

Transcript Prepared by Clerk of the Legislature Transcribers Office  
Judiciary Committee January 31, 2024

**WAYNE:** Good afternoon, and welcome to the Judiciary Committee. My-- are we on? My name is Senator Justin Wayne. I represent Legislative District 13, which is north Omaha and northeast Douglas County. I can't say that no more, though. I keep forgetting that [INAUDIBLE] redistricting, I now go to 120th. So it's really not east. North Omaha. OK. Sorry. We will start off by having committee members and staff members do self-introduction, starting with my right-- far right.

**BOSN:** To the right of you. I'm Carolyn Bosn. I am the senator for District 25, which is Lincoln, southeast Lincoln area out to Bennington in Lancaster County.

**IBACH:** I'm Teresa Ibach. I represent District 44, which is 8 counties in southwest Nebraska.

**McKINNEY:** Terrell McKinney, District 11, north Omaha.

**ANGENITA PIERRE-LOUIS:** Angenita Pierre-Louis, committee clerk.

**WAYNE:** [INAUDIBLE].

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

**DeKAY:** Barry DeKay, District 40, Holt, Knox, Cedar, Antelope, northern part of Pierce and northern part of Dixon County.

**WAYNE:** Also assisting us is our committee pages: Elizabeth-- Isabel Kold [SIC] from Omaha, who's a political science and pre-law major at UNL; and Ethan Dunn from Omaha, who is a political science major. This afternoon, we will be hearing seven bills, and we will be taking them up in the order listed outside the room. On the table on the side of the room, you will find a blue testifier sheet. If you are planning to testify today, please fill out a blue one and hand it to the page when you come up. This will help us keep accurate records for the hearing. If you do not wish to testify but would like to record your presence and position at the hearing, please fill out a gold sheet over by the same column. I would also like to note the Legislature policy is that all letters for the record must be received by the committee by 8 a.m. on the morning of the hearing. Online comments are to be submitted in lieu of live testimony. So what that means is if you submitted a online comment or a letter, you can have one or the other, but you don't get two shots at the apples, so you don't get to testify and send one. Any letters-- any handouts submitted by testifiers will be included as part of the record as exhibits. If you'd like to-- make

sure you have 10. If you don't have 10 handouts, please provide the page a copy ahead of time so when you testify you'll have the right number of copies. Testimony will begin for each bill with the introducer's opening statement; followed by the proponents, those are supporters of the bill; then opponents, those in opposition. Lastly, we will have the neutral, neutral capacity testifiers. After that, the introducer of the bill, if they want to, can make closing statements. We ask that you begin your testimony by giving us your first and last name and spell your name for the record. We will be using the 3-minute light system today. When you begin your testimony, the light on the table will turn green; yellow when the light turns to the one-minute warning; and red, I, I will ask you to wrap up your final thoughts. I would like to remind everyone, including senators, please turn off your cell phones and put them on vibrate. And with that, we will open today's hearing with LB846. Senator Hunt. And I just realized I have to go order the [INAUDIBLE].

**DeBOER:** Welcome, Senator Hunt.

**HUNT:** Thank you, Vice Chair DeBoer. Good afternoon, colleagues. Good morning, members-- good afternoon, members of the Judiciary Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t. And I represent District 8 in the northern part of midtown Omaha. And today, I'm here to introduce LB846, which would adopt the Bed Bug Detection and Treatment Act. This bill might look familiar to some of you. Some of you haven't seen it before. But Senator Wayne introduced a similar bill in the past in 2020. And that bill went to Urban Affairs at the time because it just dealt with cities of the metropolitan class. And also, Senator Wayne is kind of a master at drafting a bill to go to the committee he wants it to go to. And he was chairing that committee, so it was a good place for that to end up at the time. But, to me, you know, this is a landlord-tenant issue. It's not a city issue. So we kind of drafted it to keep that in mind. And so here I am in Judiciary talking about it. But if this sounds familiar to you, that's why. So LB846 would adopt the Bed Bug Detection and Treatment Act. The purpose of this bill is to clearly codify the rights and responsibilities of landlords and tenants when a bedbug situation arises. Basically, it provides that (i) landlords cannot offer for rent units known to contain bedbugs and must disclose information about recent infestations and inspections to prospective tenants upon request. Basically, if you're a landlord and you know you've got bedbugs, you can't rent that. And if there's been bedbugs, you've got to disclose that. (ii) tenants must promptly notify the landlord of a known or suspected bedbug problem in their unit in writing and comply with reasonable measures to allow for inspection and treatment of bedbugs.

So that's putting responsibility on the tenant and some protections for the landlords in saying, if you know you've got an infestation, you got to tell your landlord. And (iii) landlords are responsible for promptly inspecting for and treating any bedbug infestation and are liable for those costs, but they would not be liable to damages to tenant's personal property, paying for alternative lodging, or the cost of treatments and, and inspections if the tenant is noncompliant. So, you know, trying to kind of strike a, a balance here. We know that in Nebraska, in Lincoln and Omaha specifically, we have a lot of problems with bedbugs. Orkin, which is, you know, a, a bedbug and pest treatment company, they released a list of, like, the top cities in the country for bedbug infestations. And Omaha is actually in the top 50. Bedbugs are a public health issue. They disproportionately impact low-income households. And a 2020 study, when this bill was last introduced, found that low-income households are 8 to 12 times more likely to have a bedbug infestation than middle- or upper, upper-income households. And this effect also applies in areas with higher eviction rates. The negative impacts of a bedbug infestation are wide-ranging. For families living in an infested home, 81% report psychological effects due to stress and stigma associated with bedbugs. Having bedbugs are associated with anxiety, sleep disturbances, depression. Kids can miss school, parents can miss work, and families that already struggle to make ends meet probably have to throw out a lot of their belongings. For landlords, it's not easy either. There's stigma. There's fear of eviction. There's the cost liability that prevents tenants from coming forward about infestations, and that's a serious threat to their property value. It increases the likelihood that this problem will spread to other units that they own. And it's also possible that the tenants could attempt to fix it themselves, to do some self-treatment, not have it work, and the problem just continues to get out of hand. As the law stands today, without LB846, many predominantly lower-income tenants do not have the money for professional pest control services and are disincentivized to report the problem to their landlord before it becomes more widespread among the community. To get ahead of something in my introduction here that I think we might hear from opponent testifiers today if there are any here, is based on most of the copied and pasted comments that were submitted from opponents to the bill. And it-- there's a sentiment among the group that, quote, bedbugs are always brought into the building by tenants and that it is therefore unfair that the landlord should be expected to pay for a problem induced by the tenant. This is verbatim from the email blast that was sent out and included in most of the submitted comments online. I want to say that this type of statement that bedbugs are always brought in

by the tenants is ignorant. The Environmental Protection Agency states that it's a myth that bedbugs are drawn to dirt and grime. It's not because you've got dirty tenants, you know, and-- you know, this is a pretty discriminatory view to hold, actually. Bedbugs are drawn to human blood. They don't discriminate between types of people with that. And they're drawn to carbon dioxide. And we have an entomologist here who can speak more to this, but I heard from a long-time environmental specialist who wanted to come but couldn't come today due to illness, and he wrote to me today: Bedbugs hitchhike on clothing, book bags, purses, furniture, luggage after a trip, and even from friends that may visit. One could even get them from the chair in a waiting room or a place that many people visit, like public transit, a movie theater, a library, or even in their place of work or from a coworker. So really, it's just as plausible that any visitor or even the landlord themselves or a worker in the building can bring a bedbug in. And trying to assign blame to the tenants is not only implausible, I feel it's discriminatory and it's kind of a waste of time, and it avoids getting to the underlying problem that we're trying to address. What LB846 is about is getting a handle on the problem for the benefit of the landlord, the benefit of the tenant, and for the benefit of the public health and the community. Before I wrap this up, I also wanted to uplift another comment that was submitted from Restoring Dignity, which is an online-- not online-- a Omaha nonprofit that serves refugees. Their executive director wrote that in the last 12 years, their organization has been in the homes of hundreds of low-income refugee families who are suffering from bedbug infestations and that the overwhelming majority of these tenants, mainly refugees, they moved into units that were already infested by bedbugs. They weren't informed of this by the landlord ahead of time. The landlord has not been willing to pay for treatment. And the executive director further wrote that they've received calls from local schools asking what can be done because these kids are bringing bedbugs to the school, and then they're spreading in the school. They're coming in their backpacks, they're coming in their clothes, all of this stuff. And then it causes further infestations. They've got to clean the school. They've got to get bedbug folks into the school to clean all of that out. It's going home with other kids. So that's a real-life example of something that's literally happening in Omaha to some of our most vulnerable neighbors, you know, in the refugee community, but then that spreads to everybody else, too. It's because landlords-- some landlords aren't doing the right thing. They're not disclosing that there's a bedbug infestation, and they're being willing to rent out spaces that they know are infested, which is putting a bunch of families at risk and allowing the bedbugs to be transported all over

the place. So I wanted to have this apply statewide because, while it's true that they're more prone to rapidly spreading in places with higher population, like the great metropolis of Omaha, Nebraska, but anywhere that there are bedbugs, whether you're in a rural area or a mid-sized town, I think that Nebraskans deserve the same uniform legal protections regardless of where they live. I think it's only fair that tenants who are renting a new place that they know what they're walking into, that landlords take responsibility for their spaces. And also that, if a tenant knows that there may be bedbugs here, that there may be a new infestation, that they report that to the landlord so that they can, you know, protect the value of their property, basically. I think you will hear from a variety of people today. We have an expert entomologist here with the university extension who I'm really grateful for, and she can probably answer-- you know, I can talk about the bill, but she's really an expert on the issue. And I think we have some fair housing advocates here. And I assume we have landlords here, but I will turn it over to them. But I'm happy to answer any of your questions if you have any at this time.

**WAYNE:** Any questions from the committee? Senator Bosn.

**BOSN:** Thanks. Thank you, Senator Hunt. Specifically as it relates to Section 3 of the bill that talks about contiguous dwelling units next door, do you see any potential problems with neighbors of apartment 216 saying, I'm in apartment 215, I don't want to let the landlord in? And how would you-- how does this bill address that potential? I mean, can you see that as an issue? And if so, how would you address that?

**HUNT:** So, so you're saying if someone has an infestation and the neighbor won't let them in to look at-- let the landlord in to look at well?

**BOSN:** Prefers to not have the landlord coming into their property.

**HUNT:** I believe that what the bill does is it says that-- then that will-- that tenant would be responsible for the cost of the treatment.

**BOSN:** OK. My other question is, do you have any concern that the costs of the treatment-- so your bill proposes that the landlord would be responsible for hiring the Orkin man, essentially, to come out and spray for the bedbugs?

**HUNT:** Whoever, yeah.

**BOSN:** Whoever it is.

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**HUNT:** Yeah.

**BOSN:** But that was your example.

**HUNT:** Mm-hmm.

**BOSN:** The concern that that cost will be preempted and passed on to tenants before it even becomes an issue, thereby raising the rent and the cau-- problems that may cause.

**HUNT:** Yeah. I mean, that type of thing always worries me. Any time we put a, quote unquote, mandate on a landlord, whether it's saying, you know, that you have to have a carbon monoxide detector, you have to have a smoke detector, you have to provide, you know, whatever kind of safety protections for tenants. There's always the type of landlord that is going to pass that on. And I-- to me, that's kind of a market problem. That's not, like, a law problem. It's the same with any business owner. Like, there's, there's ones that are more ethical and less ethical. There's ones that pay better wages and worse wages [INAUDIBLE] wage theft and-- you know, my, my goal is just to make sure that we're protecting public health, to make sure we're protecting landlords by saying, hey, tenants, if you've got an infestation, you've got to report that. I mean, I'm a renter myself, and I've always got my landlord on the horn about something. So, you know, that's just comes with the business of choosing to be a landlord and rent out properties, I think.

**BOSN:** Thank you.

**WAYNE:** Any other questions from the committee? Senator DeKay.

**DeKAY:** Thank you, Chairman Wayne. This might not be a question for you, so if somebody wants to address it coming up. What is the cost to eradicate bedbugs and the time frame it takes to do that? So if you can answer it, that would be great. If not, somebody else could address it when they come to the chair.

**HUNT:** That's a good question. I, I would answer your question with a question. I also wonder what kinds of-- I mean, assistance there could even be for covering the cost of that from a public health standpoint, you know. That's a good question, too.

**DeKAY:** All right.

**HUNT:** Or if it's a, if it's a cost of doing business or-- yeah. That's a good question.

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**DeKAY:** So-- OK.

**WAYNE:** Thank you. Any other questions? I, I agree with you. I mean, I introduced a bill-- it was in Urban Affairs. I don't know how it got here--

**HUNT:** You missed the introduction where I talked about how great you are.

**WAYNE:** I know. No, I heard it. I heard it. I was-- I had to run to my office for a phone call, but I had it going. But I-- for those who are going to be here after me: this is an issue. If housing is a top 3 issue, we don't, one, have a single place in our government that-- housed in. Literally. It's broken up in 4 different committees and 4 different departments, agencies. And it's supposed to be a top 3 issue in the state, so. Just throw that out there. Thank you. Will you be here for closing?

**HUNT:** Yes.

**WAYNE:** OK. First we'll start with proponents. Proponents. Welcome, sir.

**CARL BRAUN:** Good afternoon. First of all, I want to thank Senator Wayne for helping us with this project in the past and, and thank the committee for allowing us this time to, to have a conversation again today. My name is Carl Braun. And I am the owner and president of Quality Pest Control in Omaha. But I'm here today as the president of the Nebraska State Pest Control Association to talk to you about LB846. One thing about the bedbugs, they-- they don't know-- they don't care about zip codes and they don't care about bank, bank balances. They're an equal opportunity infester. To that point, if I may, I'd like to discuss a specific case that, that occurred in, in my shop this week. We'll call it the Saddle Brick House [PHONETIC]. As we speak, our team is currently addressing a bedbug infestation at that location. Approximately 2 years ago, the occupants sought our services to inspect for, for bedbugs. Upon confirming their presence, we proposed a treatment plan to the landlord given the tenants lacked resources to initiate treatment. Unfortunately, no action was taken. Fast forward 2 years, and the inf-- the infestation at the Saddle Brick House not only persisted, but it has intensified, making it more challenging and costly to treat. And the unit is now empty. And those people moved out, taking those bugs with them to wherever they're going to move into. So it's-- that's one level of the problem. Additionally, the landlord is, is incurring financial losses, as the

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property remains off the market until the infestation has been eradicated. I think that offsets some of the concern that, that people might have had about having the landlords pay for it in the first place, so. Early detection is key. Had they gotten, gotten it earlier, it would have been much more economical for them. Today, I ask your-- for your support for LB846, a bill that utilizes certified pest control presh-- professionals to manage bedbug infestations in multi-unit dwellings. LB846 offers a private sector solution to a public health problem. There would be little, if any, impact to the state's budget. Bedbugs are a major health threat in the United States, disproportionately impacting low-income housing and adversely impacting mental health of Nebraskans. Thankfully, by passing this bill, Nebraska would be taking the lead on passing laws that relieve people in low-income housing and individuals suffering from the negative mental health effects of bedbugs. I am in support of-- I support LB846 because it protects both landlords and tenants in our state. In, in this bill, tenants are legally protected and permitted to come forward about a potential infestation without fear of retribution or eviction. Removing the stigma around pest infestations is the most important step to effectively addressing the problem. Landlords win by ensuring their property values are protected, as quick treatment for bedbug problems reduces the likelihood of negative reviews by tenants complaining about the infe-- bedbug infestations. Professional treatment in multi-unit dwellings will also, will also lessen bedbugs spreading to and from adjacent units. Last, last thing. This bill will reduce the overall cost of treatment by landlords by addressing the problem early and proactively. As an owner of a proact-- of a pest control company and an applicator, I know that knowledgeable, licensed, and trained PMPs inspecting-- treating bedbugs is the best way to ensure the infestation is sufficiently addressed.

**WAYNE:** I got to, I got to cut you off here. Sorry about that. Is there any questions from the committee? Can you-- Senator Holdcroft.

**HOLDCROFT:** Spell his name [INAUDIBLE].

**WAYNE:** That's what I-- I have little cards now where people don't spell their names. They slide it over to me to remind me. So can you spell your name for the record?

**CARL BRAUN:** Sure. It's Carl Braun, C-a-r-l B-r-a-u-n.

**WAYNE:** And what was the last thing you were about to say? I'll let you finish.



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**CARL BRAUN:** OK. The last thing I was about to say was: in conclusion, this bill will provide relief from, from some of our most valuable-- vulnerable populations across the state and help protect Nebraskans from the public health scourge that is bedbugs. Thank you for allowing me to speak on this matter this afternoon. And I ask that you please vote in favor of LB846. And I'd be happy to answer any questions that any of you have.

**WAYNE:** Thank you. Any other questions from the committee? Seeing none, thank you for being here. Thank you for working on this.

**CARL BRAUN:** Thank you, Senator.

**WAYNE:** Yup. Next proponent. Proponent. Welcome.

**STEVE JARRELL:** Chairperson Wayne, Vice Chairperson DeBoer, members of the Judiciary Committee. I'm Steve Jarrell, J-a-r-r-e-l-l. I'm an operational compliance manager for Rentokil Terminix. We're the largest pest control company in the United States, serving both commercial and residential customers, and committed to protecting people, property, the environment, and the performance of-- sorry-- services. My colleagues service thousands of accounts every day with the goal of protecting our customers, their property, health, and food supply. Rentokil Terminix appreciates the opportunity to share our thoughts and support LB846, a bill that utilizes certified pest control professionals to manage bedbug infestations in multi-unit dwellings. Bedbugs are problematic in the United States, disproportionately impact low-income housing, and adversely impact mental health. A 2020 study on bedbugs in Chicago found that bedbug infestations are a problem of poverty, in which the public health burden falls disproportionately on poorer neighborhoods. According to the U.S. Environmental Protection Agency, there are adverse mental health impacts on people living in infested homes. Reported effects include anxiety, insomnia, and [INAUDIBLE] relat-- reactions. Thankfully, polic-- policymakers are stepping up and enacting laws to aim-- provide relief to people of low-income housing and ind-- individuals suffering from negative mental health impacts. We are supportive of L-- LB846 because it resembles the recent landlord-tenant bedbug laws enacted in other states and the cities, including Colorado, Connecticut, Delaware, Maine, Chicago, and Philadelphia that use professional pest control as a private sector solution to the public health problems. These science-based bedbug laws received endorsements by entomologists, the National Black Caucus of State Legislators, and other groups. Lastly, these laws achieve their intended effect, which is to reduce the prevalence of bedbugs by

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relying on the pest control professionals and providing legal clarity. Please vote in, in favor of LB846. Thank you for allowing us to share our thoughts on this important legislation. And I'm happy to answer any questions.

**WAYNE:** Any questions from the committee?

**BOSN:** I do.

**WAYNE:** Senator Bosn.

**BOSN:** Thank you, Senator Wayne. What was the name of the company that you said?

**STEVE JARRELL:** Rentokil Terminix.

**BOSN:** Rent-a-kill?

**STEVE JARRELL:** Rentokil.

**BOSN:** OK. Ren-to-kil. Sorry. Oh, you're passing something out. I apologize. OK. Are you-- is that a-- does that qualify under subsection (2) of the bill that talks about a scent detection canine team?

**STEVE JARRELL:** Are you asking do we use a canine team?

**BOSN:** Right.

**STEVE JARRELL:** We do not use a canine team. We subcontract some, some areas out into canine teams.

**BOSN:** OK. So if this requires a scent detection canine team, you have someone you would use for that?

**STEVE JARRELL:** That's correct.

**BOSN:** OK. I'm understanding now. Thank you.

**WAYNE:** Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne. Thank you, Mr. Jarrell, for testifying today. Can you briefly describe, you know, how you treat an infestation?

**STEVE JARRELL:** Sure. The most important piece is going to be the, the first initial inspection. We can, we get to identify the level of

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inspection. And then we, we consult with the homeowner, steps and qualities. It's almost the first week is nothing more than prepping and getting ready for that solution. And then we can go in with different type of insecticides. But more importantly, it's, it's about [INAUDIBLE], teaching the homeowner about the cleanliness, vacuuming. We do heat sensors. And then once the area is cleaned up, then we're able to do a full inspection. But it's not always about just going in and applying insecticide.

**HOLDCROFT:** So during the treatment time, the residents are able to stay in the residence or do they--

**STEVE JARRELL:** No, sir. We, we ask them to leave and we don't allow them back into the redis-- residence for up to 4 hours.

**HOLDCROFT:** 4 hours?

**STEVE JARRELL:** Correct.

**HOLDCROFT:** And about how much does a typical treatment cost?

**STEVE JARRELL:** It really depends on the level of infestation. If caught early, we can do it rather-- pretty reasonably. It's usually a few hundred dollars, right? But if it's something that's being prolonged and the infestation is great, it, it tends to be a lot more labor-intensified.

**HOLDCROFT:** Thank you.

**STEVE JARRELL:** Yes, sir.

**WAYNE:** Any other questions from the committee? Senator Ibach.

**IBACH:** Thank you, Mr. Chairman. Can you give us an idea of how this, this issue has escalated, say, in the last 5 years? Has it escalated or has it, has it tapered off a little bit, or are we still where we were 10 years ago?

**STEVE JARRELL:** No, I don't feel like it's tapered off. I mean, it's-- the, the, the biggest issue is when we have renters or, or people that don't feel like that they can afford it or whatever. And sometimes, you know, a lot of people will mistaken the bites that they're getting or whatever from fleas or stuff like that, and this whole time the infestation is growing. So it depends on how fast you can remediate the issue. But bedbugs are prevalent and they're hitchhikers, so they're, they're always looking for the warm bodies.

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**IBACH:** But you don't feel like the issue is de-escalated even after it--

**STEVE JARRELL:** I don't think it's de-escalated, no ma'am.

**IBACH:** OK. All right. Thank you.

**STEVE JARRELL:** Yes, ma'am.

**WAYNE:** Any other questions? Senator DeKay.

**DeKAY:** Thank you. Is there any residue left after applying pesticides that would cause further cleaning, like washing clothes?

**STEVE JARRELL:** Well, it depends on the, the insecticides you use. You can use a residual that is a flushing agency that's going to get the bedbugs out of the cracks and crevices and in the walls, behind picture frames, and things of that nature. There's a dust-- there's dusting products that's used that does leave behind a residue because that's what the bedbugs are going to crawl on to remove the exoskeleton and dehydrate them out. So those products are there. And it's not a physical danger to the homeowner. These applications are going to be applied to mattresses and box springs and things like that.

**DeKAY:** Thank you.

**STEVE JARRELL:** Mm-hmm.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**STEVE JARRELL:** Thank you for your time.

**WAYNE:** Next proponent. Next proponent. Proponent.

**GERRY FORD:** Good afternoon. My name is Gerry Ford, G-e-r-r-y F-o-r-d. For the last 7 years, I have worked with people exiting homelessness to obtain safe, affordable housing. Also right now, I help manage a noncongregate shelter in Omaha. So most people I've worked with are in very fixed income and have different barriers that really narrow the scope of units that they will be approved for. So what I've learned in those situations when there is a bedbug infestation, I work with people on how to report that to their landlord. Generally, what I have seen is it's the landlord or a maintenance person that comes in and treats it. They only treat that unit. Sometimes that cost is passed

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along to the tenant. What I see with that is, most of the time, it might leave their unit, and then it goes to another unit, to another unit, and then back to the original unit. So it's just this endless cycle that's got to be a pain. Like, none of us want to work or live in bedbugs, in or around them. The-- I've also seen the opposite. So I've seen when a landlord will reach out to somewhere, like Orkin or Presto-X, and have them come in and properly look at the unit. They'll assess it. They'll see how often it needs treated, what units need to be treated, and then come back and say, this is an infestation that's gone. I really believe that if it's up to a landlord to make sure there's fire-- smoke detectors and carbon monoxide detectors, that there's no holes in the roof, there's no chipping paint, this is really no different because it is a health concern. So I ask that you guys support LB846. And I thank you for your time.

**WAYNE:** Thank you. Any questions from the committee? Did you spell your name? I think you did. OK. Any other questions from the committee? Seeing none, thank you for being here.

**GERRY FORD:** Thank you.

**WAYNE:** Next proponent. Proponent. Welcome.

**ALICIA CHRISTENSEN:** Hi. Hi. Senator Wayne and members of the Judiciary Committee. My name is Alicia Christensen, A-l-i-c-i-a C-h-r-i-s-t-e-n-s-e-n. And I wanted to follow on my colleague's testimony to briefly highlight some of the consumer protection aspects of this legislation. And it might-- I'd go to some of your questions from earlier, Senator Bosn. So I anticipated that some of the opponents would suggest that the-- this bill would potentially raise rents for people because property owners might pass the costs of this onto tenants. But I just wanted to inform the committee that this really is already happening. More and more of our participants' leases or lease addendums include non-negotiable monthly pest control fees without any indication of what those fees cover or the quality of the services that are be-- that will be provided. For instance, I-- on the handout that I provided, there are a couple of excerpts from lease agreements that our participants have been under. So a typical lease clause might require the resident to agree that the apartment was found to be free of bedbugs after an inspection by an employee of the apartment community, not by a person with the appropriate knowledge or expertise to make that determination. Further, the lease explains that the tenant agrees to cover the costs associated with bedbug removal in their apartment. So they're relying on the certification of a person that's managing the property, and that might not be their area of

expertise. This-- I, I think, to my reading, these, these provisions sometimes run counter to what are in Omaha's property maintenance code, which provides that if a tenant fails to prevent an infestation in their unit, the responsibility for pest elimination is shared by the property owner and the tenant. The property maintenance code also clearly states that the owner is responsible for pest elimination in public or shared areas. However, the addendum, like that's included on the handout, is having the tenant pay a monthly \$5 charge and then is also responsible for eliminating bedbugs or fleas in their apartment. So it seems to sound like they're subsidizing the landlord's pest control of the common areas. So I encourage you to support this legislation, as it'll bring some quality control and some consumer protections to this area of landlord-tenant law.

**WAYNE:** Thank you. Any questions from the community-- committee? I said community. [INAUDIBLE]. Seeing none, thank you for being here. Next proponent. Next proponent. Welcome.

**LIZZIE TURNER:** Hello. My name is Lizzie Turner, L-i-z-z-i-e T-u-r-n-e-r. And I am at 1614 D Street, Apartment 2, Lincoln, Nebraska, 68512. So I wanted to share my experience today as someone that unfortunately had bedbugs when I was in college as an undergrad student. I was living in an apartment with 3 other people-- the cheapest apartment we could find near our college campus. We all were attending this state school because none of us had a ton of income and we were trying to get an education at the most affordable rate possible and the most affordable apartment that we could access. At the time, I was working 2 jobs as well as being a full-time student in order just to make ends meet. I was very, very busy and very, very sleep deprived. In our second year living in that apartment, my roommate started developing a rash. She wasn't-- or, she thought it was a rash and wasn't sure what it was. After a few weeks of, of ruling out other options, she realized it was, in fact, bedbugs. And she immediately called the landlord. We didn't know what that would result in at the time. We were just trying to be responsible tenants. We were then informed that we would be responsible for the \$1,600 cost of treating the whole apartment with bedbugs. None of us could afford that. Because none of us could afford that, I spent weeks following trying to negotiate with the landlord. I spoke with our campus attorney to try to get advice of how we might be able to handle this best. The attorney at the time was very insistent that we shouldn't have to pay it. Bedbugs can spread very easily and it wasn't our fault. And the landlord, as the person responsible for caring for the apartment, should be handling it. However, I was only able to get it-- get them to cover half. So each of us were responsible for \$200. For

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me, that was a very prohibitive amount of money. At the time, I was already regularly skipping meals, underate, and very-- and frequently had adequate, adequate protein because it was too expensive. So this surprise expense made that situation even harder. It induced a lot of stress and pulled me away from my studies and had a lasting impact on my health. So with that, I hope you do pass this bill, as many others can be in an even worse financial situation and this can have an even larger impact on their life as it did mine. So, yes. Please pass this bill. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none-- Senator DeKay.

**DeKAY:** Thank you. You said the initial cost was \$1,600 and you were able to negotiate down to half that price. How did you come to the conclusion that he was able to do it for \$800?

