physician of the state of Nebraska, I can guarantee you COVID will go

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away through herd immunity and through vaccinations. COVID will go
away, but this bad bill will not go away if you pass this bill. It
will saddle the landlords forever. So COVID should not be a reason to
pass a bad bill.

PANSING BROOKS: Thank you, Mr. Tierney. Any questions?

DENNIS TIERNEY: Sir.

McKINNEY: Are you aware of what--

PANSING BROOKS: Senator McKinney.

McKINNEY: Sorry. Are you aware of what redlining is?

DENNIS TIERNEY: Of what is, what is?

McKINNEY: Redlining.

DENNIS TIERNEY: Landlines?

McKINNEY: Redlining.

DENNIS TIERNEY: Redlining?

McKINNEY: Yes.

DENNIS TIERNEY: I've heard of redlining. I believe it's illegal.

McKINNEY: This is-- kind of sounds like redlining to me, but in a
different version where we're judging individuals based off of
situations that, one, are in the past and, two, in this bill, it says
dismissed. If something is dismissed, why are we judging somebody off
of something that was dismissed? I, I don't understand how you could
judge, judge somebody off of something that was dismissed. Just
because you go into a courtroom and you're judged by your peers and
you get a case dismissed, is, is that applicable? Is it OK to judge
somebody off of something that was pretty much just dismissed? I
haven't been convicted of anything. I haven't been found at fault. Why
am I being judged off of something that was dismissed? I, I don't
understand the argument to hold somebody accountable for something
that was dismissed.

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DENNIS TIERNEY: You're not judging them if it's been dismissed. You're having the knowledge that something has happened, that they had to go to court and you can ask them about it, but you're not automatically excluding somebody because they had something that was dismissed. That would be unreasonable. And then we certainly don't advocate that. But not allowing the landlord to have the knowledge that somebody was in court for some reason, I think is unreasonable on the, on the landlord. Just like I said, if you, if you can't tell a bank, you can't run a credit report on somebody, maybe somebody's improved their credit, but they're still allowed to get the credit report on somebody. So is a, a car, car dealer before they can make a loan. Why would you put the landlord in a situation where he has to take a, a risk on somebody without any knowledge? You're allowing the landlord to have the same knowledge that a lot of other businesses are allowed to have.

McKINNEY: I understand the risk, but what I'm saying here, these individuals who have these cases dismissed, these evictions dismissed, what did they do wrong? I'm, I'm just trying to--

DENNIS TIERNEY: I don't know what they did wrong. I mean, I don't know.

McKINNEY: If it's dismissed--

DENNIS TIERNEY: You'd have to take it on an individual situation. That's why you have to talk to the, to the, to the tenant or the prospective tenant. I mean, that-- this doesn't-- the fact that they've--

McKINNEY: Well--

DENNIS TIERNEY: --had something in law that's been dismissed doesn't mean you can't talk to them about it. And we don't automatically exclude somebody just because they, they had been in court on something that was dismissed. That would be unreasonable to do to somebody.

McKINNEY: I get what you're saying about wanting to talk to them. So, for instance, if a young lady was a victim of sexual assault or, or rape or anything and she ended up in court for eviction because she left her residence, but it ended up getting dismissed. Would you want

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her to come back in and talk to you about that experience just so you
could get a better understanding of why a, a eviction was dismissed
just to put her through that trauma again?

DENNIS TIERNEY: I certainly don't want to put somebody through trauma,
sir. That would not be any landlord's intention to put somebody
through trauma for something like that. But they have to have some
knowledge as to why that person was in court. Nobody wants to put
somebody through that kind of trauma.

McKINNEY: But you will, essentially.

DENNIS TIERNEY: You don't know that going in. How do I know that that
person was, was there for that particular reason why that person was
in court? I mean, I don't have a crystal ball. I mean, if you don't
ask them, if you're not able to ask them, there's no way around that.

McKINNEY: It was dis-- thank you. Thank you.

PANSING BROOKS: Thank you, Senator McKinney. Anybody else have a
question? Thank you, Mr. Tierney. Thank you. Senator-- Chair Lathrop,
back to you.

LATHROP: Good evening.