**LIZZIE TURNER:** Well, the, the landlord agreed to cover half.

**DeKAY:** OK. Thank you.

**LIZZIE TURNER:** Yeah.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**LIZZIE TURNER:** All right. Thank you.

**WAYNE:** Next proponent. Welcome to your Judiciary.

**NOAH RASMUSSEN:** Thank you. Good afternoon, everyone. My name is Noah Rasmussen, spelled N-o-a-h R-a-s-m-u-s-s-e-n. I am a staff attorney with Legal Aid of Nebraska's Housing Justice Project, and I am based in Legal Aid of Nebraska's Lincoln office. Thank you for the opportunity to appear today in support of LB846. And I also want to thank Senator Hunt for introducing this bill and inviting Legal Aid to testify. I work with low-income tenants, representing them in eviction proceedings and help-- helping them with other housing-related issues. Between myself and other attorneys at Legal Aid of Nebraska, we have decades of experience representing low-income tenants across the state. Legal Aid of Nebraska is the largest statewide nonprofit law firm providing free li-- civil legal services to low-income Nebraskans. And Legal Aid of Nebraska helps thousands of tenants every year. Throughout my time working with tenants, I've had many encounters with tenants who are experiencing issues with bedbugs. Bedbugs spread quickly and once they appear in a home or apartment, they can be difficult to remove. Because of how easily they spread, a

person who is suffering from a bedbug infestation might not have done anything wrong. They very well could have gotten it by living next door to someone who has bedbugs. I know tenants who have reported that they are not the only ones in the building with bedbugs. The financial consequence of a bedbug infestation can be quite expensive, especially for low-income tenants. I've talked to tenants who have had to get rid of clothing and furniture because of issues with bedbugs. I have also talked with tenants who have attempted to fix the infestations on their own or who have even received threats of eviction because of bedbugs being found in their apartments. I believe that this bill, LB846, would allow a clear process by which tenants can get issues like bedbug infestations resolved without being financially responsible for it, especially if they did nothing to cause the infestations and if they notify the landlord when there is an issue. It lays out a clear timeline with clear obligations for both the tenant and the landlord. Also, requirements such as requiring a landlord to not rent out a unit that contains bedbugs is reasonable and a requirement that should already be followed. I also don't believe that this would be putting entirely new and unique obligations on landlords that they don't already have. There is already a state statute, Nebraska Revised Statute 76-1419, in the Landlord Tenant Act that describes the landlord's requirements to maintain fit premises. The statute already requires that the landlord make all repairs and do whatever is necessary after written or actual notice to put and keep the premises in a fit and habitable condition. Removing bedbugs is certainly necessary to keep a home fit and habitable. Further, in the city of Lincoln, there is already the Lincoln Municipal Code 21.05.360, which describes the landlord's obligations specifically for insect infestations. That municipal code already has rules regarding the landlord being responsible for insect infestations prior to renting a unit to a tenant. And an owner-- and I see I'm out of time. Thank you all for your time, unless anyone has any questions.

**WAYNE:** Any questions from the committee? Senator Bosn.

**BOSN:** Thank you. I know you got cut off on time there, but you were listing off a number of existing statutes. But--

**NOAH RASMUSSEN:** Yes.

**BOSN:** --your position is already require this.

**NOAH RASMUSSEN:** Well, I, I don't think requires this exact timing or all of these things, but I think a lot of this should already be covered in terms of-- if there's bedbugs in a unit, I already think a



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landlord should be in-- is required to be spraying. So I'm saying it's not going from 0 to 100. I think it's going from an already existing ground up a little bit.

**BOSN:** OK. So you're saying that this would clean up what is intended but maybe not spelled out clearly enough? Am I--

**NOAH RASMUSSEN:** Right. Exactly.

**BOSN:** So one of the questions I asked earlier-- and if you're not the correct person, I'm hoping someone later will address it for us--with regard to this beg-- bedbug detection team means a scent detection canine team. Are you aware of how many of those there are? Is that all businesses that treat bed-- I mean, that seems pretty specific. Do you agree?

**NOAH RASMUSSEN:** Right. That, that does-- I, I don't have any idea about it. I mean, I, I think a lot of this was referring to things outside of that canine detection team. But, yeah. I, I have no idea about what companies hire or what units they have in terms of canine detection.

**BOSN:** But this would require a canine detection team to come in if there's bedbugs detected in the unit. Is that correct?

**NOAH RASMUSSEN:** I, I did not believe it did. I was thinking it was just requiring the treatment of it. But I, I didn't specifically think it was requiring a bedbug detection team. I think that was just a portion of what could be used.

**BOSN:** OK. So that's one of the ways you can treat it, is your reading of the statute.

**NOAH RASMUSSEN:** That was my understanding of it, yes.

**BOSN:** OK. Thank you.

**NOAH RASMUSSEN:** Yes.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**NOAH RASMUSSEN:** Thank you.

**WAYNE:** Next proponent. Proponent.

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**BENJAMIN BURAS:** Benjamin, B-e-n-j-a-m-i-n; Buras, B-u-r-a-s. So, yeah. I support this legislation. And I think if it's going to identify that a, that a unit or property has bedbugs and then a, a landlord leases the unit to a tenant that, yeah, they should be required to remove the, the bedbugs. And I just wanted to point out that-- I know an expert pest control person testified that the, the tenants are required to be out while the pest control was being done. And I think it would be helpful if the tenants had access to a facility where they could do laundry and possibly get in, like, a chlorinated hot tub or pool which would kill the, the bedbugs. And hopefully they-- the-- doing the laundry would kill the, the bugs on their clothing. And then once the treatment's been done and it's safe to enter the unit, then they could return. So, yeah. I think that should be at the expense of the landlord it's-- if it's been determined that the bedbugs were there before the tenants arrived or started leasing the property. So that's why I support this bill.

**WAYNE:** Thank you. Any other-- any questions from the committee? Seeing none. Thank you for being here.

**BENJAMIN BURAS:** Thank you.

**WAYNE:** Next proponent. Next proponent. Seeing none. We'll move to opponents. First opponent.

**LYNN FISHER:** Good afternoon.

**WAYNE:** Good afternoon, sir. How are you?

**LYNN FISHER:** Great. Senator Wayne, members of the Judiciary, thank you so much for your service. We appreciate it, all you do for the state of Nebraska. And thank you for your thoughtful consideration. My name is Lynn Fisher, L-y-n-n F-i-s-h-e-r. I am president of the Statewide Property Owners Association. Also president of the Lincoln Real Estate Owners and Managers Association. I'm also a realtor and involved with the, the Realtor Association of Nebraska. So we at the Statewide Property Owners Association are opposed to LB846. We in most cases can determine the source of bedbugs infestation based on which dwelling unit has the highest concentration if-- of infestation. And that's if there's more than one unit involved. In cases where we can't determine the source, we then pay for treatment in full for any affected units. And we're always successful in eliminating bedbugs. Fortunately, we-- my company doesn't have to deal with beg-- bedbugs on a frequent basis, but an occasional basis. Otherwise, we bill the tenant who is responsible for bringing in the bedbugs for the entire treatment cost.

Again, because we're easily able to determine where they, where they were sourced. So we don't agree that the provision that property owners should pay for inspections and treatment when we can determine that the tenant has brought bedbugs into their unit. We agree with the bill's provisions that tenants must report and cooperate with efforts to treat for bedbugs. And overall, as with any new law that adds to the cost of operating a private property rental business, if passed, this bill will increase rents and/or reduce the number of affordable housing units. At least 35% of the cost of a residential property can be attributed to taxes and government regulation. Each new regulation increases the costs and therefore the rents. As mentioned before, there are existing laws in place that require a landlord to provide to a new tenant a habitable and, and safe and clean apartment. And if, if there was any indication at all that there were any bedbugs, we would certainly take care of those. And most of our members that we know of would do that before we put somebody into that, into that unit. We use a bedbug addendum to clearly lay out tenants' responsibilities and our responsibilities regarding that, that issue. And I think it would be problematic the requirement to guarantee no infestation prior to a tenant moving in if it was pushed to the point of becoming a new law and we had to-- or our members had to guarantee 100% that no bedbugs were there. I think that inspection process could, again, add to our costs and raise rents. Be happy to answer any questions.

**WAYNE:** Thank you. Any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you, Chair Wayne. Thank you for your testimony. How are you able to determine if somebody brought bedbugs into their apartment? Like, what-- what's the process?

**LYNN FISHER:** Sure. So the company that we use, they will come and inspect that unit and all the surrounding units if it's a mult-- if it's a apartment building. And they will tell us the pinpoint area where there's the most heavily infestation evidence. And so we can tell that it started or came there. Also, they can inspect personal belongings. If it's a brand new tenant, they can tell, for example, that maybe their clothing or their furniture-- furniture is probably the biggest source, like a sofa or a chair that somebody brings in. Or unfortunately, oftentimes people will pick up a free piece of furniture off the street, bring it into their new apartment, and we can determine that though-- that is a, a source of the infestation.

**McKINNEY:** So what if it's not a new tenant and there's a bedbug infe-- bedbug infestation?

**LYNN FISHER:** Sure.

**McKINNEY:** How are you determining that? I-- it, it's not super clear. I know-- yeah, you might-- maybe you can find, like, a, a, a big infestation of bedbugs. But that doesn't completely say this individual is the reason this enf-- infestation is in this unit.

**LYNN FISHER:** Well, just imagine a, a data map. You know, we can, we can tell how many bedbugs there are, say, in their bedroom or around their sofa in that apartment. And as we go out into other units, we see fewer and fewer, or maybe no bedbugs.

**McKINNEY:** Is that based on science or human judgment?

**LYNN FISHER:** Common sense.

**McKINNEY:** So there's no science behind it.

**LYNN FISHER:** Common sense and science are-- should be the same thing.

**McKINNEY:** No.

**LYNN FISHER:** The evidence speaks for itself. The evidence speaks for itself.

**WAYNE:** I wish it was that easy.

**McKINNEY:** All right. Thank you.

**LYNN FISHER:** Thank you.

**WAYNE:** Any other questions? Senator Ibach.

**IBACH:** Thank you, Chair Wayne. So do you-- regarding a past comment from one of the other testifiers-- do you feel like the city codes or the ordinances that are already in place cover--

**LYNN FISHER:** Yes.

**IBACH:** --inspections and what's necessary?

**LYNN FISHER:** Yes. Yeah. The health department and building safety, at least in Lincoln-- and I think Omaha's the same-- the laws are in place to cover for whatever contingency there is for a bedbug situation.

**IBACH:** And as a supplement, this doesn't add just those guardrails?

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**LYNN FISHER:** I, I don't think that it does, no.

**IBACH:** OK. All right. Thank you. Thank you, Chair.

**WAYNE:** Any other questions from the committee? Senator Bosn.

**BOSN:** Thank you, Chairman Wayne. Mr. Fisher, so-- I'm trying to understand because this isn't my lane. So right now, do you conduct a inspection between tenants?

**LYNN FISHER:** No.

**BOSN:** So I'm moving out; she's moving in. There's no inspection done?

**LYNN FISHER:** If, if we have no indication from a prior infestation or some complaint, then we-- we do a thorough cleaning. And if our staff has any indication that there's any kind of infestation, whether cockroaches or, or any kind of infestation, bedbugs or whatever, we will certainly take action and make sure that it's corrected before a tenant moves in.

**BOSN:** So in the example that the lady brought earlier-- you were here for Ms. Turner's testimony, is that correct?

**LYNN FISHER:** Mm-hmm. Yes.

**BOSN:** And she spoke of an incident where she and her roommates became aware-- she wasn't the roommate, but one of the other roommates became aware. Had they reported that the day they moved in, would they still have been responsible for paying that in any portion?

**LYNN FISHER:** Well, we had a, a very similar situation where someone moved into an apartment. And it turns out that there was bedbugs there that the prior tenant had reported. And so we determined that, based on an interview and, and a, and a investigation. And, and so we took care of the cost. And-- so the tenant didn't have to pay.

**BOSN:** So do you agree that the tenant, if it was in an existing-- if they were there before somebody moves in, do you agree that the tenant should not be responsible for bearing any of those costs?

**LYNN FISHER:** Yes.

**BOSN:** OK. Thank you.

**WAYNE:** Senator DeBoer.

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**DeBOER:** Thank you. So-- I wasn't going to ask any questions, but now I'm sort of wondering if I should here based on this conversation you just had with Senator Bosn. It sounds like you were a good actor in that situation, right? But we all know that there's probably bad actors who would say, well, you live here now, so you're responsible for it, and would charge that tenant. So would you be comfortable with a law that would try to codify the kind of good acting that you put in place? So would you be comfortable with something that said that, if the infestation came from the previous tenant, that the new tenants are not responsible for the cost of remediation?

**LYNN FISHER:** Well, as mentioned previously-- I don't disagree with that, but I think there are laws in place. And city codes and, and state codes address the fact that, as a general rule, we are responsible to make sure that it's a clean and habitable place. And so from that perspective, I think--

**DeBOER:** So you'd be OK with--

**LYNN FISHER:** --if, if a tenant was to make a complaint saying that the landlord refuses to take care of bedbugs that were there already, I think that the folks from Legal Aid and, and a complaint to the health department would probably be the way to remedy that situation, rather than a new law.

**DeBOER:** But you would say then that that should be the law, that it should be the law that if someone came in--

**LYNN FISHER:** I think that is the law.

**DeBOER:** --before-- OK. Great. And you're-- think that's good. So does it hurt to make it the law? Would you be OK if we just codified that principle?

**LYNN FISHER:** Well, I-- because I think the laws in place and the responsibility is there already, that-- the danger is as you add more and more additional laws and regulations-- I mentioned the, the cost of housing goes up incrementally.

**DeBOER:** Sure. But if it's already the law--

**LYNN FISHER:** Pardon me?

**DeBOER:** But if it's already the law, then it wouldn't at any cost.

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**LYNN FISHER:** Well, if, if it's already the law, then it doesn't require new--

**DeBOER:** Sure. But it wouldn't add any cost either.

**LYNN FISHER:** Well. All in your time.

**DeBOER:** All right. Thank you.

**WAYNE:** Senator DeKay.

**DeKAY:** Thank you. If I read-- in the testimony here, the one sentence, right-- if you determine that a tenant brings bedbugs in and a couple other apartments got infested, the one that you determined that brought the bedbugs in would bear the cost of cleaning all 3 apartments?

**LYNN FISHER:** Yes.

**DeKAY:** OK. Thank you.

**LYNN FISHER:** Thank you.

**WAYNE:** Any more questions from the committee? Seeing none, thank you for being here.

**LYNN FISHER:** Thank you.

**WAYNE:** Next opponent. Next opponent. If there are a couple more opponents, just come on up right now. There's a couple seats in the front so we don't have to keep waiting. Thank you. Welcome to your Judiciary.

**RYAN NORMAN:** Good afternoon, members of the Judiciary Committee. My name is Ryan Norman. That's R-y-a-n-- or, R-y-a-n N-o-r-m-a-n. I do promise I know how to spell my name. I'm an attorney, and I'm the chair of the Apartment Association of Nebraska Legislative Committee. I'm here to testify in opposition to LB846. The Apartment Association of Nebraska represents 86 owner management companies with over 60,000 apartment units, contributing \$270.7 million in property taxes to the state and over 2,000 jobs. Currently, under most standard lease agreements, a tenant is responsible for pest control services to eliminate bedbugs if they bring the pest into the property. LB846 would shift that burden to the landlord even if the tenant clearly brought the infestation in. Obviously, this is beyond the property manager's control. And when it occurs, the property owner also incurs

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additional costs in treating other adjacent, affected apartments. The other thing I wanted to bring up is LB846 allows a tenant, at the landlord's cost, to request a bedbug inspection even if there's no evidence of bedbugs in the unit. The way the statute's written-- we just talked about some bad actors from the landlord's side. I think that that opens this up to bad actors from the tenant's side, too. Tenants who are frustrated with their landlords would be able to force their landlords to do bedbug inspections at the landlord's cost. And, and there would be no recourse from the landlord if bedbugs aren't found. LB846 also adds additional requirements for landlords that actually make elimination of bedbugs more difficult than the current system. For example, the bill requires 48 hours notice to the tenant before an inspection, while current Nebraska landlord-tenant law only requires 24 hours' notice. Generally, landlords don't want bedbugs any more than tenants do. And I think that there might be some wiggle room to make a bill like this work at some point. I don't think that, as drafted, it would work. I just think that this is too stringent. There's too much stuff put on the landlords that shouldn't be on the landlords in this bill. And therefore, the Apartment Association opposes it. I urge the committee on behalf of the Apartment Association to oppose LB248 [SIC]. Thank you for your time. And I'd be happy to answer any of your questions.

**WAYNE:** Thank you. Questions from the committee? Seeing none, thank you for being here.

**RYAN NORMAN:** Thank you.

**WAYNE:** Welcome.

**KRISTY LAMB:** Thank you. And thank you very much for your time in advance. My name is Kristy Lamb, K-r-i-s-t-y L-a-m-b. I work for NP Dodge Management Company. We represent approximately 4,000 units in the Omaha-Lincoln metropolitan area. About 40% of those units are dedicated to affordable housing communities as well. I agree that bedbugs are a problem. And, and we don't want them, obviously, in our rental housing any more than, than the residents do as well. I do think that there are a lot of good merit to this bill, but I'm also asking for some very specific amendments to be made to make sure that we are considering the collaborative effort that's necessary in order to combat bedbugs in, in rental housing. Specifically, I think the bill as it is introduced offers a 96-hour window for an inspection to take place after the landlord's informed. At a minimum, we'd ask that [INAUDIBLE] language to get 5 business days in-- instead of 96 hours so that if that notification occurs on a Saturday, that those weekend



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hours or holidays aren't affecting that timeline for us to reasonably get ahold of the appropriate pest control providers in order to get those inspections done. More importantly, we would like to expand the language for tenant responsibility as it relates to this collaborative effort that we need in order to eradicate bedbugs. We would like more specific language regarding to the number of days a tenant has to report a potential bugbed-- bedbug concern or infestation in the unit. The quicker that's reported to us, then the scope of the, the treatment becomes minimized and we can take care of it much quicker. And we also need provisions in here that are more specific to their requirements to prepare for the treatment. I believe one of the pest control providers mentioned, in some cases, it can take residents up to a week in order to prepare for the treatment. And if, if the preparation isn't done, the treatments don't work. A minimum of 2 treatments are necessary in order to really have an effective end result. Those are about \$200 to \$250 up to \$500, depending on the nature and the severity of the infestation.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**KRISTY LAMB:** Thank you.

**WAYNE:** Next opponent. Welcome to your Judiciary.

**TARA HOLTERHAUS:** Good afternoon, members of the Judiciary Committee. My name is Tara Holterhaus, Tara; last name, H-o-l-t-e-r-h-a-u-s. I'm an attorney in Omaha, Nebraska. I represent landlords, property owners, management companies in landlord-tenant-related matters. Today, I am here on behalf of the Apartment Association of Nebraska and the Nebraska Association of Commercial Property Owners. LB846 requires and creates a burden on the landlords and property owners at the landlord, at the landlord and property owners' expense to eradicate bedbug infestation-- infestations. The Apartment Association of Nebraska members already utilize a lease agreement that contains a bedbug addendum that addresses how landlords and tenants can cooperate to address bedbug infestations. The lease agreement that our members utilize address these concerns that are already put forth in LB846, except that the lease agreement our members utilize attributes costs for the treatment of bedbug infestations to the tenants if it can be shown that the tenant did bring in the bedbug infestation to the residence. Many of the Apartment Association of Nebraska members that cannot show that the tenant did bring in the bedbug infestation already do eat the cost of that treatment and do not pass along that cost unless there can be sufficient evidence that is shown. As

drafted, LB846 does not give the landlord this option if they can show that the tenant was responsible for bringing the bedbug infestation into the residence. As with previous testimony before the committee, all of these additional bills that impose requirements on the landlord to cover these costs will ultimately raise rental rates and market conditions for the landlord-tenant industry in a market that is otherwise considered to be relatively affordable cost of living for the state of Nebraska.

**WAYNE:** Senator DeBoer.

**DeBOER:** Thank you, Senator Wayne. Thank you for testifying here. So here's the thing that I'm kind of trying to wrap my head around and struggle with, which is that if, as a previous testifier said, someone comes into the school where your child is, some-- or, tenant's child is, and the child ends up, unbeknownst to the kid, bringing bedbugs back to their home because they sat by a kid in school. Now, suddenly, there's bedbugs in that person's home. According to what you're saying, you're going to charge that person who has a child who went to school, which is not really-- no fault there-- and didn't know they had bedbugs. Now they're going to be charged a bunch of money in order to pay for the remediation of the bedbugs, right?

**TARA HOLTERHAUS:** And-- that's correct. So landlords do not want bedbugs in their units or residences just as much as tenants don't. The-- I think the balance that we need to strike is that, just as, you know, the child may have gone to school and brought the bedbug home, that is not the fault of the property owner either. And so to assess 100% of the costs for that incident to the property owner as a mandated requirement under the law isn't necessarily right to the owner of the property either.

**DeBOER:** So I, I, I sort of understand that, too. So the, the sort of quandary we're in as the policymakers is, how do we best distribute the costs of something, which is really kind of a no-fault, right? The kid who's playing with another kid at school and then brings them home to their apartment, they haven't done anything wrong, right? So the tenant who gets bedbugs hasn't necessarily done anything wrong. They just happened to be in a situation where they had that. So I guess the question then would be, who is in the best position to distribute those costs to, you know, sort of everyone? Because we don't want to just charge extra to someone who randomly got something. We don't want to charge it just to the landlord, too. So maybe the best way to do it is to put it on the landlord and the landlord distributes amongst all the people that they rent to. I mean, as a kind of a public good to

say, this is how we're taking care of the problem. And wouldn't the landlord be in the best position to remediate all the various places so long as the tenant's required to say something and make sure-- I mean, if the tenant doesn't say anything and it gets worse, that's on them. That is bad acting, right? But if the tenant reports it as soon as they know--

**TARA HOLTERHAUS:** Sure. Yes. There's a lot there I want to make sure I address. First, there are current ordinances and legislation in place that do address bedbug infestations and landlord's requirement to address those concerns. There are currently ordinances that require a landlord to do that. In addition, the Apartment Association members, the lease agreement that they utilize, the-- specifically the bedbug addendum does state that unless a landlord can attribute that source of the infestation to the tenant, the landlords do almost entirely eat the cost of that already. But to mandate it, that the landlord is required for that cost 100% of the time, does not take into a consideration the sort of habitual offenders, somebody who might have a bedbug infestation addressed at one point, only for it to circle back because there are certain cleanline-- cleanliness standards that aren't being upkeep or upheld. So as drafted currently, there is not that leeway or flexibility for those bad actors. It's a very stringent standard on the landlord only.

**WAYNE:** Any other questions from the committee? Senator Bosn followed by Senator McKinney.

**BOSN:** So to follow up on Senator DeBoer's question about the kid who goes to school, comes back to their rental, whether it's a rental house or a rental apartment, and brings the bedbug back. And her position is, well, is it fair to the landlord or should the tenant pay for it? I'm summarizing her questions. But if the child also goes back to a home where the parents have a mortgage, we don't make the bank pay for it. The hou-- the parents pay for it at their house because that's where they live, right? You would agree?

**TARA HOLTERHAUS:** Yes.

**BOSN:** So we're differentiating tenants and saying they don't have that responsibility as just-- that's, that's the way it goes, versus somebody who goes back to a home that they own.

**TARA HOLTERHAUS:** Sure. I think there of course needs to be a balance of cooperation between the tenant and the landlord. And so long as tenants are reporting that, you know, as soon as they possibly can,

that can certainly help. But again, as drafted, I, I think-- you know, landlords generally are opposed to bedbugs and would like infestation and treatment guidelines. As drafted, though, it-- there's just very little flexibility for the landlord. As I mentioned, I, I think there has to be a good balance of cooperation between the landlord and the tenant. The lease agreement our members utilize already has several standards for cooperation between the tenant and the landlord to make sure that they're caught quickly to minimize the costs for treatment. Regardless of who ultimately pays for that treatment, it must be caught early to minimize it.

**BOSN:** Thank you.

**WAYNE:** Any other questions for the-- oh. Senator McKinney.

**McKINNEY:** Thank you, Senator-- Chairman Wayne. A couple questions, probably one. Is it true or not true that if we never pass another bill in this place, that the rent for residents will still go up?

**TARA HOLTERHAUS:** I think market considerations likely-- I mean, it, it, it depends on the market. I can say that I think continuing to pass bills that have requirements on landlords only contribute to the overall operating costs for a property owner who's leasing space, so.

**McKINNEY:** But property owners, no matter what, will raise rents based on the market, especially in this market, because the prices keep going up. I represent the poorest community in the state and probably the, the community with the-- probably the most slumlords in the state. And rent for those residents go, go up every year, at least \$20. And the-- to me, the argument to say, you guys are passing laws so we're raising rents isn't completely honest because, regardless of the laws being passed or not, you're raising rents.

**TARA HOLTERHAUS:** Yeah. I think it's a cycle of operating costs continuing to increase for owners and landlords. And every additional item that a landlord is going to be required to pay for or required to do, that's a line item on a budget that is ultimately going to increase net operating costs that a landlord has to account for in order to pass on that rent. And so it is, it's-- it is the cycle of making sure that they're compliant. A landlord-- at least our members definitely want to make sure that they're complying with all of the new laws that come into place. But there's a cost with doing so.

**McKINNEY:** So do we truly have affordable housing in the state of Nebraska?

**TARA HOLTERHAUS:** I'd like to think the state of Nebraska does have one of the lowest costs of living.

**McKINNEY:** But is it affordable?

**TARA HOLTERHAUS:** I think that's a much, much larger issue than the Bed Bug Detection and Infestation Act, yeah.

**McKINNEY:** It's part of it. Thank you.

**TARA HOLTERHAUS:** Thank you.

**WAYNE:** Any other questions from the committee? Senator DeKay.

**DeKAY:** Thank you. I asked a previous testifier the question. So if you determine-- or, you-- somebody brings bedbugs in and it spreads to 2 or 3 different apartments, then that tenant picks up the cost for all the apartments that need to be cleaned?

**TARA HOLTERHAUS:** If it can be found that that tenant was responsible for bringing in the source of the--

**DeKAY:** What happens if you can't determine which tenant brought in? How's that paid for at that point then?

**TARA HOLTERHAUS:** I can speak for my clients and the managers and owners that I work with. They will pay for the cost of the treatment because, ultimately, it needs treated.

**DeKAY:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here. Welcome to your Judiciary.

**DANA STEFFAN:** Thank you. I'm Dana Steffan, S-t-e-f-f-a-n. I'm a property manager here in Lincoln, Nebraska. And I just wanted to bring a, a real-world example of something that happened to me just a couple of months ago that pertains to the bedbugs. I had a tenant. She came with the building. She's been our resident for probably over 4 years now. She says, I have bedbugs. What can I do? And I said, well, submit a maintenance request. We'll go ahead and take that looked at. Well, she had already called a bigger pest control company. And they had already given her a sales pitch and told her how they would treat it, which was the heat treatment method. And she was sold that this was the only way to treat bedbugs and that she wanted that done and she wanted that done immediately. And I went back: submit a maintenance

request and we can go ahead and help you out. We will send out the person that we contract with through our company. And she was sure that she had to be-- have it treated just one way. And I just wanted to bring that up because we know the canine dogs-- how many are in the state of Nebraska? Is there even enough available to meet the needs to go out and do the sniffing? I've heard there was only two: one in Hastings and one in Lincoln. I-- no verification of that. That is just hearsay at this point. So the young lady did submit the maintenance request. We got our own person out there. I have not had bedbugs treated for less than \$350. And I'll let the committee know that I have always eaten the cost on that. I have never charged any of my residents. I want to get them taken care of quickly. But I also heard a proponent talk about laundry and hot tub. Where is that going to end? Are we going to ask for more accommodations? Are we going to ask for-- you know, where, where does that go? So I wanted to bring that to the attention. And, and as far as companies to use, is this going to be a windfall for companies here in, in Lincoln, Omaha, across the state for treating the bedbugs? Now, I have worked for Presto-X Company. I know someone mentioned Presto-X. They are a defunct company. They've been bought out. They're no longer in existence. But I worked for them for 4 years and I ran a pest control route. I held a license with the-- we have to take the test and whatnot so you can apply the chemicals. So, you know, I'm speaking from a point of I know what a bedbug looks like. I'm a master gardener here with the University of Nebraska. So am I going to be qualified to inspect my own units or am I going to have to hire someone, pay them, and increase my costs when I feel that I'm qualified to go out there and look for those bugs myself? Thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**DANA STEFFAN:** Thank you.