GENE ECKEL: Good evening, Senator Lathrop, members of the Judiciary
Committee. My name is Gene Eckel, that's G-e-n-e E-c-k-e-l. I am a
board member for the Nebraska Association of Commercial Property
Owners and the Apartment Association of Nebraska. I'm here today to
voice their opposition to LB128. And as you've already heard from many
of the people who have testified today, this information on a tenant's
rental history is very important to our industry because it does
inform the landlord whether a tenant will be a risk to rent to and
whether that be for nonpayment of rent or other lease violations or
for conduct. There are going to be times when a writ may not be issued
because the tenant moved out after the court issued the eviction.
Could be that afternoon, could be the next day. And so the property
manager may not need to have the constable, the sheriff come out to
assist with changing the locks. That should not prevent that fact from
being made public, though, to the next landlord. Moreover, there's
concern that a landlord could also violate this Act if it is put into
law, because it's if the landlord sends a rental verification to

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another landlord, the previous landlord said, hey, tell me about this person. You know, they rented there can you tell me anything about them while they were renting there. This could potentially cause that landlord who sent the rental, rental, rental registration to now violate this Act. Moreover, it could also put the landlord who filled it out in violation of, of violating this Act. This is information that landlords need to know about, and they should not be prevented from either requesting it or informing the new landlord about the tenants' history, because you're putting a landlord in position of not telling the truth. And that could come back on liability because you knew something, but you didn't tell them about it. And even though you might say, well, it allows them to do that and not be liable, but it doesn't state that in the Act. And finally, it does state that there's a rebuttable presumption that the landlord violated this Act if an application is not accepted. Well, and as you heard, there can be an application that is going to be denied. It could be for bad credit, a criminal background, or their income requirements. And so there's other things. And a lot of times these, these background checks are done by a third party and they're going to come back and they're going to give the property manager either, yes, this person should be rented to or you may need to have someone who's going to be a cosigner. But again, this bill just puts too much risk on a landlord to not either have the information or be in trouble for violating the Act. So, again, we oppose LB128. We certainly would hope that this-- the committee would oppose it. And I'd be happy to answer any questions.

LATHROP: Senator Brandt.

BRANDT: Thank you, Senator Lathrop. And Mr. Eckel, I don't know if you're the person to answer this question or not, and because the bill introducer couldn't be here to close, it's sort of directed in that direction. But as a senator, I have to ask the question. When I read through the bill, it appears that after three years, you can go for a clean slate or, or get your slate clean on an eviction. So let's say three years, they get a clean slate, they get evicted. So then in another three years, do they get a clean slate and then they could get evicted again? I mean, there was no-- in the bill, I didn't see any time limit or a number of clean slates that you could get. It looks like they could keep, keep going for years and years and years and have multiple evictions and get multiple clean slates. Is, is that how you sort of read the bill?

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GENE ECKEL: I did. And, and obviously that is a possibility that that
could occur.

BRANDT: I think it's, it's highly unlikely. But it could happen.

GENE ECKEL: It could happen.

BRANDT: Yeah. That's all I had. Thank you.

LATHROP: I do not see any other questions, but thank you--

GENE ECKEL: Thank you, Senator. Appreciate it.

LATHROP: --once again for your testimony and your input.

GENE ECKEL: Thank you, Senator.

PIERCE CARPENTER: Hi, my name is Pierce Carpenter, P-i-e-r-c-e
C-a-r-p-e-n-t-e-r, and I'm opposed to this. I think the law is
unethical. Hiding records to make people good is bad business. To
begin with, what if you have good records and here's somebody standing
alongside you with bad records but the landlord can't find out. That's
not right. You're cheating the person who has the good records. In
half the evictions I do, the tenants move out before I get an order of
restitution, but breaking the contract and that so-- and so it's a
civil crime that's occurred. So that warrant needs to appear on the
public record for all time. So you asked about is it right that
somebody would have an eviction but there wouldn't be a writ of
restitution? Well, that's how that happens. I bet two-thirds of the
people before you get the writ, they've moved out. But yet, I spent
300 bucks on a lawyer to get them out. And I have a vacant apartment
now and I'm out the rent because I guarantee they didn't pay that last
month's rent to move. They didn't pay the rent. That's why I evicted
them. In legislation, it tells the tenants to lie about having
cleansed an eviction. I mean, how unethical can the law get to
actually advocate lying in, in a legal document? The law advocates it.
Is, is that something the public wants? No. OK, the rebuttal
presumption, combined with the obligation not to consider such
evictions if the landlord knows is a huge legal swamp that will help
lawyers make money, generate a lot of litigation, raise rent prices,
but not help tenants find a place to live. Because if it has, if it
has gotten that far, they've already denied the tenant and he's still
looking. This creates a huge legal mess heavily slanted in favor, not

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of an honest landlord, but of a tenant who was evicted and moved out before restitution was granted. The law show the landlord can prove that he did not know what-- the law requires him to prove that he did not know what the preponderance of evidence, which is like 51 percent. But what are you going to do if you know about it and you don't want to rent to him anyway? Then you, you know, you're almost obligated to rent to him because if you don't, you know they're going to say you rented to him-- you didn't rent to him because he was, you know, he had that eviction. I mean, this whole law is malarkey. We don't need a law that hides records. We don't need a law that advocates lying. We don't need a law that makes a bad-- you know, a person with a bad record look as good as a person with a good record. So I oppose this.

LATHROP: OK.

PIERCE CARPENTER: Thank you. Are there any questions?

LATHROP: Senator McKinney.

PIERCE CARPENTER: Yes, sir.

McKINNEY: Thank you, Mr. Carpenter, for your testimony. I guess my question is, have you ever charged a tenant for eviction that you didn't go through with?

PIERCE CARPENTER: Yes.

McKINNEY: Why would you do something like that? Just-- no, I, I ask that to just better understand why.

PIERCE CARPENTER: Well, what happens is, you know, I mean, I want a tenant, I don't want eviction. So what happens is, I, I tell the tenant, OK, you owe, you know, \$620 rent and, you know, the late fee's on the 15th. So you owe another \$62, \$682. So then, you know, I'm filing on you on, on the 17th. So you've got to pay me by the 17th or if you don't pay me then there's a \$300 attorney fee. So if you want to-- if you still want to stay here, you can pay the attorney fee and what you owe. And I usually forgive the late fee. I mean, it's trivial, but, but so I have had to do that. I have a guy, this-- Kevin Stewart [PHONETIC], I evicted him five times. I screwed up once. He paid me and I missed it. So I ate that one. But the other four times or three of the other four times, he paid for the eviction and stayed

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in the apartment. And I actually rented him a better apartment and
then after living there, I evicted him and he was out. Is that--

McKINNEY: Yes, that-- I'm thinking of my question, but, but thank you.

PIERCE CARPENTER: OK, I, I-- one of-- you had asked earlier, do we
ever raise rents for people that are evicted? I, I don't think anybody
does that. But what happens is, you know, when you, when you are
renting an apartment, you usually try to rent it a little higher than
when you were renting it before. And so what I've noticed is if I
raise it too much or if the market changes, you get these people with
horrible rental histories applying and don't get tenants, and that's
when the rent's too high. And so if you lower the rent, you'll get
better applications. So what happens to the people that have that
eviction on the record, they end up paying more for less of an
apartment because we don't get the same choice.

McKINNEY: All right.

PIERCE CARPENTER: But it's different then raising the rent.

McKINNEY: I'm just trying to better understand why for four months you
hold a eviction on the, on the head of a tenant. Why would you do--
instead of evicting him, you charge a late fee that you waive, you
still seek rent, but you continue to say, hey, I'm going to, I'm going
to evict you. If this individual is such a problem, why not just go
through with the eviction? Why keep prolonging the situation?

PIERCE CARPENTER: You know, that's a good question. Nobody else does
that. But this wasn't over four months. This was over, like, a six-,
seven-year period I rented to the guy and he just would fall behind
and I'd let him get behind and then eventually I'd file on him. And
then he would offer to pay it all up and come up with a payment
program. And I would include the cost of the attorney in there and he
would follow through with it, pay it all up, and we'd be done. And
then a year later, he'd fall behind again. And [INAUDIBLE]-- I mean,
he rented from me for, like, seven years.

McKINNEY: All right. Thank you.

LATHROP: Can I ask you a question to clarify something?

PIERCE CARPENTER: Yes.

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LATHROP: So if you have a tenant that isn't paying the rent--

PIERCE CARPENTER: Yes.

LATHROP: --and you had conversations with him, whatever. You've made
the decision to evict him.

PIERCE CARPENTER: Yes.