**WAYNE:** Next opponent. Opponent. Seeing none, move to neutral testifiers. Anybody testifying in the neutral capacity? Welcome.

**JODY GREEN:** Hi. My name's Dr. Jody Green, J-o-d-y G-r-e-e-n. And I'm an urban entomologist and extension educator with Nebraska Extension at UNL. I'd like to thank Senator Hunt and the committee for this opportunity to testify today. My testimony presents neutral information on bedbugs that's relevant to LB846. I'm acting in my own personal capacity as an expert on this topic and not representing the University of Nebraska system or the University of Nebraska-Lincoln. My responsibilities as a professional entomologist and an educator

include presenting science-based information to stakeholders about insect pests. As mentioned today, bedbugs do not discriminate. Any family, any unit, any home occupied by humans can have bedbugs. And not every family has the means to treat. In the presence of a human host but in the absence of intervention, the bedbug population will expand and opportunities for movement by hitchhiking on items will increase. When bedbugs are introduced into multi-dwelling-- dwelling housing, they can move on their own to neighboring units. Low-level populations are extremely difficult to detect, especially if the resident is not familiar with bedbugs or they're one of the 30% of the population that have no reactions when bedbugs bite. Determining the origin of the bedbug infestation can be impossible, and blaming a person or a group of people does nothing to solve the negative impacts of bedbugs. Bedbugs move with us. We take them places, and we may inadvertently leave them for someone else to deal with later. Bedbugs can survive months without a blood meal, and this means they continue to exist in the cracks of couches that we donate, in the spines of books that we return, and also in the baseboard cracks in a vacant apartment. Upon the discovery of bedbugs, tenants may find themselves in an unce-- uncertain situation about what the appropriate course of action is. They may opt out of doing anything at all or take action to self-treat. Self-treatment can pose a significant risk to human health, as cases-- as the case of the misused bed-- the bug bomb in the apartment in Omaha last year, where an entire apartment building was evacuated because someone was left with critical injuries because they improperly set those off. Education is essential for tenants to receive with their rental agreement. They need to know the signs and symptoms of what to do if they get a bid-- bed-- if they find bedbugs. Prevention and early detection is the key to a successful bedbug IPM program. As a board-certified entomologist, I have an obligation to society, to the public, and this profession to use my knowledge and skills for the betterment of human welfare. Given the significant impact that bedbugs infestations cause, a movement to clarify the rights and responsibilities of all involved parties would be a step forward in improving the bedbug situation. I thank the committee for this opportunity to testify. And I welcome any questions.

**WAYNE:** Any questions from the committee? Senator DeBoer.

**DeBOER:** Thank you, Senator Wayne. So you heard, perhaps earlier-- have you been sitting--

**JODY GREEN:** Yes.

**DeBOER:** OK. So you heard the discussion between Senator McKinney and a, a landlord that said that landlord uses a scientific method to determine where they come from. Can you elaborate? I mean, it does make sense to me that where you find the most activity might be a source. Is that--

**JODY GREEN:** That is not necessarily true because it really-- bedbug populations are going to increase depending on if there's a source of, of a human. So, like, if you've got food, if you've got the right environment, and also how many were there to begin with. So it kind of-- it, it all depends. And I, I don't think there is a way to determine that because someone might have also treated and got rid of some of their bedbug infestations, but it is, I would say, nearly impossible, if not impossible, to tell where it started.

**DeBOER:** So-- OK. Yes, someone might have treated. OK. So let's set that aside for a second. Let's say you've interviewed all your tenants and nobody's treated. So that issue isn't a concern. Are you saying that-- and maybe in, in certain circumstances-- but generally speaking, where there's more concentration isn't where it began?

**JODY GREEN:** No.

**DeBOER:** OK.

**JODY GREEN:** Like, if you went on vacation and you were gone, then the bedbugs would just stay dormant. Whereas in an apartment, where there's, like, 10 people in 10 different beds, there's going to be more activity, there's going to be more reproduction. There's going to be feeding, egg laying, all of that, right? It's like if you had a, a deserted island and you only had enough food for, you know, a couple people, then they're not going to reproduce as much. So, you know, it's, it's just kind of that situation.

**DeBOER:** When you said "food" earlier, I didn't see humans.

**JODY GREEN:** Yeah, humans. We are the food.

**DeBOER:** I didn't, I didn't understand that we are the food.

**JODY GREEN:** If we travel very often and we're not there to provide that food source, they're not-- I mean, we could have-- we could-- I could have an infestation for years and not have as many bedbugs.

**DeBOER:** So you're saying that if my next door neighbor who is there-- who, who works long hours, whatever, is barely there, and I'm a family



of 4 living next door and we all work from home, we're-- it could start there, but we might have more infestation in our house or apartment?

**JODY GREEN:** I mean, it could. If you brought home something from, you know, some cool thing that was out in the trash that had bedbugs, you can bring that in and-- it's, like, a total infestation right away.

**DeBOER:** OK. My next question is-- we heard testimony that there was a disagreement about the kind of treatments. My assumption is that there's sort of equal response of the bedbugs to the various kinds of treatment. Am I wrong? Are some kinds more effective than others?

**JODY GREEN:** There are 3 basic treatments, I would say., Maybe 2 basic treatments. One is fumigation, which is introducing a gas. That's not typical. But if everything is done properly, then it should be effective.

**DeBOER:** OK.

**JODY GREEN:** But some situations are going to be better to use different types. There are some construction types that cannot use heat treatment. So they're-- it's usually the circumstances that--

**DeBOER:** So what are the 3 treatment-- you said there are 3 kinds of--

**JODY GREEN:** There's going to be insecticide treatment, there could be a heat treatment, and then fumigation.

**DeBOER:** And which one is the most effective, generally?

**JODY GREEN:** Like, if I had \$1 million? Fumigation.

**DeBOER:** OK. So you don't have \$1 million. What's the next most effective?

**JODY GREEN:** They are both going to be effective if they're done properly. And it also depends-- so the success of your treatment's going to depend on the population of bedbugs. So if you've had it for, you know, like-- the, the level of the infestation, and the amount of clutter or furniture, people-- the amount of things that are there to prepare for it, so.

**DeBOER:** So-- OK. That helps me because if-- it should be the person who's paying for it gets to choose which kind of treatment to do. Is

one kind more expensive than the other between the heat and the insecticide?

**JODY GREEN:** The-- it depends on-- so a lot of times, it will depend on the size of the unit being treated, so the space or how many bedrooms. So heat treatment is usually more expensive.

**DeBOER:** OK. Thank you.

**WAYNE:** Any questions-- any other questions from the committee? Seeing none, thank you for being here today.

**JODY GREEN:** Thank you.

**WAYNE:** Next neutral testifier, testifying in the neutral capacity. Seeing none, Senator Hunt is making her way up to close. And with that, we have 56-- 52 letters, 52 letters: 6 in support and 46 in opposition. And this was a way more interesting hearing than I had in Urban Affairs. Go ahead, Senator Hunt.

**HUNT:** Thank you, Chairman Wayne. OK. I want to help you understand the canine thing, the dog thing. Let's look at the bill. On page 2-- so the, the thing about, the canine, using dogs, it's basically a definition within a definition. In Section 2 on page 2, it says: Bedbug detection team means a scent detection canine team that holds a current independent third-party da-da-da-da. So that's the part where we see the canine team. And because it's early in the bill, maybe we're making an assumption that a bedbug tec-- detection team has to include dogs. And that's not the case. If you go down to, to, I guess, like, item 10 under Section 2 on the same page on line 26, it says: Qualified inspector means a bedbug detection team-- so that would be dogs, as defined in subpoint 2-- local public health department official, licensed certified applicator, or commercial applicator who is retained by a landlord to conduct an inspection for bedbugs. So basically, it's not saying you have to use canines. It's saying-- all it's saying is that the definition of a bedbug inspection-- detection team is a canine thing, but it doesn't have to be canines that you use. In these here-- you know. I've got a landlord. I love my landlord. He's great. Someday, maybe I'll own property and I'll be a landlord and earn some money. I don't know. Like, I got no problem with landlords is my point. I don't think any of us do. And no one has a problem with landlords who are doing their job well, who are taking care of their tenants because they care about their properties and they want to be successful. But it's not the landlords that are, are doing the wrong thing that ever come in and

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testify, is it? And if we're hearing from landlords who say, you know, as part of our association, as part of our group, you already have to notify people of these things. We already have to treat for bedbugs. Well, then why don't we codify what you're already doing? Because we know that there are lots and lots of property owners who are taking advantage of people who don't speak English, who are new neighbors here in Nebraska, who have other-- you know, maybe they harbor other discriminatory views that, that I can't predict or read their minds about, but. You know, thank God for good landlords so people have places to live that are affordable. But we know that we, we have a lot of problems with landlords too, and they're not the ones showing up to these hearings. And with that, I'm happy to answer any questions about the canine detection team or anything else about the bill. Otherwise, I'll close.

**WAYNE:** Any other questions? Senator Bosn.

**BOSN:** So I appreciate it. I figured that out after Mr. Rasmussen said that, so I apologize.

**HUNT:** Perfect.

**BOSN:** But I did figure that out once I did a word search, so.

**HUNT:** Sounds good.

**BOSN:** Still good questions, but yeah. Thank you.

**WAYNE:** Any other questions or comments? Seeing none, that will close the hearing on LB846. And to continue the Megan Hunt Show, Senator Hunt Show, we're going to start with LB845. Welcome back, Senator Hunt, to your Judiciary.

**HUNT:** Thank you, Chairman Wayne.

**WAYNE:** We'll wait a second. I didn't know there was that many. Usually, once they come on landlord days, they stay all day. [INAUDIBLE] quiet down, we're going to start with LB845. Senator Hunt, you are welcome to open. All right. We're going to go strict here. Next person to talk I'm going to ask to leave the room. All right. There we go. Let's make this happen.

**HUNT:** Thank you, Chairman Wayne and members of the Judiciary Committee. I'm Senator Megan Hunt, M-e-g-a-n H-u-n-t. And I'm here again to present LB845, a bill that provide-- that would provide a defense against eviction during the school year for students, their

parents, teachers, and school staff. LB845 is a big idea for addressing multiple growing crises in our state: the lack of affordable housing, which is driving-- increasing housing instability and homelessness; the decrease in availability of childcare, with early childhood workforce that is strained while costs are skyrocketing; teacher and school staff hiring, retention, and the wage crisis there; and students struggling with worsening school performance outcomes and emotional well-being. Each of these things can either be drastically exacerbated or improved by the simple but fundamental factor of whether or not the teacher or student has stable housing during the school year. I'll be clear that this bill is not an eviction moratorium. It's an affirmative defense against evictions for the specified-- specified groups during the school year. It doesn't prevent landlords from filing eviction proceedings, and it would be up to the defendant tenant to prove that they can't be evicted because they're school staff or the parent of a student currently in school or daycare. With a tough market, rising costs of living and inflation, Nebraska families are finding it harder and harder to find and maintain safe, affordable housing. The housing shortage has resulted in increased homelessness and unstable living conditions for many families, especially in our 2 most populous counties. That instability means that Nebraska kids suffer. Substandard housing and frequent moves are connected to increased health risks, decreased academic performance, and a loss of future earning potential. Research from Creighton University found a connection between eviction and academic performance. In a study of OPS elementary schools, 67% of students attending schools in areas with the highest eviction rates scored substantially below testing standards in English, math, and science. All of these consequences have long-term, negative impacts on the future of our entire state. The shortage of affordable housing options is also hurting childcare workers, school teachers, and staff. If they do not make enough money to afford rent in their area, they are left with a choice between leaving a profession they probably love in search of one that will pay the bills, to go to another state, or stay in the job struggling to get by, potentially at risk of eviction. We also know that Nebraska is struggling to hire, fairly pay, and keep enough teachers and essential school support staff. When teacher pay is not competitive, they're less likely to be homeowners and more likely to be renters that could be vulnerable to eviction in today's economy. We ask so much of our teachers-- something that has been put in stark relief since the pandemic. We want them to not only educate, but be therapists, behavioral health providers, after-school care providers, and oftentimes the funders of their own classroom supplies. Much of this also goes for the people who keep our schools running:

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janitorial staff, maintenance staff, cafeteria workers, dedicated folks who keep our kids' schools running for little pay. None of these folks who come to work every day to make sure our next generation are educated, productive members of society should be living out of their car. And unfortunately, this is currently happening to many Nebraska teachers. This bill does not absolve the tenant of responsibility for rent owed. It doesn't waive or forgive any debts to the landlord. Tenants would still be liable for monetary damages and any suit for a breach of lease agreement. This bill would simply lessen the traumatic impact of having to relocate and find housing during the time young children most need stability and consistency and when we need our teachers and school staff to be able to come to work and do the best for our kids. I'll leave you here with a key statistic. Children are most at risk of eviction before the age of 5, a critical stage of their development, and perhaps when they need the most protection. Thank you to this committee for taking the time to listen to the stories of testifiers behind me and for reading the comments submitted in support of this effort. I hope their stories about what an eviction means for families, communities, and our state impact you in the same way they've impacted me. No child should go to school wondering where they're going to sleep at night. And this bill-- it's a big idea, but it kind of represents the world that I think that we could live in. Thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**HUNT:** Thank you.

**WAYNE:** First proponent. First proponent. Welcome back to your Judiciary.

**ERIN FEICHTINGER:** Thank you. Pleasure always to be here. Chair Wayne, members of the Judiciary Committee, my name is Erin Feichtinger, E-r-i-n F-e-i-c-h-t-i-n-g-e-r, and I'm the policy director for the Women's Fund. I'm not going to read the entirety of the document in your hands, but I do want to highlight a few key data points here to provide some context for the reasons behind this bill. Women are consistently overrepresented in eviction court. The number of women evicted is 16% higher than their male counterparts, and that number grows for black women, who are evicted at a rate 36% higher than black men. 57% of all homeless women report that domestic violence was the immediate cause of their homelessness, whether through needing to leave or through an eviction. Eviction filings in Nebraska are also increasing at an alarming pace. In Douglas County in 2023, the number

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of evictions is the highest it's been in 11 years, at 5,975 eviction filings. The last highest was about 5,200 in 2014. Statewide eviction trends are following a similar path. The average amount of statewide eviction filings between 2016 and 2019 was 6,286. In 2022, that number was 8,650. In 2023, it was 10,989. And that's according to the State Supreme Court eviction reports. In our 2 largest counties, Douglas and Lancaster-- which annually account for about 75% of our annual statewide eviction filings-- we know that the sheer number of children facing eviction with their families is staggering and sobering. According to 2023 demographic data from the Tenant Assistance Project, which provides free legal representation to only those tenants who appear for their eviction hearings, 2,147 children faced eviction in Douglas County in 2023 of the 1,800 cases handled by the Tenant Assistance Project. And in Lancaster County, it was 1,309 children of the 965 cases handled by them. Those numbers are not representative of the total number of children impacted by an eviction filing, since they only account for those households who appeared. Data from Legal Aid of Nebraska shows a fairly consistent number of households with children facing housing instability and eviction. Between 40% and 44% of callers for housing help have minor children in the households. Even with this data, we do not know the total number of children facing eviction in Nebraska, but it is almost certainly higher than these numbers. Recent research found that 2.9 million U.S. children under 18 are threatened with eviction, and 1.5 of those are ultimately evicted. We talk a lot about unintended consequences in our policy debate, and that's fine and fair. But in this case, we already know the actual consequences of our failure to boldly and adequately address our housing crisis. We know that children are most at risk of eviction before age 5. We know that having children in a rental household is the equivalent for a risk of eviction as falling 4 months behind in rent. We know that schools suffer when their students become homeless. And we know that we need to do more. And if it's not this bill, we would encourage the committee to consider more of the incremental policy changes we heard last session. Thanks.

**WAYNE:** Thank you.

**ERIN FEICHTINGER:** Happy to answer any questions to the best of my ability.

**WAYNE:** Any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you. Thank you, Miss Feichtinger. Quick question. I know you've done a lot of work with the Tenant Assistance Project.

What has been your experience in viewing how landowners or property management groups interact or view those who are facing eviction?

**ERIN FEICHTINGER:** I mean, I don't know that I can state with any certainty-- you know, make a generalization across the board. As was stated in the previous hearing, there are good actors and there are bad actors. And that's true in eviction court when negotiating as well. I will say that, over the course-- when we had emergency rental assistance and a lot of it-- and this is in Douglas and Lancaster in 2021, 2022-- there was a lot more willingness to negotiate a, a good outcome for both landlord and tenant because there was funding available. There is no longer funding available. And so the best that most folks are negotiating is just a couple more days to move out, which doesn't make-- I mean, it makes a difference, but we're not dealing with the same amount of resources as we used to.

**McKINNEY:** OK. And-- so if all these kids are dealing with evictions or going through this situation, then-- we correlate that to educational outcomes and things like that. Does it also intersect with the school-to-prison pipeline or intersect with the need for this state to be building another prison?

**ERIN FEICHTINGER:** I mean, that's a great question. I think-- and I included the data that Senator Hunt had talked about about OPS attendance areas and eviction rates here. There also is a lot of really solid research that shows that districts like yours, who consistently have the highest eviction rates-- you know, multiple units turning over constantly-- that what this does is lead to sort of community in-- instability. And I think that that makes a lot of sense intuitively, right? Because it's hard to get to know your neighbors, it's hard to throw a block party, it's hard to look out for each other if just tenants are just churning through these units. And I think-- you know, I think you probably know a lot better than me that connection of, you know, community-- I don't want to say-- instability maybe is not the right word, right? But more mobility through that neighborhood also correlates with what is perceived as, like, higher rates of crime. So I could see that connection.

**McKINNEY:** All right. And last thing, because I'm sure the opposition is going to come up and say this is sort of infringing on property rights and things like that. How do we balance that versus making sure we take care of the most vulnerable?

**ERIN FEICHTINGER:** Yeah. That's a good question. And as Senator Hunt had noted, this is a big, this is a big idea. This bill represents a

very big idea. I would argue that, you know-- and I've heard both you and Senator Wayne talk about this on the floor, right? This is a huge crisis, a housing crisis. And we are not doing enough, simply not doing enough to address it. If we're not willing to take those bold steps, if we're not willing to find a balance here like you're talking about, then-- and I don't know if you've ever been in eviction court-- you know, courtroom 20-- but seeing children in that courtroom and watching them try to sit quietly while their families-- while their parents fight for their homes and a place for them to sleep that night is simply not a society, a community that I think is reflective of our values. So I don't know what the balance is. You know, we do have a lot of really great legislation that is more incremental that we-- this committee heard in 2023 that could start to take serious steps towards addressing that housing instability and that, you know, exit into homelessness and that ultimate cost to society. But this is the choice we've made.

**McKINNEY:** Yep. Thank you.

**WAYNE:** Any other questions? Senator DeKay followed by Senator DeBoer.

**DeKAY:** Thank you. Thank you, Erin. You said there's no funding available to offset this. How do we come to a good compromise that will work well for everybody?

**ERIN FEICHTINGER:** Yeah. And that's a-- to clarify what I meant about funding, you know, there's usually-- even before the pandemic, there was a small, but there was a fairly consistent pot of money that social service organizations could draw from when a family reaches out to them for help. During COVID, we got the Emergency Rental Assistance Program, tens of millions of dollars, and that money is gone in Omaha and Lincoln. This program would not-- you know, this bill would not cost the state any money, but it would certainly have a cost. And I-- again, as I said to Senator McKinney, I'm not sure what the balance is here. To me, this is a really interesting question of, you know, what is the cost of homelessness? What is the cost of continued-- of that link between high rates of evictions and school performance? And what does that mean for our long-term future as a state if we're not taking care of the kids and making sure that, you know, they can go to school, have food in their bellies, and have a safe place to go home to at the end of the night?

**DeKAY:** Totally understand. If this, if this becomes a multi-month deal-- say, from December till June, 6 months, whatever-- to pick up the cost of that-- say if the landlords would have to pick up the



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cost. Would that eventually be reflected in rates going forward to new tenants coming in to help cover those costs or not?

**ERIN FEICHTINGER:** Probably. Let me propose to you another big idea on top of LB845. What if the state created a rental assistance fund that would benefit both landlords and tenants? Landlords are small business owners. They need to make that money. I get that. So just something to consider if we're throwing out big ideas here. But, you know, I don't really know-- again, I think it's an interesting question of whose responsibility is it? And I'm not sure that in the 5 years that we've had landlord-tenant days in this committee we have ever adequately answered that question. And everybody has their own opinion, so.

**DeKAY:** Thank you.

**WAYNE:** Senator DeBoer.

**DeBOER:** Thank you. So apparently I'm a small idea person. Because--

**ERIN FEICHTINGER:** I wouldn't say that.

**DeBOER:** This seems-- this goes-- this-- OK. I'll stop. How do--

**WAYNE:** Any other questions? You walked into that one. I had to [INAUDIBLE].

**ERIN FEICHTINGER:** This committee has the best transcripts. It's going to be, it's going to be the case.

**WAYNE:** Senator, Senator DeBoer.

**DeBOER:** Yeah. OK. All right. So this is the question. Like, how, how does putting the financial burden for tenants' children onto landlords actually help the problem? Right? Because it-- that's essentially what this bill does. This says that the financial responsibility for housing tenants' children falls on landlords during the school year if-- I mean, I can see all sorts of possibilities-- with apologies to my friend, Senator Hunt-- for u-- using this-- well, I just can't pay you this month. And you can't get kicked out because you got a kid. Like, it seems like this is ripe for fraud.

**ERIN FEICHTINGER:** Mm-hmm.

**DeBOER:** So I'm a little concerned about this one.

**ERIN FEICHTINGER:** Yeah. And your concern is probably valid, quite honestly. But the thing is-- and I would push back on you a bit that you're a small idea person because I think what this bill ultimately does is-- and again, it is a big idea. What I think this bill ultimately does is really ask us to an-- like, what does it mean that we evict kids in this state? You know? And I know that that's not--

**DeBOER:** But that isn't a question for the landlords to answer. That's a question for us in this horseshoe to answer.

**ERIN FEICHTINGER:** Right.

**DeBOER:** Which I think is a different thing than what this bill is suggesting. So--

**ERIN FEICHTINGER:** I would also say that I think the overwhelming majority of people are good and want to do right because, as Senator Hunt noted, this does not take away the right of landlords to collect rent, it's just in that moment. So ultimately, a tenant's looking at, you know, if you, if you don't pay, you're still responsible for it come whenever the school year ends. And that's a big cost.

**DeBOER:** OK. All right. Well--

**ERIN FEICHTINGER:** You can always-- no, I won't say it. We'll talk later.

**WAYNE:** Any other questions? Seeing none, thank you for being here. Next proponent. Proponent. Welcome.

**STEPHANY PLEASANT:** Hi. Good afternoon, esteemed members of the Judiciary. My name is Stephany Pleasant Maness. I'm just going to spell my maiden name. It's S-t-e-p-h-a-n-y; Pleasant, P-l-e-a-s-a-n-t. I just go by that, so. Before you guys have more proponents or opponents that are going to come up here and tell you statistics, I'm going to tell you about core memories. If you have never seen Inside Out, core memories are memories that have caused you something to create your personality. In January of 2002, my mom and my 2 brothers were evicted after domestic violence caused my dad to have to leave the home-- from our home, titled School House Lane here in Lincoln, Nebraska. That's my core memory. My core memory involves getting in a van with everything we ever owned, throwing the rest away-- as much as we could fit in the van-- and driving 12 hours to live with our grandmother in the Memphis, Tennessee metro. I left everything I knew. I went to school here. I went to school in LPS, which was one of the best schools ever. It was still that way when I was a kid. To go to

school in the Memphis metro-- and if you don't know anything about Memphis metro, it's connected to Mississippi. And if you don't know anything about Mississippi, it's the worst education system in the nation. And that's where I graduated high school, to come back here and go to college. I can start listing off all the things that occurred the day that the constable handed me, an 11-year-old girl, a notice saying we had 3 days before he would come back and lock our doors. I learned that adults can't be trusted because here is an officer who can't help me. My teacher, when I stood there and told all my friends that I'd never see him again, couldn't help me. And my mom couldn't help me. So we could talk about medical terms: hypervigilance, hyperindependence, panic attacks, perfectionism. My therapist tell you all of them, right? I will say-- you know, I'm an attorney now. I volunteer with Tenant Assistance. I was in AmeriCorps. I served in north Omaha as a college prep teacher. I [INAUDIBLE] accolades for how much pro bono hours I have done for the Supreme Court. I was the university attorney that was mentioned in the last hearing. And while these experiences, this core experience, has given me empathy to serve those clients and to spend my time outside my actual job-- I work at the state as an attorney, but I also do freelance pro bono work.

**WAYNE:** I'm going to have to ask you to wrap it up.

**STEPHANY PLEASANT:** I'm sorry. Yes. And while that's part of it, I just want to say this core memory isn't something I thrived on because of it. I thrived in spite of it. And then I used it to try to make the world a better place, which I think everyone, including landlords, have a diligence to do, have a requirement to do.

**WAYNE:** Thank you. Any questions from the committee? Seeing none. Thank you for your testimony and thank you for all your volunteer work. I do see you up in Omaha doing a lot of work.

**STEPHANY PLEASANT:** Thank you.

**WAYNE:** Thank you. Any other proponents? Any other proponents? Welcome to your Judiciary.

**LEE HEFLEBOWER:** Thank you, Chair Wayne and, and committee. I appreciate your time this afternoon. My name is Lee Heflebower, L-e-e H-e-f-l-e-b-o-w-e-r. I'm the domestic violence and economic justice specialist at the Nebraska Coalition to End Sexual and Domestic Violence. I also had over 20 years experience managing housing programs across the state, many for families who had either

experienced or were at risk of eviction. I'm here to testify as a proponent of LB845. LB845 is critical in providing statewide support for Nebraska's children and their families. A sense of stability is key for child well-being, emotional growth, growth, and academic success. However, when a family experiences eviction, it sets in motion that cascade of events that can have a long-lasting, negative effects on children and their caregivers. When a family is evicted, they lose their home and community and, frequently, their possessions, including furniture, clothing, children's toys, and important documents such as birth certificates. Families who have experienced an eviction are more likely to become homeless, causing further instability and negative consequences for children's health, safety, and development. As communities across Nebraska are facing a lack of affordable housing, homeless families must often stay in motels or doubled up with family or friends temporarily because there is no available shelter in their area. There are very few general public homeless shelters in, in the state of Nebraska. Consequently, homeless families are often forced to move frequently between living situations, requiring children to change schools and disrupt their academic progress. Children are more likely to have lower academic achievement and delayed literacy skills if they've experienced high rates of residential instability or homelessness. Housing stability is also linked to children's physical and mental health risks, incurring-- including increased rates of illness, injury, and chronic health conditions. Eviction can take a deep emotional and psychological toll on children, leaving them with anxiety, depression, and a sense of loss. Although the toll that eviction takes on children cannot be completely mitigated, eliminating evictions during the academic year could reduce some of the most immediate impacts. Increasing housing stability during the school year helps reduce mid-year school changes, maintains academic progress, and supports instructional continuity. Our agency recognizes the importance of removing barriers to safe, stable housing. There's a strong connection between housing stability and child well-being. And we support the adoption of eviction protec-- protections as provided in LB845. Thank you for your time and consideration.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here.

**LEE HEFLEBOWER:** Thank you.

**WAYNE:** Next proponent. Welcome back. Good time seeing you. Haven't seen you in a while.

**MAGHIE MILLER-JENKINS:** Yes, yes. I know. I'm, I'm trying to be more present. For those that don't know me, my name is Maghie Miller-Jenkins, M-a-g-h-i-e M-i-l-l-e-r-J-e-n-k-i-n-s. Got to think about how to spell my own name sometimes. So I'm here as a proponent for LB845 because I don't know what any of your life stories were, but I experienced homelessness firsthand at 17. I was an abducted child who was deemed a black runaway at 12 years old when I was kidnapped by my aunt and my cousin. I then spent my entire youth, 12 to 17, going through every CEDARS, foster care, Boys Town, Uta Halee. You name it, I've been there. And then once I got emancipated at 17 years old, they said, go be an adult now. And gave me nothing. I didn't have my birth certificate. I didn't have my Social Security card. I didn't have anything. I literally spent the last 2 weeks of my senior year-- I don't know if you guys know where that park is on 63rd and Havelock, 66th and Havelock. It's right by the Valentino's. I slept on that park bench for 3 1/2 weeks. I slept under that park bench. I was sexually assaulted under that park bench at 17 years old because that was my life story. So bills like LB845 are moments for this body to do what it proselytizes often, which is save the children. I also had the gift of being able to work in the schools. So I was a paraeducator for 3 years at Elliott Elementary, which is one of our-- in Lincoln, one of our more struggling elementary schools. So I got to witness: Have you guys ever seen a 6-year-old come to school when-- on a Monday when they haven't eaten since you sent them home on Friday? Have you guys ever seen a 9-year-old try to explain to you that they don't know where they're going to be sleeping? If not, I, I urge you to listen to me and other people that have lived those experiences because I spent years, I spent years with little kids who-- I had one little boy who came in on a Wednesday morning sobbing uncontrollably because his mom and his dad got into a fight. His dad punched his mom through a window. Now his mom is in the hospital, his dad was in jail, and he was now homeless with his aunt, who was a drug addict. And these are the realities of a lot of Nebraskan stories. So if you want to make a push forward to do something, use your time in these spaces to actually make impacts in-- so you don't have to hear stories like mine come before you as repetitive stories. Please, please do what you can to be able to vote yes for this and give children a chance at being able to be productive members. You can't be a productive member of society if you don't know where you're going to eat and you don't know where you're going to sleep because you're too stuck in survival mode to be able to move anywhere else. So I know your brains get numb from listening to all of the humdrum. And I know that it's a lot of voices coming at you. But this one's important. This one-- this one is really

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important. This one is for the kids. And the children are our future. If we don't save them, there's nothing left for us.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next proponent. Proponent. Welcome.

**KASEY OGLE:** Thank you. Chairperson Wayne and members of the Judiciary Committee, my name is Kasey Ogle, K-a-s-e-y O-g-l-e. And I'm a senior 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 and Civic Nebraska that works with residents of 6 Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that is responsive to their needs. I'm here today on behalf of Collective Impact Lincoln in support of LB845. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolniters. We support LB845 because it would improve the quality of life for students and families across the state by providing deeply necessary protections for housing stability throughout the school year, allowing students to learn and grow into future leaders of our state. And it would allow us to affirmatively further the Fair Housing Act, which we are bound to do. Children are the most impacted by evicted-- by eviction, making up 4 in every 10 people who are threatened with eviction. And the most common time in one's life to experience eviction is in childhood. In fact, renters with at least one child in the household are twice as likely to be threatened by eviction than renters without children, and the impact is even greater for black women households. While less than one in five renters in the U.S. are black, nearly half of all evictions are against black people, and these racial disparities persist across all income levels. The disparate impact of eviction on renters with children and black women represents a failure of our state to uphold the Fair Housing Act. It is a duty of the state to go beyond simply not discriminating. We are required by the U.S. Department of Housing and Urban Development to affirmatively further the Fair Housing Act by taking meaningful actions to overcome patterns of segregation and foster inclusive communities. Eviction harms children on multiple levels. It forces families to move into lower quality housing, where children may be at higher risk of lead poisoning. It is associated with a stark increase in food insecurity. And it is also associated with an increase of stress and depression for adults, limiting their ability to help their children overcome the many ways in which their life will change after eviction. A longitudinal study of the impact of childhood eviction on cognitive development found that children who

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were evicted in their middle childhood exhibited lower assessment scores than similar children who had not been evicted-- as much as a full year of schooling. For these reasons, we urge this committee to take action on this [INAUDIBLE] Nebraskan families and advance LB845.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**KASEY OGLE:** Thank you.

**WAYNE:** Next proponent.

**KAREN BELL-DANCY:** Good afternoon.

**WAYNE:** Good afternoon. Welcome.

**KAREN BELL-DANCY:** Karen Bell-Dancy, YWCA Lincoln. K-a-r-e-n B-e-l-l-D-a-n-c-y. Many of you are familiar with YWCA Lincoln. Our mission is the elimination of racism and empowerment of women and girls. You have my written statement, which is a short statement of our support for LB845. I did want to additionally add: during the pandemic, eviction court was still happening. And we saw-- as a nonprofit, we saw many families coming to us seeking assistance. Some of them were even referred to us from their landlords. And we were able to help some either stop the eviction, catch up on their rent, and/or help them to relocate by perhaps supporting their deposit. Some, because of the duration of what was happening during that time, we maybe had to help them to temporary-- locate to a hotel or a motel. It's not the most pleasant thing to look into a young person's face and ha-- and tell them that they have to move. I come from a family in Kansas City, Missouri. And because my family had stair-step children-- my mom and dad, they had 4 in college at the same time. And I remember at one point we had to move out of our house because my family prioritized paying their tuition. I know the feeling as a small child when Mom says, get this box, put your things in the box. You have to go. But not only my experience-- and we've heard other experiences here today. We need to figure out how do we alleviate the strain and stress on families, especially single moms. They already are faced with the childcare issues, with the transportation issue, with the disparities in the healthcare, the low unemployment and all those things. But those real basic necessities-- a place for them and their children to lay their head-- that's what we need to figure out. How do we do that as a community? And I'm hoping that the support is here to move this forward and we really craft a plan that we are more in support of families than we are in support of landlords. Because with

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the eviction court, that family moves, but yet they still have to pay. And now that landlord goes out and leases that same property to someone else. And it's a very inequitable system. And I'm hoping that this committee will continue to support LB45 [SIC] and move this forward. Thank you.

**WAYNE:** Any questions from the committee? Thank you.

**KAREN BELL-DANCY:** Thank you.

**WAYNE:** Next proponent.

**TIM ROYERS:** Good afternoon, Senator Wayne, members of the Judiciary Committee. For the record, my name is Tim, T-i-m; Royers, R-o-y-e-r-s. I'm in my 17th year as a teacher and currently serving as the president of the Millard Education Association. I'm speaking on behalf of the Nebraska State Education Association in support of LB845. Over my teaching career, I have seen multiple students have their education and whole lives severely disrupted as a result of an eviction. Now, in my school district at least, whenever a student is forced to relocate for any reason, they are permitted to stay in their school for the remainder of the year before any change is made. Yet, despite that policy, eviction still has a profound impact. Many times, those kids had severe difficulty securing transportation to get to school on time if they could secure transportation. I had instances where students basically could only manage to get to school for half the day at best. Others would try and live with friends still in the area to minimize the disruption to their daily routine, which, while that secured greater educational outcomes, essentially separated them from their family. Those that have gotten involved in school activities basically had to forfeit their participation. While obviously not directly tied to their academics, participation in athletics and activities is a huge contributor to the student's mental and physical well-being, along with their sense of belonging and purpose in the school. In many instances, it was difficult for us to provide assistance to those kids because they would hide that they were going through an eviction. There was a pretty large stigma with the idea that your family was being evicted from their home. And rarely would they open us-- open up to us until attendance issues or other indicators reached a point where a teacher or a counselor would talk with them and try and figure out what's going on. By ensuring residential stability during the school year, you will help maximize the capacity for our students to be successful and get the supports that they need. I also want to highlight the importance of including staff in this bill as well. In partnership with the Millard Public Schools Foundation, the MEA, my



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organization, manages what's called the CORE Fund, which provides emergency financial assistance to Millard employees facing hardship. Our funding is limited. We can provide, at most, \$500 per request. But I will tell you that we have a growing number of staff members needing assistance in making ends meet, specifically in helping keep up with their rent or mortgage. Most of the requests for rent or housing assistance come from newly single educators who have just gone through a divorce and are trying to make ends meet exclusively on their own income as teachers. So I can assure you that this issue is real, and it has the potential to, to disrupt the education of the kids we're intending to serve. This bill simply helps make sure that our students and families have stability during the school year. That's it. Without that foundation, our capacity to serve them and make sure they're thriving in our schools is seriously jeopardized. We strongly encourage you to advance LB845 out of committee. Thank you for your consideration.

**WAYNE:** Any questions from the committee? All right. Now, this is my committee. I get to ask you a whole bunch of school choice questions.

**TIM ROYERS:** Oh, and we had so much fun yesterday, Senator Wayne.

**WAYNE:** No, I'm joking. We, we were going back and forth yesterday in Education.

**TIM ROYERS:** It was fun.

**WAYNE:** It was fun. Any questions? Nope. I appreciate it. Thank you for your, thank you for your testimony.

**TIM ROYERS:** Yep. Thank you.

**WAYNE:** Welcome.

**KATIE NUNGESSER:** Thank you, Chairperson Wayne and members of the committee. My name is Katie Nungesser, spelled K-a-t-i-e N-u-n-g-e-s-s-e-r. I am representing voices for Children in Nebraska in support of LB845. This piece of legislation would address the profound impact of evictions on the well-being of school-aged children. We believe that every child deserves access to the essentials required for a healthy, secure, and fulfilling life. Among these essentials, stable housing is a cornerstone. LB845 would ensure a child's right to a stable home is upheld, particularly during the critical school year. Evictions are not just legal proceedings. They leave lasting scars on a student's academic success and emotional development. Changing schools, losing valuable education time,

experiencing emotional distress are some of the consequences that burden Nebraska's children experiencing this process. The loss also extends to the vital connections with their friends and support systems, further isolating a child during this time of need. LB845 represents more than a legislative measure. It's an investment in the long-term success of our communities. By preventing school-year evictions, we send kids a powerful message that we prioritize them and their well-being. We recognize that their success can be tied to the stability of their living situations. And in Nebraska, many families are struggling with the high cost of housing. But for the families eligible for assistance and unable to access it, they're particularly vulnerable. The 2022 "Kids Count" report highlights the reality that over 100,000 children in Nebraska are living in households with high housing cost burdens. Additionally, the Nebraska Homeless Assistance Program reported that over 3,500 families with children were homeless in 2021 and over 1,300 more families were at risk of homelessness. Resources to assist families facing eviction and high housing costs are inadequate and hard to navigate. For example, the lack of funding keeps families waiting for years on the Housing Choice Voucher Program. On average, nationwide, 41% of applicants are waiting 2 to 5 years to receive a housing voucher and 8% are waiting over 5 years. I acknowledge the complexities surrounding housing policies and the difficulty of balancing the diverse interests, but I'm urging you to support LB845 and provide safeguards for families during the school year and allow children to be educated without the looming threat of eviction. Thank you.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next proponent. Welcome.

**SCOUT RICHTERS:** Thank you. Chairperson Wayne and members of the committee, my name is Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, policy director at the ACLU of Nebraska. We first want to thank Senator Hunt for bringing this bill. The ACLU of Nebraska is committed to ending barriers to fair housing and ensuring, ensuring fair housing opportunities for all Nebraskans, but particularly women, especially low-income women of color, who are disproportionately harmed by housing inequities. As you heard from many testifiers, both statistics and stories, a family's eviction can have lasting negative impacts on a child's life. The early years are so crucial to development and, and future success, and we believe that LB845 offers important protections. And so for those reasons and, and reasons stated by other testifiers, we, we offer our support for this bill.

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**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**SCOUT RICHTERS:** Thank you.

**WAYNE:** Next proponent. Proponent. Welcome back to your Judiciary.

**JACOB CARMICHAEL:** Thank you. First time again this year, so.

**WAYNE:** You'll have to speak up.

**JACOB CARMICHAEL:** Yes. Sorry. Just first time back this year-- or, I guess, the first day. Good morning-- or, good afternoon, Chairperson Wayne and the Judiciary Committee. My name is Jacob Carmichael, J-a-c-o-b C-a-r-m-i-c-h-a-e-l. And I'm here today testifying in support of LB845. I'll keep it quick because I mainly just have one point to say, but Senator Wayne, we have gone back and forth on school choice and the bill put forward last year quite a bit, but I think that that shows that a huge responsibility of the state is to its kids and to the future of them. I agree with Senator DeBoer's point that there is a bit of back and forth over who would bear the responsibility, but I think ultimately the state's responsibility should be to the kids and the future that it provides. If so much of our state budget is spent on education funding and there are clear, like, factual ties between housing stability and educational ability-- if your score is improving-- like, if someone is housing-- has housing instability, the best way to improve their school performance is housing stability. And I think just to address a lot of low performance and instability in the school system in a lot of kids, this is an essential way to do that. And it should also be a responsibility of the state to look after children, and I think this bill does just that in a different realm. With that, I--

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**JACOB CARMICHAEL:** Thank you.

**WAYNE:** Next proponent. Proponent.

**BENJAMIN BURAS:** Benjamin, B-e-n-j-a-m-i-n, Buras, B-u-r-a-s. I support this legislation. I think, in an ideal world, everybody would own their own property and their own, I guess, shelter that is up to code. And-- but that's not always going, going to be the case. And I noticed there are representatives here for landlords who just put out logical fallacy after logical fallacy and-- you know, you don't have to be a

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landlord. You don't have to manage over 4,000 properties. Because what you're really doing is just ripping off the, the less fortunate. My last apartment was with Arrow Capital. I was-- I moved in in 2020. I was paying \$475 a month. I tried to renew my lease, my-- a yearly lease. They put me on month to month, and then all of a sudden I was notified that-- they just got to give you a 30-day notice and then you're out. And now they want to get \$625 a month, which is over a 31% increase in three years. And they still haven't rented the unit. So they're just throwing money down the drain. And some people might say, well, you don't have to be a lessee. You don't-- you know, you could go sleep in a shelter. Well, the shelters are full. And when I was homeless in Chicago, I was lucky enough to come by some money. And I bought a vacant lot in Bronzeville. And I slept in a tent on my own property. And then the city of Chicago sued me, saying that I had an illegal tent structure and that I was violating zoning laws and I was guilty of outdoor storage. And the judge said, well, if you don't have running water, we can't let you live there. Well, I was, like, five blocks from Lake Michigan. I could have taken a pot, got some water, boiled it, and I'd be good to go. So, yeah. I think landlords are just taking advantage of, of people who can't afford to buy their own places. So I support this.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**BENJAMIN BURAS:** Thank you.

**WAYNE:** Next proponent. OK. You tricked me. You kind of got up but-- OK. All right. Any other proponents? Moving on to opponents. First opponent.

**LYNN FISHER:** Thanks again, Senator Wayne and members of the Judiciary. Lynn Fisher, L-y-n-n F-i-s-h-e-r, representing the Statewide Property Owners Association and the Nebraska Realtors Association. Let's talk about how an eviction happens. We are the affordable housing providers in Nebraska. We offer our private property on the market for rent to private tenants. Our private contract or rental agreement lays out our simple trade. Excuse me. We provide our private property for rent and agree to maintain it in a safe and habitable condition. The private tenant agrees to pay the rent on time, take good care of the physical property, and be a good neighbor to other tenants and to neighbors. All is well unless either party violates this agreement. If the tenant doesn't pay the rent, the first action by the housing provider is to contact or attempt to contact the tenant and work out a solution. The same is true for any other violations of the lease agreement. Housing

providers seek to first find a solution and try very hard to avoid getting to the escalation point of filing for eviction. We don't want to do it. We try everything we can to avoid getting to eviction court. It's the last resort. If the tenant does not cooperate, who is the aggrieved party? The aggrieved party is not the tenant. The aggrieved party is the property owner. In eviction court, the plaintiff is the property owner. Therefore, we oppose this bill on the reasonable understanding that the tenant is not the aggrieved party, but the violator of the agreement, and should not be shielded from their responsibility to the private contract which they entered into and promised to pay the rent on time, take good care of the property, and to be a good neighbor. Whether the tenant includes children, students, teachers-- doesn't matter. Being a member of a protected class does not remove private contract responsibility. Evictions are a symptom. They are not the cause of all the sad stories we've heard today. We're very sympathetic. We all love children. We want our children to, to not be victims. But sometimes they are. And they're victims of the adults in their family or circumstances in their family, not victims of property owners. I have never seen a child in court. I've been going to eviction court for 20 years and have never seen one there.

**WAYNE:** I need you to wrap it up.

**LYNN FISHER:** Be happy to answer any questions. Thank you.

**WAYNE:** Any questions from the committee? Senator DeBoer.

**DeBOER:** Thank you. So let's say this bill passes. Are you going to become more or less reluctant to families with children, to rent, to rent-- families with children?

**LYNN FISHER:** We will not make any differentiation with families. They're a protected class. We cannot make any consideration to the fact there are children in the family.

**DeBOER:** OK. I didn't know they were a protected class.

**LYNN FISHER:** Absolute-- familial status. It's a protected class.

**DeBOER:** Well, none of us knows. All right.

**LYNN FISHER:** That's the fair housing law.

**WAYNE:** I do have a lot of wealth of knowledge here, but that may not be one-- I'm joking.

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**DeBOER:** All right. OK. So my concern, though, is if something like this passes, you're not going to want to rent to families anyway because it's going to--

**LYNN FISHER:** I will want to rent to families. But what I'll have to do is mitigate any additional costs across the board to all of our tenants. So it will, it will increase-- significantly increase rents.

**DeBOER:** OK. There are consequences, I guess, to, to--

**LYNN FISHER:** Absolutely. There'd be severe consequences. It would, it would actually drive some mom-and-pop operators out of business. There would be fewer affordable housing units.

**DeBOER:** OK.

**WAYNE:** Senator McKinney.

**McKINNEY:** Thank you. And thank you. What do you think happens after eviction?

**LYNN FISHER:** What happens after an eviction?

**McKINNEY:** Yes, on a family.

**LYNN FISHER:** Well, it's a certainly sad situation. It's an unfortunate situation.

**McKINNEY:** How do--

**LYNN FISHER:** But we, but we as landlords are not the responsible party.

**McKINNEY:** I'm not even about to go down that rabbit hole. But how do you think an eviction affects society in general?

**LYNN FISHER:** Again, an eviction is a symptom.

**McKINNEY:** No--

**LYNN FISHER:** It's not the cause.

**McKINNEY:** I'm, I'm not saying it's the cause. I'm saying, how do you think an eviction affects society?

**LYNN FISHER:** It's a symptom of neg-- a very negative situation.

**McKINNEY:** Yes, but how does that affect society?

**LYNN FISHER:** In a negative way.

**McKINNEY:** Can you elaborate?

**LYNN FISHER:** I think everybody before me has attested to how negative the situation is. And children are victims. But they're not victims of the fact that they got to the point through not paying rent. They're by-- on behalf of the, the family member who's responsible. It's--

**McKINNEY:** I'm not, I'm not even making that argument right now. My argument-- all I'm asking is, can you elaborate on what those negative things could be?

**LYNN FISHER:** Well, I think they're obvious. I mean, obviously a family is in a situation where they get themselves evicted. That's-- family's in trouble. Absolutely. We agree with that.

**McKINNEY:** But you're not elaborating. All right. But I see that you're a part of the State Property Owners Association. And I'm curi-- I'm sitting here and I, and I was thinking to myself, so if you say you're not a bad actor, are-- how do you guys police yourselves?

**LYNN FISHER:** Well, again, I think, as we talked in the previous bill, there are rules and laws and, and fair housing laws. There are all kinds of laws in place to--

**McKINNEY:** No. I'm, I'm--

**LYNN FISHER:** --protect people against bad actors. I mean, there are bad landlords.

**McKINNEY:** I'm saying, how do you police yourselves? Not the other things that should hold them accountable. How do you, as an association, make sure your members are not slumlords and bad people?

**LYNN FISHER:** Education and networking.

**McKINNEY:** That's it?

**LYNN FISHER:** Those are very powerful tools.

**McKINNEY:** So it's really no policing.

**LYNN FISHER:** And the law.

**McKINNEY:** But there's no policing.

**LYNN FISHER:** There's the, the, the law.

**McKINNEY:** But you're, you're not policing yourselves. Thank you.

**DeBOER:** Thank you, Senator McKinney. Other questions? Senator DeKay.

**DeKAY:** Thank you. Maybe you can or can't answer this. These-- in lieu of your rates per household, do you have a occupancy threshold that you feel you have to meet to break even? It's at 80%, 90%--

**LYNN FISHER:** 95%.

**DeKAY:** 95%. Thank you.

**DeBOER:** Thank you, Senator DeKay. Other questions from the committee? I don't see any.

**LYNN FISHER:** Thank you.

**DeBOER:** Thank you so much for being here. Let's have our next opponent testifier. Next opponent.

**RICK McDONALD:** My name is Rick, R-i-c-k; McDonald, M-c-D-o-n-a-l-d. I represent the Metropolitan Omaha Property Owners Association in Omaha. I've heard a lot today from the proponents of this, and it seems that they have the idea that the landlords are evicting the kids. We're not evicting the kids. We're evicting their parents. It's, it's been made-- they make it sound as though the landlord is the reason that the kids aren't getting a good education because they had to move. It's not the landlord. It's, again, the-- on the parents for that. To give you a perfect example-- I've actually had this-- if this law went into place last year-- I have a tenant recently moved in. Single mother. She has 3 kids. She moved into the property. She was just evicted this last weekend. She was between \$7,000 and \$8,000 behind in the rent. If this was in effect, she would still be allowed to live there. I'm to the point where this bill isn't going to help those kids, because they're still going to be evicted. The parents are going to be evicted, but it's going to be the bank when they take that house away from me. I could not keep that property until spring when I could evict them. I've got 75% of my tenants right now that would qualify under this, that they could all quit paying their rent. And where am, where am I going to be? Even if most of them-- and most of them probably will continue to pay the rent-- it takes a very small percentage and I'm out of business completely. Right now, I'll have to



rent that property where we evicted her, I'll have to rent it out for years just to recoup what I lost already. It was a brand new property purchased. So it's not going to take much. This isn't going to cure the problem with the kids and the parents having to move. It's going to create a bigger problem with the fact you're going to have a lot-- and I mean a lot of landlords are going to leave the business. Just had a call the other day. The landlord has a hundred properties. Wants to know if I know anybody-- I want to sell them one at a time and get rid of all of them. I hear this weekly. And this is going to create-- if you think there's a affordable housing shortage now, you, you won't believe what's coming down the road. This will put us out of business.

**DeBOER:** Thank you for your testimony. Are there questions from-- Sen-- Senator McKinney.

**McKINNEY:** Thank you, Senator DeBoer. Rick, I would argue there's a lot of people in my community that would be happy for a lot of slumlords to leave the community. But same, similar question I asked a previous testifier. How does the Metro Omaha Property Owners Association police its members to not be bad actors?

**RICK McDONALD:** Our job isn't to police the members. If we do find out there was-- there's been issues where a landlord got in trouble and stuff and he was a true slumlord, we check our roster to see if they're our members. If they are, they're booted out. That's never happened yet because we haven't found a situation where it's our members. We educate them in the rules, the laws, the regulations, what to do, what not to do so that they can be the good landlords, not the slumlords. We don't--

**McKINNEY:** How many, how many of your members-- maybe you don't know, maybe you do-- do you think-- probably an estimate-- own property in north Omaha?

**RICK McDONALD:** I would have no idea.

**McKINNEY:** Do you have members that own property in north Omaha?

**RICK McDONALD:** Yes.

**McKINNEY:** So it's potentially true that there is a slumlord a part of this association.

**RICK McDONALD:** I have no idea if they are or not. If we find out that they are the bad actor, we'll remove them from our membership.

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**McKINNEY:** How often do you research who's a bad actor?

**RICK McDONALD:** We don't have the resources to research all our members and find out and keep track of them. And if we do that, it's so costly.

**McKINNEY:** So you can't definitive-- so you can't definitively say that you do or don't have slumlords a part of your association.

**RICK McDONALD:** I can't say that we do. I can't say that we don't. I say that if we find out that they're one of the bad ones, we will remove them.

**McKINNEY:** Here's some advice-- and this is some advice for everybody here that is a part of a property ownership association-- you, you guys should probably start policing yourselves. You probably have a lot of slumlords a part of your ranks that need to be held accountable. And because they're not being held accountable and you're just letting them get by, whether you don't have the resources to research if they are or not slumlords, I think you probably should start doing so. Because until you guys start policing yourselves, there's going to be more bills every year trying to address slumlords and individuals who are bad actors and who are just not renting the greatest spaces and things like that. I'm not saying you're a bad actor, but I'm saying because there is potential even for one, that should be a problem for all of y'all.

**RICK McDONALD:** So we've taken this from the eviction of somebody not paying their rent to if I evict her, I'm a slumlord.

**McKINNEY:** No. I didn't make that argument. I didn't make--

**RICK McDONALD:** That's what you're insinuating.

**McKINNEY:** No. I didn't make that argument.

**RICK McDONALD:** So we-- and even with the city of Omaha talking to them, they say, if there's slumlords, there's only about 2%. That means 98% are good. And--

**McKINNEY:** And that 2% encompasses probably 70%-plus of my district. So that's a problem. I'm, I'm not making the--

**RICK McDONALD:** Do you know who the--

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**McKINNEY:** I'm, I'm not making that argument. I'm not even going to say names because I'm not doing that today. All I'm saying is start policing yourselves. Thank you.

**DeBOER:** Thank you, Senator McKinney. Are there other questions for this testifier? I don't see any. Thank you so much for being here. We'll have our next opponent testifier.

**RYAN NORMAN:** Good afternoon, again, members of the Judiciary Committee. My name is Ryan Norman, R-y-a-n N-o-r-m-a-n. I'm an attorney and the chair of the Apartment Association of Nebraska Legislative Committee. I'm here to testify in opposition to LB845. Again, the Apartment Association of Nebraska represents 86 owner management companies with 60,000 apartment units contributing \$270.7 million in property taxes and 2,000 jobs. I'm here on behalf of the Apartment Association of Nebraska to testify in opposition to this bill. First off, I would say no landlord wants to evict tenants. They're not in the business to evict people. They're in the business to provide housing. And they certainly don't like paying people like me to, to do evictions. However, the eviction process is the only process in Nebraska that allows property owners to maintain their property rights when a tenant does not comply with their rental agreement. LB845 would be truly devastating for rental housing-- the rental housing market in Nebraska, and it would do the exact opposite of helping provide for low-income Nebraskans. In many cases, passing this bill would require landlords to house people for free for 9 months a year. This, of course, would ultimately drive up rental rates and make housing even more unaffordable. Additionally, while this bill carves out an exception for violent conduct evictions, it has no carve out for lease violations or holdover tenants, meaning tenants could remain on the property without fear of eviction for any reason that doesn't fall under the violent criminal conduct exception. So the landlord would have no remedy for things like tenants having unauthorized pets, causing excessive noise, allowing unauthorized invitees to live in the apartment, or holding over their lease agreement, staying in the apartment after the expiration of the lease. I've heard a lot of comments about, you know, people not paying, but there's been no discussion of this part of the bill. The bill passed would open a, a myriad of legal challenges. Notably, the bill would stop landlords from evicting government employees working in the school system who aren't paying rent. Essentially, this means that the Legislature is saying that the housing providers have to house certain government employees for free for 9 months a year. And this is the very definition of an illegal government taking-- the government seizing private property via legislation for public use. This bill

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would be bad, bad for housing providers. It'd be bad for tenants. It would drive up rental rates. It would also keep landlords from removing problem tenants who violate their lease agreement, which is bad for their neighbors. The unintended consequences of this bill would be great-- would greatly outweigh the benefits of passing this legislation. Senator DeBoer, I think you hit it on the head with your question. It's just not fair to put the onus of what this bill does on property owners. Landlords are here to provide housing. They're not here to educate kids. They're not here to be blamed for the, the need for a new jail. They're not-- you know, they provide housing. This is a symptom of a problem that we can fix in other ways. This is not the way to fix the problem.

**DeBOER:** OK. Thank you. I see your red light is on. So we'll see if there's any questions from the committee. Does anybody have any questions for this testifier? I don't see any. Thank you so much. Oh, I guess I do see one. Who had their hand up?

**McKINNEY:** Thank you.

**DeBOER:** Oh, Senator McKinney.

**McKINNEY:** Yep. Thank you for your testimony. So would you rather \$350 million for a new jail or \$350 million for rental assistance?

**RYAN NORMAN:** Well, I think, I think my clients would rather have \$350 million for rental assistance, I suppose. But I don't think that this issue has any bearing on the new jail I think is my point. I don't think that it's landlords' fault that a new prison needs to be built. It's really easy-- and I think we do this a lot in this-- in, in these hearings-- to blame landlords for lots of problems. It's not landlords' fault that we need a new prison. It's not landlords' fault that kids aren't getting the education they need in these situations.