LATHROP: You go down to the courthouse and you see him in the hallway
and the guy's-- you, you have a conversation and you say if you'll
just get out of the place, I won't go through and get the writ of
restitution.

PIERCE CARPENTER: Yeah.

LATHROP: Has that happened?

PIERCE CARPENTER: That has happened.

LATHROP: Is that, is that a common occurrence where you filed, but you
don't go through with the eviction because they agree to leave?

PIERCE CARPENTER: There's actually three parts to that. You file, then
you go to court and they ask-- they usually ask for the writ of
restitution right away. I have delayed a few times because the people
said they'd move out, but that's only happened three or four times.
Usually what happens is you file and they move out before you go to
court.

LATHROP: Then if they move out, do you go through with the, with the
getting the writ of restitution?

PIERCE CARPENTER: I-- you know, I have, I have once or twice, but
normally I don't. Normally, if they, normally, if they move out,
they'll give me the key. I just call up the attorney and say, hey,
I've got possession back. They're, they're done. All their stuff's
out.

LATHROP: So that's how you end up with a dismissed eviction action.

PIERCE CARPENTER: That is correct.

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LATHROP: OK. Other than maybe they had a defense, right? They could have had a defense which would explain a dismissal, but the other explanation is they just gave you the property back--

PIERCE CARPENTER: Yeah.

LATHROP: --and left.

PIERCE CARPENTER: Yeah. You know, there is a-- I did evict this Kevin Stewart guy once.

LATHROP: And don't use any names in here.

PIERCE CARPENTER: I'm sorry.

LATHROP: Please.

PIERCE CARPENTER: And one of my evictions on him, he had actually paid. And I don't know how, but I, I didn't record the check correctly and he compared-- he wondered about it and we compared notes and I was dead wrong.

LATHROP: OK. I think Senator Pansing Brooks may have a question for you?

PANSING BROOKS: Again, I'm just going to ask you, do you feel that the eviction should never be cleaned off, that that should be always available?

PIERCE CARPENTER: Absolutely.

PANSING BROOKS: It's not a, it's not a matter of lying. We, we do this all the time. And in criminal cases where people are given a clean slate, they're-- they have their records wiped so that once they complete all their penalties and go through everything, then they don't have to carry that burden with them the whole time. So this is not some kind of new idea. And the idea is to help people get housing. And so I just-- you feel that, that somebody should carry that burden with them?

PIERCE CARPENTER: After three years, it's just not much of a burden. We wouldn't really--

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PANSING BROOKS: So--

PIERCE CARPENTER: --consider it much. I mean, it's there--

PANSING BROOKS: So if it's not a burden, then let's go ahead and, and
go forward.

PIERCE CARPENTER: Well, it's a factual thing. And, and sometimes when
you compare tenants, you look at trend lines. A lot of the people that
have problems have problems year after year after year after year. And
then maybe it stops, maybe it doesn't. So it, it, it-- I don't think
it's fair to leave and unfair to take it away because what about the
tenant that has applied that never had an eviction and then this guy's
got three evictions, but somebody's giving him a clean slate.

PANSING BROOKS: Yeah, because they've gone three years--

PIERCE CARPENTER: Right.

PANSING BROOKS: --without any kind--

PIERCE CARPENTER: But that clean slate with three evictions isn't the
same as somebody who never had the eviction.

PANSING BROOKS: Thank you.

PIERCE CARPENTER: Thank you.

***BUD SYNHORST:** As President & CEO of the Lincoln Independent Business
Association, I represent over 1,000 businesses whose mission is to
communicate the concerns of the business community to elected and
appointed officials at all levels of local government. Nebraska has
enjoyed long-standing economic growth in the face of a recession,
record flooding, and a worldwide pandemic. According to the Bureau of
Economic Analysis, over the last ten years Nebraska's economy has
grown by more than 21%. Business friendly policies continue to promote
regional investment and encourage population growth. Moreover,
opportunities for Nebraska's workforce are plentiful. According to the
Bureau of Labor Statistics, Nebraska's unemployment rate in December
2020 was tied for the lowest in the nation at 3% which matches
pre-pandemic levels. With more money in the average Nebraskan's
pocket, rent has stayed affordable across the majority of the state.
Over the past ten years, the annual rent as a fraction of income in