**McKINNEY:** See, I never made the--

**RYAN NORMAN:** Could I finish my answer?

**McKINNEY:** I never made the argument that landlords were at fault for the need for a new prison or our failing educational system. My only mention of that was the intersection of evictions and poor education and prisons, which intersects each other. That was my only argument. I never said landlords were at fault. Not once did I say that.

**RYAN NORMAN:** I think the insinuation was clear.

**McKINNEY:** No.

**RYAN NORMAN:** OK.

**McKINNEY:** Thank you.

**DeBOER:** Thank you, Senator McKinney. Any other questions for this testifier? Thank you for being here.

**RYAN NORMAN:** Thank you.

**DeBOER:** Let's have our next opponent testifier. Welcome.

**TARA HOLTERHAUS:** Thank you. Members of the Judiciary Committee. My name is Tara Holterhaus, T-a-r-a H-o-l-t-e-r-h-a-u-s. I'm an attorney in Omaha, Nebraska. I represent landlords, property owners, and management companies in landlord-tenant-related matters. Today, I'm here on behalf of the Nebraska Association of Commercial Property Owners and the Apartment Association of Nebraska. LB845 is a big idea and it is detrimental to property owners and managers. This bill restricts and limits property owners' rights to their own properties simply by virtue of their leasing to tenants and families. We are opposed to LB845. This bill would prevent a property owner from removing any tenants with children or any tenant who works in a school during the school year unless that tenant is engaging in criminal conduct or conduct that threatens the health and safety of other tenants. Even the COVID-19 eviction moratorium provided more protections to landlords than this bill provides. This bill does not provide any exception for conduct that breaches the lease agreement that does not rise to the level of being considered criminal activity or threatening to other tenants. Here, under this bill, a tenant could remain in the premises for up to 9 months after being served multiple notices for repeated lease violations, including lease violations for nonpayment of rent. This bill would prevent removal of a tenant for up to 9 months of rent owed. This bill further singles out an entire group of individuals. If passed, any tenant covered by this bill of-- any tenant covered by this bill in violation of the lease and subject to eviction would then be subjected to an eviction during the summer months, June through August. As a practical matter, this would create a huge influx of filings, overwhelming our courts and various assistance organizations during the summer months. Whereas as of right now, these filings are, you know, spread across the year. This bill also disincentivizes property owners and managers from working with tenants through the eviction process if a landlord or property manager understands and knows that once the school year begins, their rights

to remove a tenant for a potential violation disappear for the next nine months. I would pose to the committee that this is a school issue and not a landlord issue, and landlords should not bear the responsibility for, for this issue. And ha-- be happy to answer any questions.

**DeBOER:** Thank you. Are there any questions? Senator Ibach.

**IBACH:** Thank you, Vice Chair DeBoer. Are there-- can you help me understand if there are assistance programs already in place that might apply to families that are in jeopardy of losing their housing?

**TARA HOLTERHAUS:** There are certainly organizations that exist to provide rental assistance. I believe there are certain qualifications that somebody must meet to qualify for those assistance funds. But there are certainly organizations. They are dependent on county as well at the moment. I know that Douglas County certainly has less funds available at the moment. But other counties are-- provided a lot of funds right now to assist.

**IBACH:** And does your company typically have those resources outlined if-- if a tenant would happen to come to you and say, you know, I'm-- have a reason that I can't pay my rent, are-- is, is there a go-to person that would be available to say, these are some resources that you may want to check into?

**TARA HOLTERHAUS:** I can speak on behalf of my clients that I work with and organizations that I have personally worked with. As a lot of people have testified, landlords do not want to evict tenants. Eviction is the last resort if a breach of the agreement occurs and a landlord needs their property back. To that regard, almost all of the clients that I know and have talked about this issue with are always willing to help a tenant coordinate receiving assistance funds, providing them contact information of how they can get in touch with an organization. I do know that with certain organizations-- specifically the Tenant Assistance Project that has been in, in courts, specifically in Douglas County-- there are resources at court for tenants to utilize as well on the morning of their hearings. I-- again, landlords do not want to evict their tenants. That's not the business that they're in. The business that they're in is to lease their units to prospective tenants, and removing the tenant takes away their source of income as well. So it's the last resort. And if there's assistance available, I would say that landlords are very frequent-- frequently helping that assistance come into the pockets of the tenants.

**IBACH:** Thank you very much. Thank you, Vice Chair.

**DeBOER:** Thank you, Senator Ibach. Senator Bosn first, and then we'll go to Senator DeKay.

**BOSN:** Thank you. I had a constituent reach out to me with a concern. They are a property owner themselves and own 2 properties that are houses. And they use the income generated from those 2 properties to pay their own mortgage. And I believe my understanding from what you said was they're tied to that. Are you familiar with that fact pattern?

**TARA HOLTERHAUS:** Yes.

**BOSN:** OK. So should this individual-- let's say it's me-- should I have 2 properties and the income from those 2 properties pays my mortgage and is tied to my mortgage, and you-- the la-- the tenant in one of those properties stops paying rent and, under this, would be allowed to delay the proceedings on that for 6 months-- let's just say for argument's sake-- and now my property is gone. Are we going to be in a real world of trouble under that fact pattern?

**TARA HOLTERHAUS:** Absolutely.

**BOSN:** OK.

**TARA HOLTERHAUS:** Under these-- under this bill, if a tenant doesn't pay their rent in the month of August and they're served with a 7-day notice for nonpayment of rent, the practical implication is that a landlord can't take any action to remove that tenant until after the school year has ended in May. And that's 9 months. And that's a big problem.

**BOSN:** I guess my point was that there are, there are situations-- and you said you do have commercial properties-- or that was the reas-- who was having you here today. But there are property owners who are landlords who are not commercial but are more just one or two properties?

**TARA HOLTERHAUS:** Yes. Small companies, mom-and-pop shops, owners of one to two, maybe a handful of properties that use the financing for a rental home to fund their whole business of, you know, a handful of properties. Yes, it will shut a lot of those companies down.

**BOSN:** Thank you.

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**DeBOER:** OK. I said Senator DeKay first. Then we'll go to Senator McKinney. So Senator DeKay.

**DeKAY:** Thank you. How much-- in the case of an eviction, how much added cost does that add to the property owners on an eviction case? Is that case-by-case deal or do they hire a service to help them with--

**TARA HOLTERHAUS:** I want to make sure I understand your question. Are you asking about the fee to evict--

**DeKAY:** Right.

**TARA HOLTERHAUS:** --that a landlord incurs?

**DeKAY:** Right.

**TARA HOLTERHAUS:** Most landlords, I would say, hire an attorney to help them through the eviction process. That fee itself is relatively small. However, the ultimate out-of-pocket expense to the landlord is the unpaid rent that was never received by the landlord from the tenant. Ultimately, that amount may end up going to collections. It may be collected over the course of several months, if not years, down the line.

**DeBOER:** Thank you, Senator DeKay. Senator McKinney.

**McKINNEY:** Do you see a lot of children-- thank you, Senator DeBoer. My bad. Do you see a lot of children in eviction court?

**TARA HOLTERHAUS:** I personally appear in several counties, Omaha-- Douglas County being the primary one. I would say as a matter of course, a child is never included on an eviction pleading ever. They're not an adult. They're not on the lease agreement. They may be included as an occupant, but they are not a party to any eviction. I can understand your question. I would say a handful of tenants may bring their children with them to court. That's no different than other cases that I have where they may bring their child to court with them. They may not have had child care that day. I, I don't think that's a differentiator with this type of hearing versus a different one.

**McKINNEY:** What do you attribute the spike in evictions in 2023 to?

**TARA HOLTERHAUS:** I think several things. Obviously, the COVID-19 pandemic I don't think helped. I think the state has done a lot of



good things in terms of providing a lot of assistance funds, which has been great. One downside to those assistance funds, however, is that many of them will not cut a check to a landlord or is very slow in processing paperwork unless there is a pending eviction action. And so, as-- you know, disappointing as that is, it sometimes requires a landlord to file for eviction so that the assistance organization can expedite the paperwork to receive that assistance. So it was almost a double-edged sword of, you know, you had to file the eviction to get the assistance paperwork. So I, I think that that may have contributed to the influx of filings as well.

**McKINNEY:** All right. And last thing. If this passes, could you still file an eviction against a tenant?

**TARA HOLTERHAUS:** During the school year, the only way under this bill you could evict a tenant is if they were engaging in criminal conduct or conduct that threatens the health and safety of other tenants.

**McKINNEY:** Could you still file, file, though?

**TARA HOLTERHAUS:** Well, as Senator Hunt pointed out, this would be an affirmative defense. So we could file, but it would ultimately be fruitless if this defense is raised and brought in court. And now the landlord is stuck incurring additional legal fees for a cause of action that has a stated defense.

**McKINNEY:** But it doesn't eliminate the option, though, right?

**TARA HOLTERHAUS:** It doesn't eliminate the option to file. It provides the tenant an affirmative defense. And it, it increases legal costs with no real reason to proceed with anything if, if the law doesn't allow for it.

**McKINNEY:** All right. Thank you.

**TARA HOLTERHAUS:** Thank you.

**DeBOER:** Thank you, Senator McKinney. Other questions for this testifier? I don't see any. Thank you for being here. We'll have our next opponent. Welcome.

**KRISTY LAMB:** Thank you. Good afternoon. My name is Kristy Lamb, K-r-i-s-t-y; Lamb, L-a-m-b. Again, I work for NP Dodge Management Company. I am also a member of the Institute of Real Estate Management as well as the Nebraska Apartment Association. I think we've heard a lot of reasons to be compassionate about the needs for family

protections and the concerns that families and students face during the school year. But I-- the, the bill as, as written today is scary to put it [INAUDIBLE] lack of an-- any other words. The bill lacks any mechanism to ensure that tenant protection is warranted in this case. So without a requirement for tenants-- for a tenant to provide evidence of their need for assistance or protection, this law can be easily ex-- exploited. Evictions, while a last resort, do provide property owners the ability to address legitimate concerns such as property damage, illegal activity, violations of the lease, and restricting our ability to evict for cause during the school year could result in prolonged issues that threaten both maybe the safety and well-being of other residents at the communities but also the rights of the other residents at that community that are following the rules and regulations of the lease and things of that nature. We want to make sure that we're providing quality housing to anybody and everybody at the community versus just a few at the community. Property owners do depend on rental income to cover mortgage payments, property taxes, and maintenance. So a delay in that is going to have a direct effect, especially on mom-and-pops, those smaller property owners. And the previous example, if, if rent isn't paid for 6-9 months, it easily is going to put that property owner in a foreclosure or bankruptcy-type situation. Even our affordable housing communities that we oversee, those are generally break-even budgets. Those budgets are break-even because we have the intent of keeping the rent as low as possible. So if there's an uptick of nonpayment of rent for a prolonged period of time, it's not going to take too much time between-- before those properties are going to find themselves having to cut costs that's going to obviously reduce the condition of the property and/or find themselves in a position where they're not going to be able to pay their mortgages. In conclusion, while the intention behind protecting tenants during the school year may be to provide stability for families, it's crucial to balance this with the rights and responsibilities of property owners as well as the other tenants in the community. And striking a fair balance that considers both sides can lead to policies that protect tenants without unduly burdening property owners and preventing abuse of the law's intent.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**KRISTY LAMB:** Thank you.

**WAYNE:** Next opponent.

**DANA STEFFAN:** Good afternoon. I am Dana Steffan, S-t-e-f-f-a-n. I'm a residential property manager here in Lincoln. And I am a fee-based property manager, meaning I don't own the properties. I manage for others. And I do manage for an older population. So I'm kind of like the accidental landlord, someone that ended up with a house, don't know what to do with it, or they worked their whole entire lives to pay off the few handful of houses that they do have. Husband may have passed away. Wife may have passed away. So this is their retirement plan. So I get the phone call. Why, why am I not getting the rent this month? Well, I-- I'm sorry, Ms. Homeowner. I know you've worked your whole entire life, paid off this property. This is your income, your only income to live off of. But, you know, we-- they're not paying their rent. And we can't evict them. And you're not going to get a check for 6 months. Please plan accordingly. You can imagine how that phone call goes. What, what do you mean I'm not going to get-- I, I re-- I need that money. That's what I've retired on. That's my retirement plan. So they go to the-- usually kids or go to their lawyer and counsel, whoever they go talk to. And the sale of houses are as at a record all-time high right now. So they say, let's just sell the property. And that's usually what happens. I have seen this play out over the last 2 years over and over and over. So now that house, the two-bedroom, one-bath house renting for \$795 has no-- now sold for record price. And the new person that bought it is an investor. Goes through it. Fixes it up. Fixes a little here and there. And now it's \$1,600 to \$1,800. So this problem just perpetuates the affordable housing. I feel I-- I am a affordable housing provider. I do try to keep those market rents at a fair price and be fair to everyone involved. But what am I supposed to tell his widow that now you not only are going to get-- not get rent for six months. Then we have to clean it up, re-rent it. So as Rick mentioned, now we're years down the road to even recoup that. Another phone call I've received is, oh my gosh. I got my property taxes. You need to increase the rents. I, I, I got-- what am I going to do? So I tell that homeowner, the lease expires in July. So we need to wait till July and we can address that subject then about raising rents. But it's the same problem. We're all here about affordable housing and putting roofs over people's heads. This bill is only going to perpetuate the stock that we do have that's affordable, in my opinion, not being affordable because a two-bedroom house should not be \$1,600 a month. It should be \$995. And that's here in Lincoln, Nebraska. Also, Lincoln Public Schools does have some rental assistance if people just know to ask. They also can call-- I believe it's 211-- also has information for help on rental assistance. I also have, you know, the resources that I've compiled that-- with the late notice. Those resources go out with

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that notice as well so they can reach out to those sources. Any questions?

**WAYNE:** Any questions from the committee?

**DANA STEFFAN:** Thank you for coming.

**WAYNE:** Seeing none, thank you for being here. Next opponent.

**SANDRA IRELAND:** Hi.

**WAYNE:** Welcome.

**SANDRA IRELAND:** I'm Sandra Ireland, S-a-n-d-r-a I-r-e-l-a-n-d. And I'll just-- there's been a lot of good testimony with good points, so I'll just kind of make this short. But basically, this bill I feel would be on the fast track at putting a lot of landlords out of business. And because most people have payments on their properties and they-- there's also taxes, insurance-- there's no way that they can absorb no rental income for 9 months. It just won't happen, which will take a lot of rental properties off the market. And there, there will go a big dent in affordable housing. And why, why would landlords have to be expected to forgo being paid for their services for providing a need? I can assure you that there's not many landlords that will be able to go through that many times-- and probably once would do it-- before they would be putting their houses up for sale. And like I said, then that would significantly reduce the inventory of rental properties on the market. And if landlords-- why, why are they the only ones that don't have to be paid for their service-- the services they provide for a need of housing? Maybe-- during the school year, maybe they should be able to go to the grocery store and not have to pay for groceries during the school year or the utilities during the school year. I mean, it just-- it doesn't make sense to me. And I know there are rental assistance programs out there. In fact, LPS I know does have one of them. And there's, there's others as well. And I'm all for some kind of assistance programs to help tenants. And one of the things they need to work on with those programs is to help tenants learn to manage better and be more responsible. And you had asked about the costs to do evictions. And I think, in Lincoln, their price-- the minimum's about \$350 starting for a fee, an attorney fee. Thank you very much. Any questions?

**WAYNE:** Thank you. Any questions from the committee? Senator McKinney.

**McKINNEY:** Thank you, Senator Wayne. Quick question: how do you manage or be more responsible when you have a un-- a unexpected death in a

family, a car accident, those type of things? How do you manage or be more responsible to respond to those things? Cause a lot of-- cause a lot of people end up in, in those situations due to things that happened unexpectedly.

**DANA STEFFAN:** Sure. And usually-- you probably have a tenant that you've had for a while, they've always paid their rent, now all of a sudden they're calling you. I can't make my March rent. I was in an accident. I had a death. I had to travel. I mean, we've had that happen. OK. We work with them on situations like that. But I'm talking about people who are just irresponsible. They, they don't seem to be able to manage their money and set their priorities. There could be-- and I know there's a program called Went-- RentWise that they do a good job of working with people on that kind of thing. But I think--

**McKINNEY:** I don't-- and sorry to cut you off. I don't doubt that you work with your tenants and, and help them out, but I do know of property management companies that don't work with people at all. So in that situation where I have a unexpected death in a family and I have to help with funeral expenses, there's people who can't go to their property management company or their lease, their-- whoever that, whoever that person is, say, hey, my, my, my dad or my brother died ex-- unexpectedly. Can you give me some time? They're filing right away. And, and I think that's the issue. Cause I'm not saying that you don't. But I'm saying there are people who are not flexible.

**DANA STEFFAN:** I think most-- even property management companies would want to try and work out-- if they're at least paying-- you know, even if they pay some of it and try and work with them, they'd rather do that than have a vacancy and--

**McKINNEY:** I think we wish that happened that way. I-- like in a perfect world, yes. But--

**DANA STEFFAN:** Well, I know we had a property that we had the same tenant over 16 years. And we didn't raise their rent the whole time until one year before we sold it. We raised it \$50. We had to-- taxes, insurance. We just had to. But we knew that they struggled and we tried our-- we were in a position on that property we could do it, and so we did. I mean-- so it was way below market rent. And they didn't want to move when we sold it, but we just were in a situation and we needed to sell it. But, I mean, there's times when people can't do that. And right now, with taxes and insurance and everything going up, the expenses keep going up. And so rents have to go up. And if there's more-- going to be more mandates on things that cause more expenses,

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that's going to make rents go up more, which isn't going to help tenants and affordable housing.

**McKINNEY:** It's a, it's a conundrum here.

**DANA STEFFAN:** Pardon me?

**McKINNEY:** I said, it's a big conundrum here, so. But--

**DANA STEFFAN:** Yeah.

**McKINNEY:** --and I appreciate your feedback, though. Thank you.

**DANA STEFFAN:** Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**DANA STEFFAN:** Thank you.

**WAYNE:** Next opponent. Next opponent. Those testifying in the neutral capacity. Neutral capacity. Seeing none. Senator Hunt. As she comes up to close, we have 1,400 letters-- no, 100 letters-- 105 letters: 46 in support and 59 in opposition.

**HUNT:** Thank you, Chairman Wayne. One time, I did a bill that had about--

**DeBOER:** Yes. Yes.

**HUNT:** Yeah. We were up there. Yeah. I'm sitting over there going, I'm never doing landlord-tenant again. Like, these days get so-- landlords, you're right. I'll leave you alone. I'm sorry.

**WAYNE:** I hear you.

**HUNT:** You know, being serious, we obviously all share the same goals of making sure that kids are housed, kids are safe. There's a lot of great landlords out there. And we know that there's people who are part of the problem-- on both sides, folks know that there's people who are part of the problem. I'm always willing to work on amendments, on compromises that preserve the spirit of what we're trying to accomplish. And, you know, I think, I think this hearing was pretty thorough and we heard a lot of good arguments on both sides. And I just want to thank and give respect to everybody who took the time to come today and share those views. And hopefully we can find a place to come to where we can reach those goals a little bit more productively

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in Nebraska. And I'm happy to answer any questions if the committee has them.

**WAYNE:** Any questions? Seeing none.

**HUNT:** Thank you.

**WAYNE:** Thank you. Oh, Senator Ibach.

**IBACH:** I noticed on the-- and I threw it away already. I apologize. On the fiscal note, there was just a \$10,000 cash expenditure. Is that correct?

**HUNT:** Mm-hmm.

**IBACH:** Can you tell me what that would cover?

**HUNT:** This is something that the Supreme Court said that they would need to do to make some change in their software or something.

**IBACH:** OK.

**HUNT:** In my opinion-- and I'll say it on the record-- I don't know if it'll be that much money. But it's just what Fiscal came up with.

**IBACH:** All right. I was just curious because it didn't outline it in the explanation. Thank you.

**HUNT:** Thank you.

**IBACH:** Thank you, Chair.

**WAYNE:** Any other questions? Seeing none, thank you.

**HUNT:** Thank you.

**WAYNE:** That'll close the hearing on LB845. That'll be our second hearing today. We will be starting with LB1115. Senator Dungan waives opening. First, we'll start with-- [LAUGHTER]. Come on up.

**DUNGAN:** Thank you, Chair Wayne. I will say I anticipated being here a little earlier today. I didn't realize it was going to be quite as long. If you could just pass out here.

**DeKAY:** Are you introducing all of that?

**DUNGAN:** I promise those are not amendments. That is something else.

**BOSN:** Brevity.

**DUNGAN:** Yes, brevity. Thank you, Chair Wayne and members of the Judiciary Committee. I am Senator George Dungan, G-e-o-r-g-e D-u-n-g-a-n. I represent District 26 in northeast Lincoln. Today, I'm introducing LB1115. LB1115 is a bill addressing a respondent's right to a trial by jury under the Uniform Residential Landlord and Tenant Act. The catalyst for this legislation is a concurring opinion that came from the Nebraska Supreme Court in the case of NP Dodge Management Company v. Holcomb, which the pages should be handing out to you now. I would like to just briefly read the opening paragraph from Justice Papik in that. I agree with the majority opinion that this case is moot and therefore the appeal should be dismissed. That said, I believe Holcomb has identified a potential constitutional problem with the provision of Nebraska's Uniform Residential Landlord and Tenant Act requiring that actions for possession be tried to the court. I write separately to highlight why I believe the bench trial provision may rest on constitutionally fragile grounds. Colleagues, I'm not going to obviously read the entire case for you, but if you go to the end and look for where it says the concurring opinion, please take time to read that. I know you're very busy today. I am happy to read-- or, talk about it with you moving forward. But that concurring opinion, which was written by Justice Papik and joined by two other judges on the Nebraska Supreme Court, essentially outlines the exact concern that this bill is trying to address. It is a constitutional originalist perspective that ultimately reaches the conclusion based on sound law and precedent from both the U.S. Supreme Court and other courts around the country that the right to jury trial is one that one should have on an eviction action. Under Article I, Section 6 of the Nebraska Constitution: The right to trial by jury shall be inviolate. Historically, Nebraska courts have held that this applies to all legal claims. Additionally, the courts have recognized that an action to recover possession of real property is, in fact, a legal claim, meaning that individuals have a constitutional right to a trial by jury in eviction proceedings. This bill allows defendants the right to a trial by jury under the Uniform Residential Landlord and Tenant Act. This bill does make several changes to the current statute. The bill would amend the section to read that rental agreements cannot include provisions requiring individuals to waive their rights under the Uniform Residential Landlord Tenant Act. Additionally, and primarily, this bill strikes language stating that eviction hearings are to be tried without a jury. It would allow either party to demand a trial by jury. And if neither party demands it, the court would try the action without a jury. The defendant may request a trial by jury on the day



of or before the defendant's first appearance. Landlords may also include a demand for a trial by jury in the complaint for restitution, which they file with the district or the county court. You should have an amendment in front of you: AM2191. AM2191 allows plaintiffs to be awarded reasonable attorney fees if the jury finds in favor of the landlord and if the tenant's violation of the lease is found to have been voluntary. This mirrors current statute, which allows for the collection of attorney fees in those circumstances. I simply wanted to ensure that it was referenced in that to make sure you could see the attorney fees could also be collected here. Additionally, and importantly, this amendment addresses the concern that's been brought up about these cases being dragged out for months. If the jury trial extends beyond the initial trial date as determined by the court, the court may require the tenant to deposit rental payments to the clerk of the court as they accrued during the pendency of the suit. We've worked with landlords and their representatives over the last few months. In my view, this bill is not your classic landlord-tenant issue, where we're simply talking about advocacy or what we'd like to see happen, but instead a serious constitutional issue. I liken this to what we did last year when we addressed the issue with regards to home equity theft, where multiple people brought bills to address that problem. It was a problem that was pending before the U.S. Supreme Court. And we as a Legislature had to come together to address it before it was ultimately found unconstitutional. I believe that if a case were to go to the Supreme Court of Nebraska that were ultimately found not to be moot-- meaning the court would actually reach an opinion-- we've received notice from this concurring opinion that's-- was on this other case on how they would rule. And I believe that the Supreme Court has indicated to us that this is an issue that we need to address now. Essentially, my fear is this: if the Supreme Court were to have a case come before it, and ultimately they deemed our current landlord-tenant statute unconstitutional by virtue of denying that right to a jury trial, one of two things could happen. One, they could find the entire landlord-tenant statute unconstitutional if they say it's not severable and the entire law would be thrown out. And it would be just-- it'd be just complete chaos. Or if they find that it is severable, they would strike out the language in the statute saying that you cannot get rid of the right to jury trial, which makes the rest of the statute unworkable. So what we're seeking to do here is simply address an issue before it becomes a problem. I believe this is something that we can continue to work together on. As I've said, I've, I've met with a number of stakeholders, talked with representatives from the landlords. We understand this has to be workable. And we've tried to build into the bill through the amendment

certain guardrails to ensure that this functions. One of-- again, one of the chief concerns that I heard was, well, what happens if this gets continued over and over and over again? That's why we built in this requirement-- or, this ability, rather-- for the court to order rent to be collected by the county court or the district court clerk during the pendency of the case if it's continued by the tenant past the original jury trial date. That's to ensure that the landlords do receive their money in the event these cases do get continued because we want to make sure that nobody is out that extra money. I think this is a serious issue. I know it's kind of complicated. And I know we're probably going to hear from a number of testifiers about it. But this is not just something I think would be nice to see happen. This is something that I think we need to address as a Legislature. At the very end of that concurring opinion, Justice Papik I think specifically says something to the effect of, this is an issue that should probably be taken up by the Legislature. I think we're kind of on a ticking clock with regards to this. And I know there's already cases that have been filed that are potentially working their way through the appeals process. And if this reaches the Nebraska Supreme Court prior to an opinion being made, I think it's going to be a huge problem. So with that, I'll let the testifiers talk. I will stick around for closing. But I'm happy to answer any questions if you have any.

**WAYNE:** Any questions from the committee? Senator DeBoer.

**DeBOER:** Thank you. So you mentioned that you thought it would be unworkable if the court just said you have a right to a-- not, not just if it's not severable, they throw the whole thing out-- which is chaotic because who knows who has what rights then. And I don't even know what we would revert back to. Would it be reverting back to before the Uniform Act was passed?

**DUNGAN:** It's possible. I don't actually know what would happen other than pure chaos.

**DeBOER:** Pure chaos. OK. Suffice to say: pure chaos. So if we just say it is severable and that they would just strike the part about the jury trial, then what would sort of be the, the bad consequences of that?

**DUNGAN:** So currently in the statute, as it currently operates, there's sort of this process and procedure that's been established with regards to a bench trial, which is just a trial to the judge. Every county court or every county or district court has a different way of

conducting jury trials. And what I mean by that is they have a different way of calling jury panels. They have different jury terms. So everybody kind of does it their own way. If you just struck the portion of the current statute that says you can't have a jury trial, the rest of the statute that has all these requirements in place for when things can happen or have to happen would make it almost impossible for county courts to operate functionally by calling jury panels or impaneling people to come in and, and hear these cases. So what we sought to do was to allow flexibility for individual counties to set these cases as soon as practicable based on their local county court rules with the understanding that a top-down approach of us in the Legislature telling each county how they can or can't conduct jury terms is a problem. So in speaking with the county court judges, I wanted to provide them as much flexibility as possible while still ensuring that this happens, quote unquote, as soon as practicable to try to speed these things up. Knowing that eventually those cases could get continued, that's why we built in that extra guardrail to allow the court to order those payments of rent during the pendency of the case, in an effort to ensure there's not a lot of money lost during these cases. So if they just-- to answer your question, if they just struck that portion, the rest of our current structure is just not workable because it's built to support bench trials to judges and not jury trials in front of panels and juries.

**DeBOER:** So have you talked to, I don't know, judges from across the state and-- with what you've now got with your amendment, which we don't have or we just now got.

**DUNGAN:** OK. My apologies. I thought that would have gone out earlier.

**DeBOER:** So would that-- do they think that this is a workable solution that they could actually be able to impanel juries to do these actions?