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Nebraska decreased by 0.28% and continues to stay well below the national average. Now is not the time to pass legislation that would hurt landlords and ultimately their customers. Strong property rights have always been the foundation for economic growth and a healthy housing market. We should not pass legislation that seeks to fundamentally reform existing landlord and tenant policies when those policies are working as outlined above. This bill is a solution in search of a problem. Affordable housing should be a priority to encourage our young people to stay in Nebraska and to lower the pressure many working-class families face making rent payments. However, this bill does not get us closer to that goal and would make it less desirable for landlords to offer affordable housing in an already distressed housing supply market. Government regulations don't always fix the issues they are intended to fix. California has one of the most regulated housing markets in the country, yet it has the highest homeless population and ranks 49th in housing supply per capita. As Milton Friedman once said, politicians have a bad habit of judging "policies and programs by their intentions rather than their results." LIBA stands in opposition to this bill in order to protect property rights of businesses, and so rent stays affordable for those that need it the most.

***JUSTIN BRADY:** Chairman Lathrop and members of the Judiciary Committee; My Name is Justin Brady, I am testifying as the registered lobbyist for the Nebraska Realtors Association in opposition to LB128 and would ask that this testimony and opposition be made part of the committee statement. LB128 would eliminate one of the tools that property owners can use when screening potential tenants. The sealing of eviction proceedings does not give property owners the ability to have an accurate portrayal of the potential tenant they are going to allow to occupy their property. This information should be allowed to property owners to allow them the full information needed when deciding to turn over their property to the care of somebody else. You will/have heard from the property owner's association that can/did provide more details about the hardship this will add to property owners across the state of Nebraska. We respectfully ask for this committee to IPP LB128. Thank You.

LATHROP: All right. Thank you. We have time for one more opponent if there is any in the-- that want to be heard. Certainly don't feel compelled to jump up though. Anyone here to testify in a neutral capacity? Seeing none, Senator McCollister has waived closing. So

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before I close the record on LB128, I need to read that we have 21 letters-- 21 position letters on LB128, 20 of those are proponents, 1 in opposition. We also have testimony submitted this morning by a proponent, Kasey Ogle, O-g-l-e, Collective Impact Lincoln; Kelsey Waldron, W-a-l-d-r-o-n, Women's Fund of Omaha; Erin Feichtinger, F-e-i-c-h-t-i-n-g-e-r, with Together, she is a proponent; and an opponent, Bud Synhorst, S-y-n-h-o-r-s-t. That will close our hearing on LB128 and bring us to our own Senator DeBoer and LB246. Welcome, Senator DeBoer.

DeBOER: And just as a point of reference, since I'm the first member of the committee who's introducing a bill, our custom used to be that we didn't sit at the table, but during COVID, are we changing that? We still not sitting at the table?

LATHROP: I'm OK if you want to sit at the table.

DeBOER: OK, I just thought--

LATHROP: You just won't ask questions.

DeBOER: Yeah, it just-- it opens up the room so there's space for others to testify.

LATHROP: That's fine.

DeBOER: OK. Good afternoon, Senator Lathrop and members of the Judiciary Committee. My name is Wendy DeBoer, W-e-n-d-y D-e-B-o-e-r, and I represent Legislative District 10, which includes Bennington and northwest Omaha. Today, I'm introducing LB246, which would change provisions relating to actions for possessions under the Uniform Residential and Landlord Tenant Act, which it's going to be a slightly different kind of bill than we've been hearing all day today. But I would like to say that I appreciate all of the passion that I've heard today. Someone may have overheard me saying, I said at the beginning of today, today that landlord tenant day is one of the hardest days in Judiciary. And I think that's in part because we're dealing with such a wide variety of situations from single-home residential landlord tenant actions to giant complexes. And we end up balancing the needs and exigencies of the most difficult members of each group. But this bill is a little different. This bill would require complaint's for possessions to include the statutory authority under which possession