**DUNGAN:** I'm-- I, I can't speak on behalf of all the different county court judges. I mean, absolutely when this bill first came up-- I'm just going to be totally candid-- it causes a lot of people to be nervous, right? I mean, you're-- I'm sure you're going to hear from some testifiers that there are logistical concerns about what's going to happen here. In speaking with representatives for the county judges, we have sought to address those issues and we have sought to provide them the flexibility to make these things happen in the way that I think would actually be good for them and actually work in those courts while still ensuring that there's guardrails in place to make sure it's not going to go too far off the rails. At the end of

the day-- and I want to highlight this prior to any of the testimony-- if this is, in fact, a constitutional issue, we have to figure out ways to make it work, right? Saying this is difficult to do is not a good enough reason to not allow somebody to exercise a constitutional right. And the opinion that I've passed out-- I think it's actually written pretty understandably. It's not super deep into legalese-- goes into a really good detail about how this really is just a right to jury trial that you should have. Frustrating though it may be to sometimes figure out how to effectuate those rights, we have to do it. And I would also note the U.S. Supreme Court has actually found in D.C. that the right to jury trial has to be allowed for evictions because the U.S. Supreme Court has jurisdiction over D.C. But by virtue of the fact that that ruling doesn't affect state courts, that's not necessarily precedent. But a number of other states have looked at that U.S. Supreme Court ruling-- I think it was in 1974-- and said, we agree with that line of argument, and therefore they've also allowed jury trials for evictions in their states. I don't have a list, an exhaustive list on the top of my head of which states do currently allow for jury trials, but it's multitudinous. And I would also note we had the right to jury trial for evictions here in Nebraska up until 1995. So this is not like we're trying to all of a sudden implement something wacky. It was something that was allowed by statute that in 1995 was removed as part of a larger package. And I believe in going back and looking at the hearing transcript from that, it was indicated that these jury trials happened so infrequently that it was not going to cause a problem. And I think one testifier gets up and says something to the effect of, has anybody thought about the constitutionality of this? And there's not really any answer and then they just kind of move on. So I, I just want to highlight that. I think it's important to note this is not something that's a wild, harebrained scheme. It's something that was permitted here in Nebraska for quite some time. A number of other states do it. And I think it's necessary for us to figure out the way to make it operate.

**DeBOER:** All right. Thank you.

**WAYNE:** Any other questions from the committee? Seeing none. Thank you for being here. First proponent. Welcome.

**JONATHAN URBOM:** Chairperson Wayne, honorable members of the Judiciary Committee, my name is Jonathan Urbom. I'm testifying in support of LB1115 on behalf of the Nebraska Association of Trial Attorneys. Senator Dungan pointed out a number of the things that I was going to point out to the committee today-- primarily, that the Nebraska Constitution and the United States Constitution guarantee a right to a

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jury trial in civil cases, and an eviction is a civil case. As Senator Dungan also pointed out, our Supreme Court has hinted that if the proper case were before them, that they would find that the right to a trial by jury-- jury does exist in eviction cases. And we appreciate Senator Dungan bringing this bill in advance of that potential opinion in the future. From NATA's position, this bill seems to primarily help those situations in which-- not the situation in which a, a tenant hasn't paid rent for a number of months and the landlord files for an eviction-- because in that situation, the tenant is going to be evicted-- we're looking at more of the situation where the landlord just doesn't like the tenant or wants to sell or upgrade the property and provides a 30-month notice to evict that tenant from the property under a month-to-month tenancy. And that tenant, through no fault of their own or through no violation of the lease agreement, is left with no place to live in a very short period of time. We believe a right to a trial by jury, particularly in those situations, levels the playing field for the tenant. And with that, I would answer any questions if the committee has any.

**WAYNE:** Any questions from the committee? Can you spell your name?

**JONATHAN URBOM:** Urbom, U-r-b-o-m.

**WAYNE:** Thank you--

**JONATHAN URBOM:** Thank you.

**WAYNE:** --for being here. Next proponent. Welcome.

**CAITLIN CEDFELDT:** Good afternoon, Senator Wayne. My name is Caitlin Cedfeldt, spelled C-a-i-t-l-i-n C-e-d-f-e-l-d-t. And I'm an attorney with Legal Aid of Nebraska's Housing Justice Project, and I'm in testifying in favor of LB1115. Because I'm a housing trial lawyer with over 6 years of experience representing tenants all over the state, I'm well positioned to tell you from direct experience why LB1115 would give tenants a much better chance at equal justice under the law. Put simply, this bill codifies a right that tenants already have. I was the trial lawyer on NP Dodge v. Holcomb, in which we asked for a jury trial on behalf of our client, Teresa Holcomb. Together with my co-counsel, Kasey Ogle, from Collective Impact Lincoln, we brought the case through the appellate process to the Nebraska Supreme Court, who ultimately found it to be moot. But as you saw in the opinion that Senator Dungan provided-- Dungan provided you with, at least 3 of them agree with us that the constitutionality of the law is questionable. I will let Ms. Ogle further explain to you the particulars of the

history and the legal argument, as she's kind of the brains behind this operation in that respect, as well as the details of the Supreme Court of Nebraska's response. Instead, I want to focus on the practical implications of what this will mean for tenants, lawyers, landlords, and everyone involved in this process. I think we're going to hear a lot of opposition today arguing that should this bill pass, costs will skyrocket for the courts and landlords. And I just don't think this is the case. It's hard to estimate the exact cost increase that will occur, because there will be one. But I know from experience that a significant number of trials will likely not occur. I'm in court every single week representing tenants, and I don't try cases that often. Landlord-tenant law is just not special. It's not any different from any other area of law. Civil legal cases don't always go to trial. And that will not change with this ste-- this thing-- this bill, rather. The other thing that I wanted to point out is that the forcible entry detainer statute, which applies to commercial cases, allows for a right to a jury trial. The forcible entry detainer statute applies to commercial tenancies as well as situations in which there's a squatter. So arguably, right now, a squatter has a right to a jury trial and a normal tenant does not. And that's just absurd. The Landlord Tenant Act operates just like any other area of civil law. Evidentiary rules, civil procedure, and the rule of law all apply. Calling it special or expedited proceeding does not make it exempt from due process requirements. The constitution is inconvenient, but it is an important component of our society, and the right to a jury trial is incredibly important for all Nebraskans, renter or homeowner. And they d-- everyone deserves to take advantage of a fundamental right in court.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you.

**CAITLIN CEDFELDT:** Thank you.

**WAYNE:** Next proponent. Thank you. Welcome.

**KASEY OGLE:** Hello. Thank you, Chairperson Wayne and members of the Judiciary Committee. My name is Kasey Ogle, K-a-s-e-y O-g-l-e. And I'm a senior 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 and Civic Nebraska that works with residents of 6 Lincoln neighborhoods to build community, develop neighborhood leaders, and take action on policy that's responsive to their needs. I'm here today on behalf of

Collective Impact Lincoln in support of LB1115. Collective Impact Lincoln advocates for better housing quality, more affordable housing, and fair rental practices for low-paid Lincolniters. We support LB1115 because it reaffirms an essential constitutional right of litigants in eviction court. Article I, Section 6 of the Nebraska Constitution states that the right of a trial by jury shall remain inviolate. The Nebraska Supreme Court has explained that this constitutional provision preserves the right to a jury trial as it existed at common law and under statutes enforced when the Nebraska Constitution was adopted in 1875. Because at common law, legal claims were tried to a jury and equitable claims were tried by a court, the Nebraska Supreme Court has traditionally denied jury trials in equitable actions and provided jury trials as a matter of right in legal actions. Statutory provisions in place at the time the Nebraska Constitution was adopted provided parties 2 actions for possession of real property the right to a trial by jury. Additionally, actions for the possession of real property are legal actions. Therefore, by whichever test you use, litigants in actions for the possession of real property, such as an eviction action pursuant to the Nebraska Uniform Residential Landlord Tenant Act, are guaranteed a right to a trial by jury by the Nebraska Constitution. Until 1995, all litigants in eviction actions were provided this right. In 1995, the Legislature passed LB52, which amended Nebraska Revised Statute 76-1446 to say that actions for possession of real property pursuant to the Uniform Residential Landlord Tenant Act shall be tried by the court without a jury. For nearly 3 decades, this statute has stripped litigants of their constitutional right to a trial by jury. The Nebraska Supreme Court was recently asked to declare the bench trial provision of the Landlord Tenant Act unconstitutional for these reasons. While the court found the case before it to be moot and therefore declined to pass on the constitutionality of the bench trial provision, a concurrence by Judge Papik urged the Legislature to consider the constitutionality of and reassess the Landlord Tenant Act's bench trial provision. With LB1115, the Legislature has the opportunity to correct this grave constitutional error. And for these reasons, we urge you to advance LB1115.

**WAYNE:** Any questions? Seeing none, thank you for being here.

**KASEY OGLE:** Thank you.

**WAYNE:** Next proponent.

**SCOUT RICHTERS:** Scout Richters, S-c-o-u-t R-i-c-h-t-e-r-s, policy director at ACLU of Nebraska in support of LB1115. We want to thank

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Senator Dungan for bringing this bill. The ACLU of Nebraska, along with the Iowa-Nebraska Chapter of the NAACP, did submit an amicus, or friend of the court, brief in the, the referenced case, NP Dodge v. Holcomb. We took the position and still hold the position that there should be a right to a jury trial in eviction proceedings and then-- at the-- and that the Nebraska Constitution does guarantee that right. Our, our amicus brief outlined policy reasons why jury trials in eviction actions are important given the current eviction crisis, the collateral consequences of evictions, and the disproportionate effect of evictions on Nebraskans of color, those with disabilities, and women with minor children. Given the immense stakes of evictions, coupled with the constitutional reasons Nebraska law should include the right to a jury trial previously discussed, this, this change would really make sense from both a legal and policy perspective. Housing is about security, safety, and economic opportunity, and giving Nebraskans the chance to have a jury during eviction proceedings is really a step forward to ensure housing justice for all Nebraskans. So for those reasons, we offer our full support for LB1115.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**SCOUT RICHTERS:** Thank you.

**WAYNE:** Next proponent.

**BENJAMIN BURAS:** Benjamin, B-e-n-j-a-m-i-n; Buras, B-u-r-a-s. I firmly support this legislative bill. Last year, this would have helped me out immensely knowing that I have a right to a trial in a civil matter such as a pending eviction with my experience with Arrow Capital LLC, who owned and managed the property that I lived at and in 106-degree heat index with a broken air conditioner and having to breathe in pesticides, I was forced to buy my own air conditioner and install it in one of the windows. And-- because they refused to fix the air conditioner on their own. So, yeah. This would have, this would have helped me out a lot. And I think people are-- some people are getting paid a lot of money to represent landlords. And they're going to say, oh, yeah. The-- this is, this is going to delay everything and the costs are going to go up. Well, then stop evicting people and-- you know. Oh, we painted the cabinets and then we put in granite countertops and now we can charge over 31% more in 3 years. OK. Well, in Chicago, how it works is if you can't pay your property taxes, then you-- those taxes go to auction and somebody can buy that. And then if you don't redeem your taxes within a certain amount of time, that



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person takes ownership of the property through a tax deed. And-- so if you're a landlord and you've got all of these properties you can't rent because you're trying to charge too much, well then you're going to lose the properties and that-- somebody's going to get them. And then the property value's probably going to go down. That, that's, that's what I would think, so. I support this. I think-- yeah. I think we-- I think-- it sounds like we do have a right to a jury in civil matters. So, yeah. That's why I'm in support.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**BENJAMIN BURAS:** Thank you.

**WAYNE:** Next proponent. Next opponent. First opponent.

**LYNN FISHER:** Thanks again for allowing us to testify. Thank you, Senator Wayne.

**WAYNE:** No problem. [INAUDIBLE].

**LYNN FISHER:** Lynn Fisher, L-y-n-n F-i-s-h-e-r, representing the Statewide Property Owners Association, Nebraska Realtors Association. We understand the constitutional right of everyone to have a jury trial. But historically in Nebraska, the eviction process has been expedited with a bench trial in order to res-- restore private property back to an income-producing status as soon as possible. Therefore, we oppose this bill on the reasonable understanding that the tenant is not the aggrieved party, but the violator of the agreement, and should not be shielded from responsibility. The eviction process should be maintained as much as possible as an expedited process. The tenant should have to deposit with the court any rents due before proceeding with a jury trial, or the process should remain a bench trial, as the more time it takes to resolve the case, the higher the cost in lost rent or damages to the property, not to mention a huge increase in legal fees that have to be absorbed in some form or fashion with a jury trial. We're, we're assuming there'll be a lot more jury trials than not because it's going to be a, a way to postpone an eviction process. I'd be happy to answer any, any questions.

**WAYNE:** Any questions from the committee?

**LYNN FISHER:** Thank you very much.

**WAYNE:** Yup. Next opponent. Welcome.

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**RYAN NORMAN:** Good afternoon, again, members of the Judiciary Committee.

**WAYNE:** I'm sorry. Are you-- were you a-- are you a lobbyist? Are you, are you a lobbyist?

**LYNN FISHER:** No.

**WAYNE:** OK. No, no I just-- there's a ongoing debate among Chairs that making sure lobbyists repre-- say that they're lobbyists. So I don't know-- just trying to make sure. Go ahead. No. Because you [INAUDIBLE] represent an association, so I just assumed. So go ahead. Sorry about that, sir.

**RYAN NORMAN:** I'm not a lobbyist either.

**WAYNE:** All right. Thank you. It was this big deal yesterday in Education Committee. It was just weird. So I don't know. OK. Go ahead.

**RYAN NORMAN:** Good afternoon, members of the Judiciary Committee. My name's Ryan Norman, R-y-a-n N-o-r-m-a-n. I'm an attorney. And I'm a chair of the Apartment Association of Nebraska Legislative Committee. I'm here to testify in opposition to LB1115. Article I, Section 6 of the Nebraska Cos-- Constitution preserves the right to a jury trial as it existed at common law and under the statutes enforced when the Nebraska Constitution was adopted in 1875. As argued by the Attorney General's Office in their brief to the Supreme Court in NP Dodge Management v. Holcomb, I believe that the right to a jury trial at common law never existed in summary proceedings and that eviction cases in Nebraska are summary proceedings. Obviously, not all the lawyers in the room agree with me on this issue, but I believe that's what the case law indicates. And as we've discussed, only 3 of the 7 Nebraska Supreme Court members concurred in an opinion stating otherwise, which indicates to me that there's disagreement even among the members of the Supreme Court on this issue. I understand it's a confusing and convoluted legal issue. And if this bill is going to pass, I think that there definitely needs to be a sit-down among all parties to discuss how we can make the bill workable. You've also heard or you will hear reasons why passage of this bill would be a problem from a public policy perspective. And if-- again, if the bill's going to pass, I think we need to discuss more amendments that would make that, that public policy effect lessened. I won't belabor those points too much, but only wish to highlight that it would-- again, it would increase the rent in the state of Nebraska because there'd be increased legal costs for landlords in these cases in

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addition to increased time. Passage of this-- passage of this bill would also be very expensive for the state or the counties, cities that would have the burden of impaneling the juries and hiring-- likely hiring additional judges. Finally, this would clog our already busy court system with cases that have relatively simple legal issues that don't necessarily need the finding of a jury. So I urge the committee on the-- on behalf of the Apartment Association to oppose LB845. If that's not going to be the case, we would love to sit down and discuss how we can lessen the impacts of this bill on our constituents. Thank you for your time. And I'd be happy to answer any questions that you have.

**WAYNE:** All right. Senator DeBoer.

**DeBOER:** Sorry. Just one quick one. You referenced an Attorney General Opinion?

**RYAN NORMAN:** Yeah. So in the NP--

**DeBOER:** What-- I just want to know what that is, which Attorney General Opinion.

**RYAN NORMAN:** So there was a, there was a brief filed in the--

**DeBOER:** By the Attorney General--

**RYAN NORMAN:** By the Attorney General's Office--

**DeBOER:** --in that lawsuit. OK.

**RYAN NORMAN:** And it was-- it, it was on the opposite opinion of what the--

**DeBOER:** But there are--

**RYAN NORMAN:** --concurring opinion was from the 3 justices that we've been discussing.

**DeBOER:** There are previous Attorney General Opinions, historically, that have been-- actually concurred with the concurrence. Is that correct? Do you know of those?

**RYAN NORMAN:** I don't. I don't know.

**DeBOER:** Yeah. I think there have been. But--

**RYAN NORMAN:** I just know there was a--

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**DeBOER:** --you're talking about-- OK.

**RYAN NORMAN:** --there was a brief filed in this case specifically from the Attorney General's Office that was--

**DeBOER:** That's helpful.

**RYAN NORMAN:** --in favor of NP Dodge's position.

**DeBOER:** OK. That's helpful. Thank you.

**RYAN NORMAN:** Yep.

**WAYNE:** So you can take a bad set of facts, take it up to the Supreme Court, or you can try to figure out the law. Which one would you prefer?

**RYAN NORMAN:** Well, I don't necessarily think those are the only 2 options, but I--

**WAYNE:** What's, what's the other options? Because people are now asking for jury trials. It's going to bubble up. There's no way it's not going to go to the Supreme Court.

**RYAN NORMAN:** Right. I don't think it's a foregone conclusion that just because 3 of the justices believe one way that the Supreme Court's going to rule that way, I guess is my first answer to that question. But I agree that if this is something that the Legislature's going to do something on, we need, we need to sit down-- both sides need to sit down and, and hammer out how this is going to work.

**WAYNE:** I would, I would implore you guys to.

**RYAN NORMAN:** Right. I agree.

**WAYNE:** Considering the 3 justices that signed on, I would, I would think it would be something they would take up. You're nodding your head. So you're, you're agreeing that the Supreme Court would probably take this up?

**RYAN NORMAN:** Oh, I think that the-- I, I think that this will be in front of the Supreme Court again. I don't think that there's any question about that. I just don't-- I, I don't know how they're going to find. I don't think just because 3 of the justices said they would find one way that that necessarily means that's going to be the majority opinion.

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**WAYNE:** Thank you. Any questions? Seeing none, thank you for being here.

**RYAN NORMAN:** Thanks.

**WAYNE:** Next opponent.

**RICK McDONALD:** Rick McDonald, R-i-c-k M-c-D-o-n-a-l-d. I'm the president of the Metropolitan Omaha Property Owners Association. Just real quick on this. If this was apparently, as we were just informed, changed to where there was no jury trial-- it was a bench trial 30 years ago, and there hasn't been a big issue on this. It hasn't seemed to be any problems. I don't see trying to fix a problem that doesn't exist. Currently, most evictions are due to nonpayment of rent. It's quick. It's easy. I mean, they didn't pay, then they are evicted. So I don't see the need for a jury trial in that case. This would just put another financial burden on the landlord that is either going to push them towards, once again, getting out of the business or it'll have to be passed onto the tenant. So with that said, I hope you vote against this.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Hey, finally not one of my bills you're opposed to.

**KORBY GILBERTSON:** There's always a day but you're not going to like the end of my testimony then. Chairman Wayne, members of the committee. For the record, my name is Korby Gilbertson. It's K-o-r-b-y G-i-l-b-e-r-t-s-o-n. I am appearing today as a registered lobbyist on behalf of the Nebraska Realtors Association. But I will point out that there is a specific exemption in statute so that you do not have to be a lobbyist to represent someone in a public hearing. And there's no statutory requirement that you divulge that you are one either. I know that came up in another hearing, so I just thought I'd add that in there. But I want to-- you've heard both sides of the argument on this bill. I'm a lawyer. I see Professor Willborn or Dean Willborn sitting back there, so I always get nervous making any legal comments, but. In, in discussing this with numerous people, including Senator Dungan, we all agree that there is-- it's very likely that it would be held that this is a constitutional amendment. And my advice to clients is always, if there's going to be something that causes a real big problem with the existing statute, if you do nothing, you should probably be part of the group that's trying to fix it. And so I want to thank Senator Dungan for taking the time to sit down with us and discuss the-- his amendment that he filed last week. We do have one additional request after meet-- we-- the realtors met last weekend to

review bills-- would be their ability to collect on actual damages that exceed the damage deposit. It is my understanding that there has been some pretty big damage resulting from eviction proceedings. And so if they-- if there's no damage, they don't get any additional money. If they can prove that there are additional damages that go beyond what the deposit was, we would hope that they would be able to recover those as well. With that, I'll answer any questions.

**WAYNE:** Any questions? Senator DeBoer.

**DeBOER:** So just that last part-- I'm trying to follow that. How does the jury trial affect whether or not there would be additional damages? And why would that be the trigger for whether or not--

**KORBY GILBERTSON:** The concern is that the-- it will take longer time-- It will take a longer time to be able to get people out of the property. And that extended period of time could lead to additional damages to the property.

**DeBOER:** What if it doesn't take longer? Then--

**KORBY GILBERTSON:** Then if--

**DeBOER:** Then those additional damages wouldn't be given?

**KORBY GILBERTSON:** No. I mean, I think that was the original argument why they should. I think they would argue they don't-- if they're-- if someone tries to destroy a property intentionally because they're being evicted, they should arguably pay for it.

**DeBOER:** Sure. Maybe. But that, that doesn't have anything to do with whether it was a bench or a jury trial, right? Except you're saying that maybe the jury trial might take longer to [INAUDIBLE].

**KORBY GILBERTSON:** Right. And if-- so if you look-- I-- this is in conjunction with our conversation with Senator Dungan. So if you look at the amendment-- and the amendment says that you have 2 different things. Number one, that if it goes beyond the original date, that--

**DeBOER:** Sure. Then there would be a continuance.

**KORBY GILBERTSON:** --the judge can ask for that. And then secondly, that if tenants can receive attorney's fees, a landlord should also be able to do that. The third concern that was brought up by members was that they're concerned about additional damage that could be done to a, to a property during the proceedings.

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**DeBOER:** It doesn't take very long to damage property, right? I mean, that's--

**KORBY GILBERTSON:** Right.

**DeBOER:** I mean, I just don't see the connection, so. Thank you.

**KORBY GILBERTSON:** Yep.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**KORBY GILBERTSON:** Thank you.

**WAYNE:** Next opponent.

**KRISTY LAMB:** Good afternoon, again. My name's Kristy Lamb, K-r-i-s-t-y L-a-m-b. I work for NP Dodge Management Company, so, regrettably, I'm intimately familiar with the Supreme Court case. That aside, I am still advocating against the tenants' right to a jural-- jury trial as is proposed in the current bill. Most eviction cases are related to nonpayment of rent in excess of 77%. And they involve very clear-cut financial transactions and documented evidence. The issues at hand are often factual and do not nece-- necessitate the complexity, complexity of a time-consuming jury trial and can easily be resolved through a judge-like proceedings without compromising the tenant rights. If an amendment could be considered that still could remain in the spirit of the law and the constitution, I would recommend removing the option for a jury trial specifically related to the cases related to nonpayment of rent. That would help ensure that the judicial system could still focus its resources on cases with more complex legal issues and those involving evictions for cause, like other lease violations and things of that nature. And it would also help expedite those jury trials that do go to court so that we could have some, some swift, timely, and effective judicial processes there as well. So again, trying to find-- to strike a balance between the rights of the tenants and the need for a timely and effective judicial process.

**WAYNE:** Any questions? Seeing none, thank you for being there.

**KRISTY LAMB:** Thank you.

**WAYNE:** Next opponent. Welcome.

**TARA HOLTERHAUS:** Good afternoon, again. My name is Tara Holterhaus, T-a-r-a H-o-l-t-e-r-h-a-u-s. I'm an attorney in Omaha, Nebraska. I represent landlords, property owners, and management companies in

landlord-tenant-related issues. Today, I am here on behalf of the Apartment Association of Nebraska and the Nebraska Association of Commercial Property Owners. LB1115 does not benefit tenants. It does not benefit landlords. It benefits attorneys and it will overwhelm courts and court personnel. This bill concerns the constitutional right to a jury trial. As it stands, the current Uniform Residential Landlord Tenant Act states that a restitution action is to be tried to the bench, to a judge. There are other instances where a civil matter is only tried to a judge and not to a jury. Those matters are in equitable causes of action. Usually, a jury trial is only provided-- or a right to a jury trial is only provided in legal causes of action. An equitable cause of action is where a judge can look at the facts and determine on those facts who is entitled to possession. So, for example, quiet title actions are always tried to a judge and not a jury because in a quiet title action, the issue before the court is who is entitled to possession, who owns this property. I would argue to the Judiciary Committee here today that a restitution action considers that same exact question: who is entitled to possession of the premises on these facts? Quiet title actions, other equitable actions, there is no right to a jury trial. Those are equitable claims that are heard to a judge only. I would also ask the Judiciary Committee to consider the practical implications of impaneling juries specifically in larger counties such as Douglas County. The right to a jury trial and restitution actions, when the current statute requires these hearings to be heard within 10 to 14 days of the complaint being filed, would necessarily require Douglas County specifically to impanel a jury weekly, perhaps even daily. The practical implications are that this is going to bog down the court. So I would welcome some discussion or amendment to alleviate some of the practical implications this bill would provide. I welcome any questions.

**WAYNE:** Any questions from the committee? Thank you for being here.

**TARA HOLTERHAUS:** Thank you.

**WAYNE:** Next opponent. Opponent. Seeing no other opponents, neutral testimony. Anybody testifying in the neutral?

**TIM HRUZA:** Good evening, Chair Wayne, members of the Judiciary Committee. My name is Tim Hruza. Last name spelled H-r-u-z-a, appearing today on behalf of the Nebraska State Bar Association in the neutral capacity on LB1115. I do want to thank Senator Dungan. He and I have been having conversations about this issue for several months now. I appear on behalf of the Bar Association. The Bar Association represents all attorneys across the state of Nebraska. We have talked



about this bill at length in a neutral capacity simply to highlight for you all-- you hear from me often about judicial resources, the concern for the, the ability for the system to operate and function. You'll note on the fiscal note from the court that I think there's an estimate of maybe 10% to 20% increase or impact on cases. Our interest in, in this really just comes down to being mindful of the fact that if we make this move or this transition, whether it's done through legislation or by an opinion of the Supreme Court, it will mean more work for our county courts. Our county courts have jurisdiction over eviction matters as it currently sits. In every other county besides the 3 that you've heard me testify about before-- in Douglas, Sarpy, and Lancaster-- our county courts handle judicial-- juvenile matters. They handle probate matters. They handle minor criminal matters, and then binding over larger felony cases as well. So with an eye toward consideration for those resources, a passage of this legislation would mean probably that we'll get-- we're coming back to have a discussion about that in future years. The only other note that I would make that lawyers discussed is that Section 4 of the bill on page 3 does have a bit of a unique piece in it, where the judge is instructed to inform a civil defendant at hearing or at their first appearance of their right to a jury trial and give them an opportunity to request that. That's a little bit unique in that we don't do that in any other civil matter. It's pretty standard in criminal matters to give them information of that rights, but-- that right, but not necessarily in a cri-- in a civil matter because it is typically included in the summons. I think lawyers and judges were kind of like, that's a unique thing to, to place on the court in a civil matter as opposed to a criminal one. So with those 2 items in mind, that's the basis of my testimony today. I thank Senator Dungan for his responsiveness and his willingness to work with us. And thank you for your time.

**WAYNE:** Thank you. Any-- Senator DeBoer.

**DeBOER:** I just have one question for you about the amendment which Senator Dungan passed out. I don't know if you had a chance to review it. It says that the judgment shall authorize under the Uniform-- may, if authorized under the Uniform Residential and Landlord and Tenant Act, award reasonable attorneys fees to the plaintiff. So-- you know, a bunch of people have said, oh, this is going to take all these judicial resources, all this time, but won't the attorneys fees-- the potential awarding of attorney's fees in a jury trial-- which I imagine is much more expensive than a bench trial-- won't that be a disincentive to a tenant to request a jury trial if they do not have a reasonable argument that they might prevail on?

**TIM HRUZA:** That might, might be certainly true. And I think that's sort of why-- like I said, I'm here, I'm here in the neutral capacity just to, to remind you to be mindful. I do think that, based on my conversations with a lot of folks, nobody really knows what this would mean for the type of workload or caseload that you'd have, right? How many people will actually follow through with requesting it? I've read the amendment. The, the depositing of future rents is an interesting approach, too, to help offset some of that delay. We have some folks that are still reviewing kind of the technical-- how that would work. But I do think there's a real question about how many cases this will actually mean. And that's why I li-- that's why I think you see in the fiscal note some uncertainty. And, and we may come back in a year after the Judicial Resource Commission looks at it and sees filings, and it might be O-- OK if this bill passes. I just--we're not in a position to know that it will, just that we're here for solutions, if that happens, so.