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is thought-- sought. The primary reason for this bill would be to allow the judicial branch to add a drop down menu in the online pleading system for a landlord to choose the statutory reasoning for filing. Tenants and their attorneys can understand, then, why the eviction notice has been issued before the eviction proceedings take place. It will help to simplify the online pleading process and the ability for everyone to respond to the action. There's already a requirement in statute that the facts be pled with specificity. But this will add just an additional step of picking the correct menu item and will allow the state to look at trends. For example, if landlords are having to institute eviction proceedings to evict people for criminal activities, that's something that we might want to know as lawmakers. If you look at the fiscal note, there's a de minimis fiscal note with no General Fund effect in order to add this drop down menu in the justice system, which is our online pleading system. It shouldn't be onerous to anyone who's instituting eviction proceedings to click, click-- since they already have to click eviction, they would then just have one more click of what the eviction subtype was that they were clicking. LB246 also clarifies that a civil possession against a renter of a mobile home lot would follow the same procedures as actions brought against renters of mobile homes, apartments, and homes. Currently in the law, it's a little bit unclear whether actions regarding mobile home lots should follow the procedures used for other residences or whether they follow the procedures in forcible entry and detainer statute, which is intended for commercial property. So this would put those statutes under the-- or those mobile home lot rentals with residences rather than the commercial home and the matters involving squatters, which is under the forcible entry, entry and detainer statute. So it would remove any speculation or guesswork. All evictions involving all forms of residences would clearly follow the same procedures, making the process easier for tenants, landlords, and the courts. There was a brief concern that was mentioned to me about a person living in a mobile home prior to a lease being enacted. But that would be unaffected as they would still be considered a squatter and therefore would be under the forcible enter-- entry and detainer statute. Thank you for your consideration of LB246. I hap-- I am happy to answer any questions you might have, and there are probably several people behind who will also answer your questions.

LATHROP: OK. Doesn't look like you've generated questions this far.

DeBOER: OK.

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LATHROP: Thank you, Senator DeBoer. We will take the first proponent.
Professor.

RYAN SULLIVAN: Senators, Ryan Sullivan, R-y-a-n S-u-l-l-i-v-a-n. I am testifying on this bill in my capacity as a volunteer attorney with the Tenant Assistance Project and not as an employee of the university. I've been volunteering at eviction court since April when we started the Tenant Assistance Project to address the surge in evictions that resulted from the pandemic layoffs. This work has been incredibly rewarding, also very disheartening, but importantly for this hearing enlightening. Through this work, we've identified a number of issues in the landlord tenant laws and LB246, it's a pretty straightforward one aimed to address two of those. The first is that it's going to require, as the senator said, that a, that a complaint state the statutory basis for the eviction. Now this, for the attorneys in room, this may seem like something that's already required. Unfortunately, it isn't. Nebraska's laws include nearly a dozen different grounds for eviction, and each ground falls under a different statute. Because each basis for eviction may give rise to a different defense that may be available to a tenant, it's critical that the tenant be put on notice of the specific basis for the claim. And I've reviewed over 1,000 eviction lawsuits in the last year, and of those, only a handful, less than 100 stated the statutory basis for the claim or really gave any indication which statute would apply. In the rest, a tenant and even the judge was just left to guess or speculate as to what defense might be available to the tenant. This amendment will resolve that issue, and I honestly can't think of any reasonable opposition to it, unless your landlord who wants to force the tenants to have to guess what claim they're bringing, maybe there's an advantage to that, but I, I don't see that as a reason to keep the law the way it is. The bill will also eliminate the confusion as between matters involving mobile homes and mobile home lots. Right now, it's-- the Mobile Home Act and has no procedures at all for how an eviction should take place. So courts and litigators are just left to guess. Some landlords will bring it under the commercial statute. Some will bring it under the residential statute. Then you have the issue where you have the lot is rented and the mobile home itself is, is. So this to me, this is an easy fix. It would be clear eviction involving a residence, whether that's an apartment, a house, a mobile home, or a mobile home lot, it would all follow the same procedures. This is good for tenants, landlords, and judges and attorneys. From my

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perspective, I think these are easy fixes to solve pretty significant
problems in the law right now. And I hope you advance it.

LATHROP: OK.

RYAN SULLIVAN: Thank you.

LATHROP: I don't see any questions. Thanks.

SCOTT MERTZ: Good evening. Thank you,--

LATHROP: Good evening.