**DeBOER:** I guess, I guess my question is just, isn't that the reason for allowing the award of, of-- well, one of the reasons, many-- for allowing attorneys fees is to kind of disincentivize people from making sort of spurious claims, go to the more expensive jury trial process?

**TIM HRUZA:** That certainly might be part of, of the motivation for it, yeah.

**DeBOER:** And so in the past, prior to 1995 when the jury trials were allowed in eviction cases, were there a lot of jury trials in that era?

**TIM HRUZA:** I don't have the history on that. I-- Senator Dungan and I have talked about this, and I was not able to pull case data. And I don't know that we-- the court might be able to assist in getting that. So I can certainly ask them, but I, I just don't know what those numbers looked like before, so.

**DeBOER:** So what's the reason that folks have kind of gone to this is going to be a ton of cases, rather than, well, this would probably be a few in certain circumstances. I mean, I've just heard you and others saying, oh, this is probably going to be a huge burden on judicial resources and things. Why are we-- is there anything in the bill or is there any reason to think that this would have that more likely effect than less, or is it just panic in case it, it does?

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**TIM HRUZA:** I don't, I don't know if I have an answer off the top of my head. I'd be happy to discuss some ideas. Maybe. But I don't-- let me think about it a little bit. And you and I can talk. I, I don't know-- like I said, I don't know that we're certain that this is going to double or triple the county courts' workload. And that's-- again, that's why I'm neutral and not-- I'm not here opposed, saying we're going to need 4 judges, and this doesn't cover that sort of a thing. It's more any time that we change the types of cases that are coming before it-- and particularly, too, with a jury trial, that has obligations. It requires more people. It requires, requires some work on the county-- the county's part to call people in and to voir dire and s-- you-- I just don't know that we have a good sense of what that will look like. The fiscal note references some research from other states that the court administrator's office did on 10-20, I think that's probably the best that, that I can do. And I don't-- I'm, I'm not even here to say that, that I think that that's what it will be. It's just more-- any time you add stuff to the court's docket, it affects other cases that those courts are looking at, right? And whether it's a jury trial or whether it's a continuance, and then, you know, you resolve the case-- anything that makes it take longer can affect the workload flow of a bunch of other things that aren't necessarily even contemplated in this bill but are within the jurisdiction of the county court.

**DeBOER:** OK. Thank you.

**WAYNE:** Any other questions from the committee? Seeing none, thank you for being here.

**TIM HRUZA:** Thank you.

**WAYNE:** Next neutral testifier. Senator Dungan, would you like to close?

**DUNGAN:** Yes. Thank you, Chair Wayne and other members of the Judiciary Committee. I, I just want to respond to a couple of things that were said. And I think we can continue this conversation moving forward. I want to apologize in advance. When you're sitting behind that column, it's really hard to hear what people are saying. So I would respond to everything, but I didn't hear it. But in the interest of time, you're probably happy about that. So I, I want to address a couple of things in particular. First of all-- and Senator Bosn and I know Senator Wayne can attest to this-- it's very different to have something set for a jury trial versus actually having the jury trial, right? So in criminal court, for example, oftentimes you'll get what's called a

jury term list or a jury docket call, where they send out a piece of paper to all of the attorneys who have a case set for jury trial during a jury term. That can be 60, 70, 80 cases. Generally, as a course of practice, the vast majority of those get settled prior to going to jury trial. And so when we hear these concerns about whether or not we're going to have a lot of jury trials, I, I want to be very clear in delineating the difference between people setting things for jury trial versus actually having the jury trial. Based on the research I think that the courts have done and conversations that I've had with a number of people who have done a little bit more research into what other states have done, I, I, I genuinely do not believe that we are going to see some massive floodgates open up of jury trials happening. Do I think there will be a bunch of things that probably get set for jury trial? Potentially. But at the end of the day, the amount of these cases that actually go to trial are going to be small. And the reason for that is the people who are having these jury trials are people who are saying, I have rent. I can pay you my rent. I want to go in front of 6, 12 members of the community and argue why I should get to stay in my house. So I really don't think we're going to see some massive onslaught of cases. And so I think that-- I, I'm not super concerned about that. It will be, I think, you know, an adjustment for the courts. And that's absolutely true. But I do have faith in talking with the county courts representatives, talking with the Bar Association, and talking with a number of people about this that, that we can handle it and there is a system in place. Throughout the pendency of helping write this legislation, talking to people about it, I've met with a number of people. So I want to say to any of the opponents who, who were up here testifying: A, I very much appreciate your input. I think that everybody is correct that when we're dealing with a constitutional right, that's the number one thing we have to figure out, but we have to make it work. And that was absolutely my goal in this legislation, too, is try to find a way to actually make this function and to make this operate in a way that's, that's going to be OK for the court system. So anybody who has future suggestions or wants to be a part of that conversation, I'm absolutely happy to sit down with you and talk about that. The amendment that was introduced is representative of that intention. It's me trying to make sure that we balance those, those things. And so I, I, I appreciate the person who said it's important to balance the rights of the landlords and the tenants. That's exactly what we're trying to do with this. We don't want anybody to be put out or, or put upon in a way that's not equitable. But I think we've balanced that pretty well in this. But I'm open to future suggestions. I know one of the suggestions we heard was that maybe there could be a requirement of

rent being paid prior to the trial happening. I don't think you can predicate a constitutional right on payment of money. I think if this is, in fact, a constitutional right, you have to at least permit the opportunity to have the jury trial first. But then we tried to work in that sort of balancing act of if the tenant then wants to continue it past when it was originally set, then they may be ordered to pay that rent by the court if it's, if it's deemed fit. So that's where we came up with that. And that mirrors current statute in these landlord-tenant hearings that currently exist. When they ask for a continuance, they can be made to essentially pay a bond. And so that's what we were kind of mirroring that off of. It's already in effect. This is, again, again, not some wild, harebrained idea. Speaking to a couple of the other comments that were made with regards to the concurring opinion. I don't ever want to predict what the Supreme Court would do. I know the other attorneys in this room-- you know, you don't want to talk on behalf of the Supreme Court. But I, I would I guess, push back a little bit. Just because 3 justices signed off on that concurring opinion is not indicative of the fact that the other justices disagree with that. I think anybody who follows our courts here in Nebraska knows that our Supreme Court tends to, I think, be pretty-- they, they, they operate with a lot of consensus. And so the very fact that this concurring opinion exists and was signed onto by multiple judges I think is indicative of an overall theme or an overall conversation. I'm not saying any judge would for sure vote one way or the other, but I do think if you follow our courts, you know how monumental it is to see a concurring opinion joined by multiple judges saying something that is this consequential. So that's, I think, what we-- we've essentially gotten a memo from the Supreme Court talking to us about what we could potentially address. And so I think it's important to just give that the gravity it deserves. I do want to talk briefly about this idea of what is a legal question versus what is an equitable question or an equib-- an equitable claim. I'm not going to bore everybody. We can probably sit here and talk about it for, like, the next hour, but I know nobody has time for that. Long story short, common law or history has divided-- and one of the testifiers got into this-- those 2 things. An equitable claim is different than a legal claim. Typically, an equitable claim is something like an injunction or forcing somebody to follow through with a contract. It's-- and, and somebody was kind of laying out different circumstances of that. Whereas a legal claim usually has to do with damages or the recovery-- in this circumstance, of property-- or monetary damages. What differentiates eviction as a legal claim instead of an equitable claim is it's not just a discussion of title. It's not just who's in-- who owns this house, right? That was kind of

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a conversation about an equitable claim, is it could be a title discussion. This is an action to recover property. The, the, the point of this action is to take back possession of that property, physical property. That is what makes it a legal claim. And in Pernel, which is the case referenced in this concurring opinion-- which is a U.S. Supreme Court case, not a Nebraska Supreme Court case-- they specifically say and reference the fact that historically speaking, the right to recover possession of real property was a right ascertained and protected by courts at common law. They then hold that the Seventh Amendment of the, of the Bill of Rights protects the right to a jury trial in actions brought under the eviction statute. So by virtue of the fact that what we're doing here is actually taking real property, that's what makes it a legal claim. And so I understand the argument was made by the Attorney General and the other, other individuals that were, were up here testifying in the Supreme Court case that it was a, an equitable claim. I simply disagree with that. And I would be inclined to say that our Supreme Court, in that concurring opinion, also disagrees with that opinion. So, again, I don't want to go too deep into that. I like talking about these things. I could ramble for quite some time. But I'm happy to answer any other questions. At the end of the day, colleagues, we have to do something about this before this becomes a problem. I'm willing to sit down with everyone and talk about possible amendments or outcomes, but I think we need to get something done on this by the end of the session or we're going to have a problem on our hands.

**WAYNE:** Thank you. Any questions from the committee? Seeing none.

**DUNGAN:** Thank you.

**WAYNE:** That closes the hearing on-- there's 52 letters: 4 in support, 48 in opposition. That closes the hearing on LB1115. Next, we'll open the hearing on L-- where's Do-- Dover? Oh, there. Next, we'll open the hearing on LB1312. Senator Dover, welcome to your Judiciary Committee.

**DOVER:** Thank you, Chairman Wayne. And good afternoon, committee members. For the record, my name is Robert Dover, R-o-b-e-r-t D-o-v-e-r. I represent District 19, which consists of Madison County and the south half of Pierce County. You will receive an op-- my opening statement as well as copy of 3 suggested amendments to LB1312. I have introduced LB1312 on behalf of the Statewide Property Owners Association as well as Nebraska Realtors Association to make life easier for tenants and landlords by providing option of electronic notices being sent from landlords to tenants. As currently written, Statute 76-1413 requires a landlord's notice to a tenant be delivered

by hand or mailed to the tenant where they wish to receive communication or their last known place of residence. There is no current provision for electronic notification. The biggest issue with the current statute is that our world is rapidly moving toward 100% electronic communication. Checking the physical mail is becoming less and less a dai-- a daily practice. Bills and statements are on autopay, and many companies are incentivizing paperless options. Adding to these difficulties is the fact that if a tenant has vacated a property and yet is still bound by the lease, any physical mail sent to the address will be received by the tenant. It is these issues that LB1312 is intended to resolve. LB1312 amends Revised Statute Sections 76-1413, 76-1450, 76-1457, 76-1474, and 2022 Revised Cumulative Supplement Section 76-1410 to define electronic communications and to include electronic notifications as other communications option. To be clear, there is no requirement for tenants to allow electronic communication. It is simply provided as an option. LB1312 provides tenants with an option of enabling electronic notices. It also provides tenants with the ability to withdraw consent for electronic communication. In short, it gives those who want it a way to avoid paper copies of notices and instead to receive notices electronically. In conversation with the Women's Fund of Omaha, we have agreed to make the following changes to the bill, and we will be drafting an amendment to reflect these 3 changes. One: a specific provision that consent to electronic means cannot be required as part of a lease agreement or a lease renewal. Two: a provision that the electronic communication works both ways, that tenants can also provide a notice/communication via electronic means. Three: striking Section 2(15) on page 9 and Section 6(15) on page 14. The language in LB1312 was copied from other sections of law, and these sections are not applicable to or necessary for this bill. Lynn Fisher, president of the Real Estate Owners and Managers Association and Rick McDonald of the Metro Omaha Property Owners Association will follow me. After they have spoken, we'll be happy to answer any questions. Thank you for your time.

**WAYNE:** Thank you. Any questions? Seeing none, thank you. We'll start with proponents.

**DOVER:** Thank you.

**WAYNE:** Yep. Proponents.

**LYNN FISHER:** Well, I'm in the strange position of being a proponent. So Lynn Fisher, L-y-n-n F-i-s-h-e-r, president of the Statewide Properties-- Property Owners Association and a member of the Nebraska

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Realtors Association. So first of all, I want to, I want to thank Senator Dover for introducing LB1312 on our behalf. We are the affordable housing providers in Nebraska. We have surveyed our members, other housing providers, and tenants. Everyone agrees that it would be very helpful for all notices provided for the Landlord Tenant Act to be allowed to be sent electronically. We are now in the 21st century, and first-class mail is not a good option for most folks. The postal service is very unreliable. And for most of our younger tenants, regular mail is not even used. As a side note, I-- we have tenants literally that never go to their mailbox. They don't even know where it is. They don't care. We understand that the change language of this bill is the same as the language already in law related to the insurance industry here in Nebraska. So we believe it should work just as well for our industry. Our, our company-- our particular company, we accept email notices from tenants now. And we think that tenants would like the option of being able to receive any notices that we send out. And that's what they've told us, so. Again, thanks to Senator Dover. We think this is a, a very commonsense change in the law that will make life a little easier for everyone. And so I'd be happy to answer any questions.

**WAYNE:** Questions from the committee?

**LYNN FISHER:** All right. Thank you very much.

**WAYNE:** Thank you. Next proponent.

**DENNIS TIERNEY:** Good evening. My name is Dennis, D-e-n-n-i-s; Tierney, T-i-e-r-n-e-y. I'm the vice president of the Metropolitan Omaha Property Owners Association. And we think that the-- this legislation is definitely needed to bring the Landlord Tenant back-- Tenant Act into the 21st century. It's common knowledge that regular mail is a little too slow, hence the term "snail mail," and becomes un-- and sometimes is unreliable in its delivery. Communication between landlords and tenants and management companies and tenants has been largely electronic for some time now. Online signatures for contracts and leases have been legal for several decades, and most management companies and self-managing landlords have the tenants sign leases online. Many tenants have their rent paid by ACH from their bank accounts. For most management companies and so-- many self-managing landlords, any work order from the tenant now for repairs is submitted by text or other electronic communication. That's already going on now. It's only fitting then that the option for electronic notification be codified into the Landlord Tenant Act. We support LB1312. Thank you.



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**WAYNE:** Any questions from the committee? Seeing none. Thank you. Next proponent. Any opponents? Senator Dover, you, you can sit right there. Go ahead. You can sit right there. That's fine. Sit right there. Because it's hard to hear over there. You can sit right there.

**BENJAMIN BURAS:** Benjamin, B-e-n-j-a-m-i-n; Buras, B-u-r-a-s. I, I don't think this is a very good bill at all because a lot of people just have cell phones as their primary means for electronic communication. And so say, say somebody's cell phone gets stolen and their-- and they had their email password saved on their phone. So if they [INAUDIBLE] if they even try to log in on a, on a public computer at the library or something and then-- they wouldn't know the password if they didn't have it written down somewhere. Then, you know, your, your landlord, he's like, oh, yeah. I really want to fix the place up so I can charge more rent. So he sends you a 30-day notice to vacate. Well, you don't get it, so, you know. 30 days down the road or whatever, whenever the constable comes and they kick your door open and throw you, throw you out and all your property then-- wouldn't have it-- wouldn't it have been nice to have, like, a, a notice in the mail or something like that? So, yeah. I, I don't think this is a good idea. I don't think it works for everybody, so. But I think-- if you had the option to both have mail and electronic notices, that would be a good thing. But I, I would never want to get rid of paper notices. That's why I'm opposed to this bill.

**WAYNE:** Thank you. Any questions from the committee? Seeing none, thank you for being here. Next opponent. Anybody testifying in the neutral capacity? Senator Dover, do you want to close?

**DOVER:** I'll be brief. I know you have 3 more bills to hear. Again, just to reiterate, it is a choice. You can choose to get electronic communications and you can then opt out if that's not working for you. We use, we use, obviously emails because they're-- they have-- they're-- actually have a date and time stamp. Be quite truthful, really want to communicate with all the people running from us, we would just text them, because some people, that's all they really look at. So really, it, it just provides another choice for communication to our, to our tenants and also property management, property management company. But I think it's just a good, good opp-- opp-- opportunity. And the mail is, is far from reliable. So if anybody has any, any other questions, I'd be glad to answer them.

**WAYNE:** Any questions? Nope.

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**DOVER:** OK. I have the greatest respect for all of you on the Judiciary Committee. And thank you for your time.

**IBACH:** Good closing.

**WAYNE:** Thank you. And we have for LB1312, 53 letters for the record: 42 in support, 9 in opposition, and 2 in neutral. And that'll close the hearing on LB1312. Next up, we'll have a hearing on LB884. You got drafted?

**SEAN FLOWERDAY:** Yep. Relief pitcher.

**WAYNE:** Just wait a second for them to clear out. All right. Welcome. We'll open the hearing on LB884.

**SEAN FLOWERDAY:** Thank you very much. Good evening, Chairman Wayne and members of the Judiciary Committee. My name is Sean Flowerday. That's S-e-a-n F-l-o-w-e-r-d-a-y. Senator Bostar regrets that he is not able to, to present this bill before you himself. I'm here in his stead. LB884 is a bill designed to protect the financial interests of caregivers who share the residence of a family member in need of care while also considering the interests of the Nebraska Medicaid Program. Family caregivers are the backbone of the U.S. care system, helping parents, spouses, and other loved ones remain in their homes while providing approximately \$600 billion annually in unpaid care. According to the American Association of Retired Persons Public Policy Institute, in 2021, there were over 179,000 unpaid family caregivers in Nebraska providing more than 168,000,000 hours of care, valued at \$2.8 billion. Our state's elderly population is growing rapidly, increasing by 27% from 2009 to 2019, to over 312,000 persons past the age of 65. Nationally, every day until 2030, 10,000 baby boomers will turn 65. An American Association of Retired Persons survey found that more than 75% of adults 50 and older want to stay in their homes and communities as they age. Increasingly, family caregivers are contributing more time, more energy, and more money to support those in their care. The rising costs of healthcare, the limitations to Medicare and insurance coverage, and the increased number of years that caregivers are providing care due to improved longevity have all put pressure on caregivers to tap into their own personal finances to help pay for various elements of care. According to a report published by the American Association of Retired Persons, 78% of caregivers incur out-of-pocket costs due to caregiving. Caregivers often sacrifice their careers and financial futures by reducing work hours, taking on debt, and tapping into their own savings, ultimately jeopardizing their own retirement security. Caregivers spend, on

average, \$7,242 annually on care-related expenses. That's an approximate average of 26% of their income. 47% of caregivers report having experienced at least one financial setback, such as having to access their personal savings, cut back on their own health care spending, or reduce how much they save for their retirement. According to the Genworth "Cost of Care" study, a comprehensive annual industry study composed of more than 67,000 long-term care providers, the monthly cost of nursing home care in Nebraska for a semi-private room is \$7,483. That's \$246 per day, or \$89,796 annually. For those on Medicaid, the reimbursement for nursing home care is generally 70% of the cost that a private resident might pay, or \$172 per day and \$62,853 annually. Genworth reports that the cost of in-home care is approximately \$28,020 less than nursing home care annually. It's clear that delaying entry into the nursing home facility level of care for a Nebraska resident even for one year can result in significant savings for the Nebraska Medicaid Program. Family caregiving is, across our state, the best mechanism to keep an aging population in their home with the least disruption and most tailored care. Nebraska's family caregivers deserve protection for their sacrifices they make. Caregivers that move in with an elderly, disabled, or chronically ill family member makes significant personal, professional, and financial sacrifices, including but not limited to personal time committed to the care of the family member, financial contributions to the household such as paying utility bills, upkeep of the home, rent or mortgage payments, and lost revenue due to time away from a paid position. The value provided by family caregivers is clear. However, under current law, family members serving as a caregiver in a loved one's home must take significant financial risks in order to do so because the home may be seized as an asset to repay the cost of care if the loved one ultimately needs Medicaid assistance. In other words, a person who moves into a home to take care of a loved one who can lose that home if that loved one ultimately needs help from Medicaid-- can lose that home if that loved one ultimately needs help from Medicaid because the current law is written poorly. Nebraskans can currently transfer assets to family members as long as they do so 5 years prior to accessing the Medicaid system. However, if there is no plan for an asset transfer or if a loved one becomes unexpectedly sick or injured, the current law does not sufficiently protect the family members who sacrifice to take care of a family member. In fact, the current risks and confusing language in the law actually discourage people from caring for a loved one. While exemptions exist in current-- in certain circumstances, they are limited and unclear. LB884 protects the interests of family caregivers while also maintaining fair rules to prevent individuals from avoiding payment of

medical expenses. The-- this legislation makes the following improvements to protect the interests of individuals providing care in the home of a loved one with whom they live full time. First, an exemption to asset recovery exists for certain caregivers. LB884 expands the categories of eligible caregiver-- caregiving relatives to include all of the following: a child, a grandchild, niece, nephew, or other individual who can establish a close relationship tie that provides care in the home for at least a year of-- for a relative that would have otherwise entered institutional level of care. LB884 allows care provided by a loved one in the shared home to be reimbursed or unreimbursed, allowing a caregiver that spends significant time meeting the needs of an individual that would otherwise be in an institution to be paid to do so without risking losing their home. LB884 also allows a physician to make the determination about the need for institutional-level care, leaving the decision in the hands of a medical professional. This gives the caregiver certainty that the care they are giving will allow them to qualify for asset protection rather than just hoping for a positive determination after the fact by someone who is not medically trained. And finally, LB884 allows the caregiver exemption to apply after one year instead of two. In other words, if a family member makes the hou-- makes the house their home, lives there, and provides care to prevent the "indiwiwi"-- in the-- prevent the individual from entering institutional-level care, their home should be protected from asset recovery after one year of providing care. LB884 prevents fraud by certifying need through a physician. Currently, an individual can qualify for the caregiver exemption and gain ownership of assets if they can establish to the satisfaction of the department that he or she provided care that delayed the recipient's admission. This is unnecessarily vague, subject to interpretation, and may be lacking in sufficient documentation in situations where little planning is possible. Requiring a physician to certify based on their training and licensure is much more concrete. This lisc-- legislation goes on to address potential con-- confusion or abuse of the law by requiring family members to live in the home in order to receive it as an asset through the caregiver exemption. The family member receiving the asset may do so only if they live solely and continuously in the home, meaning that they cannot have a second residence in which they live and take advantage of the asset without providing direct daily care. The bill also empowers the Department of Health and Human Services to establish regulations and promulgate rules to fairly and implement the act as another safeguard against bad actors. It should be noted that the False Medicaid Claims Act already prohibits knowingly making false claims, providing false records, or unfairly withholding money, and

prescribes penalties and requires the payment of damages. Caregiving is a labor of love, but it can come with a great personal toll and sometimes a risk of family assets. LB884 will help ensure Nebraskans in need of care can stay in their homes when their health is failing, eliminating the need for much more co-- the much more costly option and the added emotional burden of being cared for in a taxpayer-funded nursing home. LB884 recognizes the hard work and sacrifices made by family caregivers and helps lessen the financial risk the family caregivers take upon themselves. Thank you for your time and consideration. I'd be happy to answer any questions you might have about this bill.

**WAYNE:** Any questions from the committee? Oh. We'll start with proponents. Sorry. You did such a well job I was going to ask you questions.

**SEAN FLOWERDAY:** All good.

**WAYNE:** First, proponents. Proponents.

**SEAN FLOWERDAY:** The one thing I would, I would note real quick for the committee: we had several caregivers who actually wanted to be here to testify. They were here earlier today. They weren't able to stay late, literally because they had to go back and care for their relatives tonight . So, just--

**WAYNE:** Welcome.

**JINA RAGLAND:** Good evening, Chair. Chair Wayne and members of the Judiciary Committee. My name is Jina Ragland, J-i-n-a R-a-g-l-a-n-d. I'm here today testifying in support of LB884 on behalf of AARP Nebraska. Most older adults in the United States-- 79%, in fact-- own their own homes, and about half have paid off their mortgage. Two-thirds of U.S. adults and more than three-quarters of those age 50-plus want to stay in their homes as they get older. Family caregiving is a key component to making that wish a reality. A 2020 AARP report found that 43% of family caregivers are looking after people who live in their own home, and 40% share a residence with the care recipient. The goal is to help loved ones be as independent as possible at home for as long as possible and allow them to age in place as long as they possibly can, delaying the need for higher, more expensive levels of care. For low-income beneficiaries, a home is likely to be their only asset in value-- of value and their own-- only means of passing wealth to subsequent generations. Families who haven't engaged in estate planning are often taken by surprise when

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they discover there's a claim against the family house filed by a state Medicaid program. Although states are required to inform beneficiaries of the possibility of estate recovery, the information is often buried in a complex application, escaping notice or comprehension. The possibility of an estate claim being assessed is one more item or-- of one more piece of paper, so it's not necessarily something that someone might recall. This also can be done in times of great difficulty when applicants are scrambling to provide the necessary information so they or their family members can get urgently needed care. The need to protect one's assets simply isn't intuitive when filling out healthcare-related paperwork. It's very difficult for families who really don't see this area as some reason to see a lawyer. To them, it's just caregiving. It's just elder care, right? Then to find out that this home, which, which-- find out that their home, which has been the family-- in the family for generations, perhaps, that there's no equity because of Medicaid estate recovery. For many, their home is the only investment they ever made and a big lifelong accomplishment. Many will set aside a small amount from every Social Security check, often their own income post-retirement or maybe money for a life insurance policy to cover. They fear being a burden to their children, and it's a huge source of pride for them to be able to say, I left my kids an inheritance, no matter how meager, no matter how modest. Estate recovery often falls hardest on those with modest incomes and means. These aren't people with thousands of millions of dollars. They're people sitting on \$40,000 or less worth of resources for their entire life. People are living longer, and many have done their due diligence and saved and put money away to retire on. The longer you live, the longer that money must last. Eventually, that money is going to be spent down and gone and there is no longer a choice but to acquire assistance from Medicaid to assist in caring for their own care. One medical incident or disabling diagnosis is often all it takes to start that downward spiral in depleting financial gains that once were in place. I'm out of time, so I will stop, Senator.

**WAYNE:** Any questions from the committee? Senator Ibach.

**IBACH:** Thank you, Mr. Chair. How many cases a year do you think this would apply to?

**JINA RAGLAND:** I cannot answer that question, but I could certainly reach out to the department and see. I, I don't have that information. That's a great question.

**IBACH:** Thank you. Thanks, Mr. Chair.

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**WAYNE:** Senator DeBoer.

**DeBOER:** Just a quick question. And I think I've had this already confirmed, but this won't cause any problems that you know of with respect to federal Medicaid sort of regulations or rules or anything like that to change--

**JINA RAGLAND:** No. And this comes-- yeah. This comes from the federal on down. And so states have the ability-- the, the state which is currently-- or, the federal laws right now is the two year, but they do give the states the ability to make those changes, which is the one year that we have here.