SCOTT MERTZ: --Chairman, members of the committee. My name is Scott Mertz, S-c-o-t-t M-e-r-t-z. I'm speaking in support of LB246 in my capacity as the managing attorney of the Legal Aid of Nebraska's Housing Justice Project. At Legal Aid of Nebraska, we are often fielding intakes or talking to people who have recently been sued for eviction. These clients are facing eviction trial in a matter of days, sometimes even hours. And what we have to do at Legal Aid is piece together the facts and assess any affirmative defenses or triable issues of fact in an eviction trial. Sometimes it is quite clear from the pleadings what the statutory basis is for the restitution action or, or the eviction trial. Some attorneys are very well practiced in filing these complaints and do make it clear what the legal basis is for any cause of action. Far too often, however, tenants receive complaints that do not include an attached notice to quit or vacate and do not clearly state the legal basis for such a notice. Sometimes pro se landlords will use pleadings that they retrieved online or print off from handbooks that state a legal authority for an eviction that is completely different from the actual reason for the eviction trial. So when it is difficult for even the attorney to ascertain the legal authority behind an eviction, it is close to impossible for a pro se litigant to understand the eviction. Too much of landlord tenant law in Nebraska is focused on efficiency and quickly disposing of cases with very little time afforded to pleadings, or to the hearings themselves. More needs to be done to ensure fairness and due process for these pro se defendants. This proposed change is, on its face, a minor one. But it does go a long, a, a long way towards ensuring that the eviction cases are treated by courts as seriously as any other lawsuit requiring some specificity in the pleading that would ensure a tenant, likely an unrepresented one, is informed of the

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legal authority being used to terminate their tenancy. With these eviction trials occurring mere days after service of a complaint, it is imperative that the complaints clearly state the statutory basis for an eviction so that unrepresented defendants can better understand the legal basis for any lawsuit. The passage of LB246 would do a great deal to ensure procedural fairness and clarity in all eviction actions. I, I welcome any questions the committee has at this time.

LATHROP: I don't see any.

SCOTT MERTZ: Thank you.

***ISABEL SALAS:** Chairperson Lathrop and members of the Judiciary Committee: My name is Isabel Salas and I am testifying today in support of LB246 on behalf of South of Downtown Community Development Organization (SDCDO) and on behalf of our partnership with Collective Impact Lincoln (CIL). Collective Impact Lincoln (CIL) is a partnership between Civic Nebraska, Nebraska Appleseed, and SDCDO that aims to improve the quality of life for six core neighborhoods in Lincoln: Everett, Near South, University Place, Hartley, and Belmont. South of Downtown CDO is a nonprofit, c3 organization in Lincoln, Nebraska, that enriches the quality of life for residents of the Near South and Everett neighborhoods through collaboration, economic opportunities and community development. SDCDO is focused on two census tracts, 20.01 and 20.02, or roughly the area between K and A Streets and 9th and 17th Streets. This includes the State Capitol itself, where the committee is currently listening to and valuing the perspectives of the folks who live mere blocks from where you sit. Within the South of Downtown focus area, there are over 3,500 living units, 94% of which are rental units. LB246 is incredibly important and relevant to the folks who call this neighborhood home. LB246 is a basic bill that would clean up and streamline the eviction court process, not only for organizations such as ours that seek to identify problems before we offer solutions neither only for the city and state to know what the causes of eviction are in our communities, but also for neighbors to be able to identify the reasons for evictions in our communities. Since the COVID-19 pandemic started affecting our community in March 2019, both South of Downtown and Collective Impact Lincoln have worked with community partners to launch and realize the Tenant Assistance Project (TAP) in Lincoln and Lancaster County. The TAP provides free legal representation to tenants appearing at eviction court in a limited-scope capacity. Since the TAP's inception, volunteer attorneys

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have represented 250 individuals and households in eviction court to avoid homelessness, secure more time to move out of their unit, or come to another agreement with their landlord or property manager that will allow folks to avoid eviction entirely. However, one of the problems with the current eviction process is that tenants don't always know that they're being evicted, nor do they know the reason for an eviction filing against them. There have been one-too-many cases in which a TAP volunteer is delivering informational materials to a tenant's door and this volunteer is the first person to inform the tenant of the eviction filed against them. Under current processes and without LB246, neither the TAP volunteer nor the tenant can come up with the information that would help make this rapid and overwhelming process a little more transparent. LB246 would give more clarity on the already-confusing eviction court process. Under current landlord-tenant law, the landlord is not required to list the reason for eviction, leaving tenants to speculate as to why they will lose their home and not know how to best prepare for their hearing. Requiring landlords to list a complaint on their eviction filing would add clarity to the tenant's perspective and give them a fair chance to seek representation, have adequate information for the emergency representation of the TAP, or even be able to equip themselves if they choose to represent themselves. Furthermore, LB246 would help organizations like South of Downtown CDO and CIL to better identify and understand the problems that all parties property owners and managers, tenants, service providers, etcetera are faced with as a result of evictions. Evictions create transiency and destabilize the block-by-block fabric of communities. Having this information clearly laid out in our court system could better help South of Downtown identify why folks are being evicted that could identify opportunities to expand programming. This data does not currently exist in a way that is readily available and accessible to organizations such as SDCDO or our partner organizations through CIL, and is also inaccessible to community partners who are directly serving folks impacted by evictions. Only by having the data available will we be able to start to remedy the problems causing and caused by evictions. We urge the committee to advance LB246 to add much-needed clarity around evictions and so that our communities will be better-equipped to identify and address the problems surrounding evictions.

LATHROP: Thanks for being here. Any other proponents? We'll take opponents in just a second. I'd like to say something, though. We've

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listened to a day of bills dealing with landlord tenant and, and I, and I appreciate that during COVID, during a pandemic, and during an economic slowdown, a lot of people are getting tossed out of their house. Maybe the moratorium has stopped some of it, but plenty of it's going on. And as a practicing lawyer, I greatly appreciate the men and women that have stepped up to volunteer to, to stand in for and help these folks out. I cannot imagine anything more disorienting than to be served with eviction papers and go down to the courthouse with no legal background. And it is a source of great pride for me that members of the legal profession are down there at the courthouse answering questions and helping people out. So whatever happens to these bills today, I want to express my, my admiration and my appreciation for what you and others have done who volunteer your professional services to people who are in a really bad spot, oftentimes without a-- yeah, they just have nothing. You're just walking them through it, I, I suspect. But thanks for what you guys do. And with that, I think we're out of proponents. So we will take opponent testimony if anyone's here to testify in opposition.

LYNN FISHER: I'm here in neutral.

LATHROP: Seeing no opponent testimony, I will take neutral testimony at this time. Good evening.

LYNN FISHER: Yeah, good evening. Thank you for the last time. Lynn Fisher, L-y-n-n F-i-s-h-e-r, here just representing myself and not as a association president. And Senator Lathrop, I, I will thank you for pointing out the, the help the tenants are getting in eviction court by the volunteer attorneys. Fortunately, I've only been there this year about twice, I think, for eviction proceedings. And I think it's a great help that the tenants are able to get and, and it's well deserved and they should, they should have the help. So it's, it's a good thing. And I think it clears everything up and makes, makes a lot of landlords toe the line to make sure that they're crossing their T's and dotting their I's. And of course, we use an attorney, but some landlords don't. And I think it's, it's a good thing for, for tenants. My concern or my-- one of the concerns I have here with this particular bill, which I, I don't think is one, and that is to make sure that we still would have the right to do a-- end a tenancy, a month-to-month tenancy without providing a reason. I think that the, the Landlord Tenant Act gives us that right to end a tenancy that's month to month. And I hope that that is not what this is intended to

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do, is to prevent that without giving a reason. For that-- after that,
I'll, I'll answer any questions.

LATHROP: I, I don't think there are any.

LYNN FISHER: OK. Well, thank you very much.

LATHROP: You bet.

LYNN FISHER: Appreciate all your hard work.

LATHROP: Thank you for your patience today.

LYNN FISHER: Sure.

LATHROP: Anyone else here to speak in a neutral capacity? Seeing none,
Senator DeBoer, you may close. As she approaches the chair, we have
received seven position letters with respect to LB246. All seven are
in favor or proponents. We also have a testimony that was offered,
written testimony this morning and turned in according to our rules,
proponent testimony from Isabel Salas, S-a-l-a-s, with the South of
Downtown Community Development Organization/Collective Impact and-- of
Lincoln. With that, Senator DeBoer, to close.

DeBOER: Thank you, Senator Lathrop. I just wanted to address the
gentleman's question, but I think he just left, that this should not
in any way affect month-to-month tenancy and ending a month-to-month
tenancy without giving a reason. Really, we just want to make things
consistent and smooth, give people notice and get that online drop
down menu so that we can follow data and also just have that ability
to clarify notice in pleadings to tenants. So thank you very much.

LATHROP: OK. That will close our hearing on LB246, and end our
hearings for the day. Thanks, everybody.