**DeBOER:** Perfect. Thank you.

**WAYNE:** Any other questions? Seeing none, thank you for--

**JINA RAGLAND:** Senator, could I also--

**WAYNE:** Yep.

**JINA RAGLAND:** --just real quick. I did put an example in my testimony. And I obviously didn't have time, but I--

**WAYNE:** What example would you like to share with us?

**JINA RAGLAND:** Well, since you asked. I know everybody behind me is really excited about that, but. If I can just read-- and, and again, this is an example that kind of came to us. And I think it illustrates-- the Smith family first started noticing of their dad's memory was declining when, when he was in his mid-70s. After an incident when their father drove down the wrong side of the road and was clearly disoriented when a police officer stopped him-- and the siblings knew they had to do something, not only for his safety but the safety of the public. The oldest brother and his family moved in to care for him, and the eldest sister came during the day when their brother was at work. After a few months, it became difficult for the 2 siblings to keep up with their father's needs, so the family decided to enroll him in Medicaid for help with in-home care. It was a stopgap measure, and the caregiver would come for a few hours when the 2 siblings couldn't be there. Their father received in-home care for about 7 months. Mr., Mr. Smith was a retired machinist. He lacked any savings and was living on Social Security. He was not in poverty; he was on the verge of being so. And Mr. Smith divorced his spouse early in their marriage. And his 4 children remained in his home with him while they grew up. The three-bedroom, one-bathroom house was

purchased around 1971. It was the only-- the first and the only home the family ever owned. Mr. Smith declined rapidly. And after a few months, he could no longer bathe, dress, or feed himself independently. The siblings decided to put him in an assisted-living facility where he lived for just over a year until he passed away at the age of 77. This family knew the estate recovery was going to happen and could happen, and so they had tried to plan accordingly. The family got documentation from the assisted-living facility that their father's care cost was \$2,900-- keeping in mind this was a, a few years ago. They contributed their dad's \$1,800 monthly Social Security check to the cost and had a balance then of \$1,100 for Medicaid that was left over. After their father passed away, the siblings calculated that the total estate claim would equal between \$20,000 and \$30,000 for the combined costs of institutional and in-home care. So they planned to use their father's small life insurance payout to cover some of it and discuss how to pay for the rest. And then the letter came from Medicaid that said, you owe \$67,000. Now, I don't have for you in here, but this is an example of-- with our MCOs, our managed care companies. They received capitation payments from the state to take care of people. And so what-- where the difference in that calculation was from the family to what Medicaid was saying is they were taking the actual payment that the state was giving them and that was what they were using as the cost of care. So this family had tried to make a difference in what they could do. But because of that, the, the amount was a lot less-- more than that. So apart from a small, decade-old pickup truck, all that remained that, that he had left behind was his father-- their father's house. It was the family house. And it wasn't anything fancy, but there were decades of memories within it. The family occasionally has mentioned the idea of trying to purchase the house in the event that they did, did lose it. But I just ask you again, is that really fair? Again, this is an example of someone who has contributed, wasn't living off a lot, that was, was making their-- putting their, their money towards their care. Thank you, Senator, for allowing me to, to--

**WAYNE:** No problem.

**JINA RAGLAND:** --to give that.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**MATT PROKOP:** Good evening, Chairman Wayne and members of the Judiciary Committee. My name is Matt Prokop. That's M-a-t-t P-r-o-k-o-p. On behalf of the ALS Association and the 137 people living with the ALS served annually in Nebraska, we urge you to support LB884. ALS is a



fatal, progressive, neurodegenerative disease that affects the nerve cells responsible for controlling voluntary muscle movement. It is a devastating condition that leads to the gradual loss of muscle function, eventually rendering individuals unable to speak, eat, or breathe independently. The average life expectancy for those diagnosed with ALS is 2 to 5 years. Based on our analysis of the Centers for Medicare and Medicaid data from 2021, we know that 14% of people living with ALS are currently eligible or utilizing Medicaid in Nebraska. People with ALS and their caregivers face significant financial burdens. A spring 2020 survey from the ALS Association on "Understanding Insurance Needs and Financial Burdens" of 440 ALS patients and current and former caregivers from across the United States found the following data: costs for medical treatment and services topped the list of stressors for, for, for people with ALS and their caregivers. One out of 4 people with ALS and their caregivers said they had to borrow money or go into debt because of their ALS treatment or to provide caregiving, respectively. Additional data from the ALS Association also shows that the estimated annual pocket cost to treat a person living with ALS is \$250,000. The ALS Association is committed to our mission of making ALS livable for everyone everywhere until we find a cure. Policies that support our caregivers can greatly assist our work in meeting this objective. We thank Senator Bostar for introducing this legislation and strongly encourage members of the Judiciary Committee to advance LB884 out of-- to the full Legislature. And happy to take any questions.

**WAYNE:** Any questions from the committee? Seeing none--

**MATT PROKOP:** All right. Thank you.

**WAYNE:** --thank you. Next proponent.

**EDISON McDONALD:** Hello. My name is Edison McDonald, E-d-i-s-o-n M-c-D-o-n-a-l-d. I'm here representing the Arc of Nebraska. We're Nebraska's largest membership organization representing people with intellectual and developmental disabilities and their families. I'm here to express our support for the proposed LB884, which seeks to incorporate life estate interests in real estate under specific circumstances in the statute. This legislation is a positive step towards recognizing and valuing the contributions of family members in providing care. This legislation is of great significance, as it acknowledges the crucial role played by family members, particularly relatives or siblings, in caring for individuals receiving medical assistance, recognizes the practical impact of their care on delaying the need for institutionalization, and consequently seeks to protect

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the interests of those who've dedicated themselves to supporting their loved ones. For those who are served in segregated, institutional, or semi-institutional placement, the average cost can soar to an average of \$221,920-- and this is for the IDD community side-- which is slightly above the national average. In comparison, the average cost of community-based services is \$63,000. The cost decrease is significant because of family, friends, pastors, or community members who help to support them. We need to value those who help to provide this cost relief to the government. We applaud the foresight in addressing the unique circumstances faced by families providing essential care. This legislation reflects compassion and understanding for the challenges caregivers face and promotes a family-centric approach to healthcare and support services. The provision's emphasis on a written estus-- attestation by a physician adds a layer of objectivity, ensuring that the caregiver's contribution is recognized based on professional judgment. This approach is a fair and reasonable means of substantiating the conditions outlined in the bill. I urge the committee to consider the positive impact of this legislation on families providing cares to individuals with medical assistant needs. Thank you. Any questions?

**WAYNE:** Any questions from the committee? Seeing none, thank you. Next proponent. Next proponent. Seeing none, first opponent. First opponent. Seeing none, anybody testifying in the neutral capacity? There are no letters for the record. And that'll close the hearing on LB884. Next, we will open the hearing on LB902, Senator DeBoer.

**DeBOER:** Good afternoon-- or evening, as it were-- Chair Wayne 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 District 10 in northwest Omaha. I appear today to introduce LB902, which seeks to resolve an issue that was brought to me during the Supreme Court Commission on Guardianship and Conservatorship meeting this past December by the Office of Public Guardian. I serve on that commission. The issue, in short, is that when guardians are signing paperwork to admit their wards into assisted-living facilities, buried in the dozens of pages of paperwork are different clauses in which the guardian, by signing residence agreements, voluntarily accepts personal financial responsibility for the ward, otherwise known as a third-party guarantee of payment. Some guardians are unaware of these clauses or they assume the regulations governing Medicaid or Medicare make those requirements illegal, which is true if a filis-- facility is accepting Medicaid or Medicare for a resident, requiring a third-party guarantee of payment as a condition of admission is against regulation. But those some-- some regulations allow for facilities to accept guardians volunteering to provide

third-party guarantees as conditions on admission, thus a gap in our laws. A guardian is often a volunteer appointed by the court or doing so just out of the goodness of their heart. That's who our guardians often are. The individual they are serving-- or the individual they are serving is on-- is the only person who should be obligated to pay expenses related to their care. The guardian may be the individual who is obligated-- if the guardian may be the individual who is obligated to provide payments on behalf of their ward, this bill does not change those obligations. LB902 just makes it clear that if an assisted-living facility is to require a third-party guarantee of payment, it needs to be clear and obvious and done so in a separate agreement. So I passed out an-- amendment. It's not quite drafted yet-- that is a result of negotiations which have been happening during these hearings today. The language in the amendment harmonizes these new provisions with federal law and makes it clear that anyone who has legal responsibility to provide payments for their ward is still legally required to pay-- provide such payments. So I want to thank the Nebraska Herth Care-- Health Care Association for working with me and the Office of Public Guardian, who came together to come to the compromise which was reflected in that draft amendment which you've gotten. So behind me is Marla Fischer from the Office of Public Guardian who will further describe the issue and the need for LB902. But I would like to finish with this: we need guardians in Nebraska. There are so many individuals in situations with no one to help them. And while we have the Office of Public Guardian, the need is greater than what we can provide or what they can provide. I have worked with the past few years with you guys on this committee to get more guardians in the Office of Public Guardian to incentivize people to be willing to serve as guardians, even temporarily. And I do want to thank all the members of this committee for their help with these efforts. But we know that the idea that one person could be financially liable is a barrier to getting more people to serve. So LB902 serve-- provides a simple, commonsense solution and a protection to allow guardians to serve their ward in the best way possible without exposing them to litigation over personal and financial responsibility that they were not required to take on and did not intend to take on. So essentially, what we're doing is we're requiring that in those circumstances where a guardian is signing a bunch of papers and there's a 72-page contract, you can't bury on page 52 a provision that says, I volunteer to take on the financial responsibility for this ward-- that you wouldn't otherwise have-- and say, I'm going to take on to that financial responsibility for this ward myself personally. Instead, what we are doing in this bill is requiring that there be a separate sheet of paper so that any

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volunteering to do that has to be done in such a way that everybody knows that's what's happening. So my understanding is that we're all in agreement about this. We were having trouble coming to the right language of how to say that and how to enact that in a way that didn't get in the way of other things. But I think we've come up with that now, so. I'm happy to answer any questions that you have.

**WAYNE:** Any questions from the committee?

**HOLDCROFT:** Yes.

**WAYNE:** Senator Holdcroft.

**HOLDCROFT:** Sorry.

**WAYNE:** No, you're fine.

**HOLDCROFT:** Thank you, Chairman Wayne. Why would the guardian have to pay any personal-- or in-- incur any personal--

**DeBOER:** So--

**HOLDCROFT:** --liability?

**DeBOER:** So they shouldn't in the kind of circumstances we're talking about with the Office of Public Guardian or a volunteer guardian or something like that. But there could be someone who's a family relation who wants to take on that financial responsibility that would volunteer to do so. But then they need to volunteer to do so. And that's why we want to do it on a separate sheet of paper.

**HOLDCROFT:** Thank you.

**DeBOER:** Yep.

**WAYNE:** Questions from the committee? Thank you. First proponent. Welcome.

**MARLA FISCHER:** Good evening, Chairperson Wayne and members of the Judiciary Committee. My name is Marla Fischer, M-a-r-l-a F-i-s-c-h-e-r. I'm the deputy director of the Office of Public Guardian with the Administrative Office of the Courts and Probation. I'm here to testify in support of LB902. The Nebraska Office of Public Guardian, or OPG, serves over 300 individuals across the state as a last resort when they have no one else to serve as guardian or conservator but have been found to lack capacity to make decisions for

themselves. In about 99% of OPG cases, the court appoints full guardianships, meaning they encompass all 9 areas of statutory decision-making. One of those statutory requirements includes entering into contracts on behalf of the ward. Conservators also have this responsibility. In full guardianships, guardians manage benefits and finances if no conservator is appointed. Private individuals are often reluctant to serve as guardians due to the belief of, of personal liability. LB902 serves to alleviate this concern in terms of financial obligations to assisted-living facilities. The OPG was appointed a successor guardian over several individuals whose prior guardian was found to be personally liable for the financial obligations to an assisted-living facility. One case was overturned on appeal based on the language used in the agreement that stresses how liability hinges on language used. In other states, guardians who entered into si-- similar agreements were not as lucky. To safeguard against liability, the OPG has 2 legal counsels who review every admission agreement to assisted-living facilities. On average, legal counsels spend 4 hours a week editing the-- these types of, of, of documents. The agreements are often anywhere between 14 to 60 pages. In reviewing the documents, legal counsels catch terms used interchangeably: "resident," "resident's representative," "responsible party," et cetera. This string of terms is usually used collectively and interchangeably when it comes to financial obligations, not as separate guaran-- not as a separate guarantor statement. I provided each of you with a packet of an actual assisted-living facility agreement that was reviewed by our legal counsels. It's been redacted, but it shows several things. The first tab-- well, first of all, there are 102 edits that we had to make to the document. The first red tab shows the use of "resident," "authorized representative," and "responsible party," each obligating themselves to financial liability in the first paragraph. The next tab is the blue one, that talks about joint and several, several liability-- again, kind of com-- combining those terms. And then the fourth example, with the yellow tab, is actually the, the guarantor page. And you can see that it's buried in the packet. It also doesn't seem to have the word "voluntary" on it, so that-- it's just kind of thrown in with all of the other papers. And if one didn't know any better, they would go ahead and sign that. So unlike the OPG, who has legal counsel on staff, private guardians would likely not consult with legal counsel prior to signing such an agreement. And instead, packets are presented to them with a "sign here" directive. When liability is taken away at one point, it can easily be added back at another to an unsuspecting signer. Separate guarantor agreements--

**WAYNE:** I'm going to ask you to wrap up.

**MARLA FISCHER:** Yeah.

**WAYNE:** Just go ahead and wrap up.

**MARLA FISCHER:** OK. Separate guarantor agreements leave it as an option for a guardian to knowingly and voluntarily be financially obligated, if they wish, instead of hiding the ball. And I'm happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you.

**MARLA FISCHER:** All right. Thank you.

**WAYNE:** Next proponent. Proponent. OK. Opponents? Opponents? Anybody in the neutral capacity?

**ABBIE WIDGER:** Thank you. Good evening. My name is Abbie Widger, A-b-b-i-e W-i-d-g-e-r. I am general counsel for Nebraska Health Care Association, which is a nonprofit association-- trade association representing 104 proprietary and nonproprietary assisted-living facilities and nursing facilities in the state of Nebraska. I'm-- also represent private and assisted-living facilities and nursing facilities in the state. And I'm also, on occasion, a voluntary guardian. I passed out testimony because originally when the day started, we were going to testify in opposition to LB902. However, we have been working with Senator DeBoer's staff. And it's been amazing. And we have some language in LB902 that we believe meets the intent of Senator DeBoer that she talked about at the beginning of this. And also, what we were afraid of with regard to this bill was that individuals, not even guardians, but individuals who had a fiduciary relationship to an individual in a long-term care facility, if they violated that fiduciary obligation and did not use the resident's money for the resident's care or on an appropriate spend-down, such as the burial plot, that this bill would not allow a court to say to that individual, you're responsible for paying back the resident's money that you used in-- you know, inappropriately. We've resolved that issue. So with that, we believe that the intent of the bill is appropriate and that we're really very happy with Senator DeBoer and her staff. So thank you all.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here. Next neutral testifier. Next neutral testifier. Welcome.

**KIERSTIN REED:** Hi. Good evening, Senator Wayne and Senator DeBoer and the rest of the committee members. My name is Kierstin Reed. It's K-i-e-r-s-t-i-n R-e-e-d. I come here today on behalf of LeadingAge Nebraska members in the neutral capacity. LeadingAge Nebraska is a statewide membership organization supporting long-term care providers across the state. The majority of our members are comprised of assisted-living providers, as well as being small, rural, and nonprofit organizations that represent their neighbors and community members in their service. We were not opposed to the intent of this legislation. We believe that our providers are seeking to require legal representatives to be financially liable-- or not seeking to make them financially liable using their own funds to guarantee payments for resident services. Nearly all assisted-living providers across the state do require a responsible person to cosign that residential agreement prior to being admitted to the community. The "responsible person" is often used interchangeably with "resident" to refer to that person who is able to make financial decisions on behalf of the resident. We can understand the need and confusion that this creates. This is often because the person entering the residence may have a legal guardian, a financial conservator, or a financial power of attorney. Because of these legal responsibilities, the resident may not be able to enter into that legal agreement on their own. As the resident-- all the resident agreements that I have reviewed also state that that person who is one who has lawful access to the resident's income and financial resources for their ability to pay for those living arrangements. This arrangement is not to hold them personally responsible. While this may not be the case for all resident agreements, we believe that we are in support of making sure that they have the choice to do so. We understand that an agreement has been reached to address this in a revision, and we would be in full support of that revision. I'll be happy to answer any questions.

**WAYNE:** Any questions from the committee? Seeing none, thank you for being here.

**KIERSTIN REED:** Thanks.

**WAYNE:** Any other neutral testifiers? Seeing none, there were one letter. That's one letter of support. Senator DeBoer, closing. Senator DeBoer waives closing. That'll close the hearing on LB902. We will open the hearing on LB1168, Senator DeBoer.

**DeBOER:** Good evening, Chair Wayne 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 District 10 in northwest Omaha. I appear today to introduce

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LB1168, the Uniform Health Care Decisions Act. This bill came to me from the Uniform Law Commission, which, as this committee is aware, I tend to work with each year. The Uniform Health Care Decisions Act enables individuals to appoint agents to make healthcare decisions for them should they become unable to make those decisions for themselves, to provide their healthcare professionals and agents-- agents with instructions about their values and priorities regarding their healthcare, and to indicate particular medical treatment they do or do not wish to receive. It also authorizes certain people to make healthcare decisions for individuals incapable of making their own decisions but who have not appointed agents, thus avoiding the need to appoint a guardian or otherwise involve a court in most situations. In addition, it sets forth the related duties and powers of agents and healthcare professionals and provides protection in the form of immunity to both under certain spec-- specified circumstances. Simply put, this bill is about simplifying the process for all involved in these healthcare decisions. This act makes it easier on individuals to prepare plans for their life and on practitioners who need to interpret the healthcare wishes of an individual in a quick and timely manner. Since the introduction of this bill, my office has of course heard from numerous stakeholders with a wide variety of opinions, and so I'm happy to work on all of these issues with them as we're going forward and talking about this legislation. I'll answer any questions you have.

**WAYNE:** Any questions from the committee? Seeing none, thank you. First proponent. First proponent.

**STEVE WILLBORN:** Senator Wayne, members of the committee. I'm Steve Willborn, S-t-e-v-e W-i-l-l-b-o-r-n. You guys really work hard. I'll be very, very brief. I just wanted to note for the record that this is a Uniform Law Commission product, which means been vetted over a 2-year period with all the stakeholders in the room, hospitals, nursing homes, trust and estate lawyers, and so on. It's been heavily vetted. We have an expert here from Chicago to talk with you about the details of the regula-- of, of this law. Don't ask me about them, please. I'm a labor lawyer. But I do want to thank Senator DeBoer for opening this conversation. These are amongst the most important decisions people make in their lives about when they can make their own healthcare decisions, how to appoint an agent, who should make healthcare decisions if an agent isn't appointed and you're not able to do it? The most important-- some of the most important decisions in a life-- lifetime. And Senator DeBoer is-- I want to thank her again for opening the discussion on, on, on these important topics. So thank you.



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**WAYNE:** Thank you. Any questions from the committee? Thank you. Next proponent.

**BEN ORZESKE:** Chairman Wayne, Vice Chair DeBoer, members of the committee. My name is Ben Orzeske, B-e-n O-r-z-e-s-k-e. I'm chief counsel at the Uniform Law Commission. Thank you for considering this bill. The Uniform Health Care Decisions Act is a law about 3 related topics. The first is healthcare instructions, where a patient can give instructions to their healthcare providers about the type of care that they either want or do not want to receive. The second is healthcare powers of attorney, where a person can name a trusted person to make healthcare decisions for them when they cannot make them for themselves. And the third topic is healthcare surrogates. So for a person who has not named anybody to make decisions, who in their family is legally-- has the authority to make decisions on their behalf? At the request of our Nebraska Uniform Law Commissioners, our office did a comparison of Nebraska law to the new Uniform Act, newly approved Uniform Act. And if I were like Professor Willborn, where I was in the business of giving out letter grades, I would give Nebraska law a solid B. It is a good law on the topic. It is better than many of your surrounding states. But our comparison also revealed 8 areas in which it could be improved. And so I'm going to list those very briefly for you now, and then I'm happy to take questions on any of them. The first improvement would be that the Uniform Act is much clearer and easier to understand for the people who need it than the current Nebraska law. The Nebraska statute is scattered into three separate statutes across the Nebraska Code. So even if one is looking for it, if you don't know where to look, you might not find all of the relevant law. The Uniform Act is a comprehensive law in one place. And like all uniform laws, it comes with its own user's manual in the form of official comments from the drafting committee that explain exactly how the law is intended to work and comes with examples of how it should work. And that's important in this area of the law because it isn't just, say, judges who are-- have to interpret this law. It's doctors and nurses and health c-- hospital administrators and family members who have a, a person in the hospital that they need to make sure is being taken care of appropriately. So it's easier to understand. That's the first major advantage. The second is it has a modern, functional definition of "capacity." Usually, capacity is the trigger that allows somebody else to make decisions on your behalf when you no longer have capacity to make them for yourselves. And the Uniform Law recognizes that capacity is not like an on/off switch that can be turned on and off, but rather it's a, a concept that can come and go with time, with, with illness, and recovery. A person can have

capacity to make some decisions and not others, and the Uniform Law is flexible enough to recognize that. Third major advantage is it has a plain language sample form so that anybody who is not an attorney can still understand exactly what they're doing and make these sort of instructions to give to their healthcare providers. The fourth is we've made it easier to execute. There's not enough people right now who do have healthcare advance directives. And part of the reason is because it's difficult to, to execute them sometimes, too difficult than it should be. We've tried to make it easier to execute so that it can be executed when most people are thinking about this, which is at the time of admission to the hospital.

**WAYNE:** Thank you. Any questions from the committee? Senator Holdcroft.

**HOLDCROFT:** Thank you, Chairman Wayne. So walk me through a situation. Say mom is in assisted living. Now she has no capacity to make decisions. She has not made a designation for anyone, power of attorney for medical purposes, or whatever. So who's going to step in now and designate a surrogate at that point? How would that work?

**BEN ORZESKE:** So there's a list in the law, Senator, of, of default surrogates. And so-- normally would be a close family member, a spouse if one exists. If not a, a parent or a, or a, an adult child. And if there are more than one, it-- the healthcare prof-- treating healthcare professional has the authority to choose between them, for instance, for, for children-- I'm sorry. Not, not based on what they-- what, what their choice is, but on who has the, the authority. If there's more than one, they have to listen to all of them. But it's-- so-- it's-- there's a list of people in, in the law that are based on, on relations. It can also include for people who don't have any relations, a close friend or somebody that they're living with or someone who's been taking care of them.

**HOLDCROFT:** And who's the individual who's making the decision on the surrogate?

**BEN ORZESKE:** On the surrogate? It's that person who is-- whoever the, the health-- the treating healthcare provider identifies as the highest priority on that list.

**HOLDCROFT:** No, I mean, the, the, the healthcare provider. Who is that? Is that the doctor? Is that the primary care? Is that the assisted-living facility? I mean--

**BEN ORZESKE:** Depending on the situation, it could be any of those. So it could be-- there is a, a definition of a treating healthcare professional-- so someone who's treating you for a specific issue, a specific medical issue. They would be the, the provider who's making that decision. If you have an overall, personal physician, that person has to be consulted.

**HOLDCROFT:** OK. Thank you.

**BEN ORZESKE:** You're welcome.

**WAYNE:** Any other questions from the committee? Seeing none, thank you.

**BEN ORZESKE:** Thank you.

**WAYNE:** Next proponent. Proponent. Any opponents? Opponents. Anybody testifying in the neutral capacity?

**MARION MINER:** I'm sorry. I wasn't quick enough on the draw. I'm actually testifying as an opponent.

**WAYNE:** Oh, you're opponent.

**MARION MINER:** Yes.

**WAYNE:** OK. Opponent.

**MARION MINER:** Good evening, Chairman Wayne and members of the Judiciary Committee. My name is Marion Miner, M-a-r-i-o-n M-i-n-e-r. And I'm testifying on behalf of the Nebraska Catholic Conference, which advocates for the public policy interests of the Catholic Church and advances the gospel life through engaging, educating, and empowering public officials, Catholic laity, and the general public. The conference opposes LB1168, which purports to simplify and streamline medical decision-making for a patient who is incapacitated. We are concerned that, if enacted, LB1168 would instead be a regression compared to current Nebraska law. The processes for delegating healthcare decision-making authority, settling disputes, and ensuring protection of the patient from abuse are pretty clear under current law in Nebraska. LB1168 raises many questions from our perspective due to seeming contradictions and points of conflict. Whereas-- current law has one type of surrogate decision-maker and attorney in fact, LB1168 and multiplies this into 3: an agent, a default surrogate, and/or a guardian authorized to make healthcare decisions. Under LB1168, a person who decides to use a power of attorney for healthcare-- which is one type of document advance

directive contemplated under this bill-- may appoint an agent to make healthcare decisions for him. If he uses a healthcare instruction-- which is another type of document anticipated by this bill-- he should appoint, according to the bill, a default surrogate to make such decisions. If he has both, a healthcare instruction and a healthcare power of attorney-- which the bill also contemplates for-- he may have appointed both an agent and a default surrogate who may be different people. In the event of conflict, it's not clear under the bill as we understand it who prevails. So decision-making authority in this and other instances we believe is unclear. Section 20(a), we also have significant questions regarding who prevails where you have multiple potential agents, each who have equal, ultimate decision-making authority and independent decision-making authority. In the event you have not appointed an agent or agents, Section 12 creates a hierarchy of default surrogate classes. Section 13 then says that if 2 or more people in the same surrogate class are in conflict, then a democratic vote decides what treatment you do or do not receive. Section 27(a) states that the act does not authorize mercy killing, assisted suicide, or euthanasia, but goes on in subsection (c) to say that the person's death due to a healthcare decision made pursuant to the act, quote, does not constitute a suicide or homicide, close quote. It seems plausible then to read these 2 provisions as potentially, if unintentionally, legalizing mercy killing, assisted suicide, or euthanasia but saying it is not happening because whatever happens under the act is by definition not one of these things. I see that my time is up, so I'll end there. And I'm happy to take questions.

**WAYNE:** Any questions? Senator Ibach.

**IBACH:** Thank you, Chair. Are-- and thank you for your testimony. Are you, in short, saying that an attorney is better equipped to make the decision than a healthcare provider?

**MARION MINER:** No. I'm sorry if, if that's the impression I made. So the current law, Nebraska's current statutes regarding the appointment of a-- of what's called an attorney in fact for healthcare decisions, that person need not be an attorney. That's just the title that they have. That's the person who's entrusted by the patient with the authority to make healthcare decisions should the patient become incapacitated. Say they go into a coma or, or something else happens where they-- they're judged incompetent to make those decisions. So that, that's all that is there.

**IBACH:** OK.

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**MARION MINER:** And it's our belief that, under the current law-- which may have areas for improvement. I'm not-- we're not saying that, that that's not possible. The current law is pretty clear with regard to who has the authority to make the decisions should the patient become incompetent. This bill raises a lot of questions for us that don't exist under the current law.

**IBACH:** OK. Thank you for that clarification.

**MARION MINER:** Mm-hmm.

**IBACH:** I think.

**WAYNE:** Any other questions? Seeing none, thank you for being here.

**MARION MINER:** Thank you.

**WAYNE:** Any other opponents? Any other opponents? Anybody testifying in the neutral capacity except for the Bar Association?

**TIM HRUZA:** Good evening, Chair Wayne, members of the Judiciary Committee. My name is Tim Hruza, last name spelled H-r-u-z-a, appearing tonight on behalf of the Nebraska State Bar Association in the neutral capacity on LB1168. Let me first start, start off by saying the-- thanking Senator DeBoer for beginning a conversation on this. Nebraska statutes probably do need to be looked at and updated. We don't do it super regularly, and ours are fairly dated. But we got a B, so we're not, we're not doing terribly bad. We haven't failed. With that, I would say, like-- I, I would also like to thank the Uniform Law Commission for reaching out to us last fall. We've had ongoing discussions about this act. It is fairly new. It was just approved by the Uniform Law Commission, I believe, last, last year. And I, I think that maybe where we're at, to, to summarize it from the attorney's standpoint practicing in this area, is we think it needs a little bit more time. We need-- we want to spend some time looking at it, looking at how some of these provisions and these ideas, the conflict provisions and those things, fit into our existing reshi-- regime with regard to how folks plan for these types of decisions with our, our powers of attorney statutes, our-- other provisions that are used. I would say too that we have invited the Uniform Law Commission to kind of sit down with the lawyers that are experts in this area under Nebraska law and talk about some of those pieces and how the conflicts might be resolved with an eye toward many people having existing plans in place, right, for the documents that exist under the current statutes, how if those became in conflict with this particular

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statute, how those issues might be resolved in the future. So I-- suffice it to say that we have attorneys that really like a lot of the provisions in here, some attorneys that are saying, hey, some of the language in this we're going to use in our own documents as we create them for clients, which is a good thing. We just think it needs a little bit more time, a little bit more study, and a little bit more work to make sure that it comports with what we do under Nebraska law now and moving forward. So with that, I'm happy to answer any questions. Again, thanks to Senator DeBoer for introducing the bill. And we look forward to working with her and the commission to do something in the future.

**WAYNE:** Any questions, concerns, thoughts?

**TIM HRUZA:** Thank you.

**WAYNE:** Thank you. Any other neutral testifiers? Seeing none, Senator DeBoer for close.

**DeBOER:** Thank you, Senator Wayne and members of the committee. So this is one of the really fantastic things about the particular body in which we work, is that we can introduce bills like this and start to work on them with the committee, start to work on them with all the interested parties by having a public hearing in which we say, come and talk to us about the problems that we might have or what we might need to do. When the Uniform Law Commission brought this bill to me, they said that, you know, this one's probably not ready to pass this year, but we can't figure out all the problems with it unless we have, you know, some way to get it in the, in the air. So there are some, some things that we still have to work out. I do think that the aims of this bill are really important to, you know, make it clearer to understand, to put an area of law that should all be together in one area, to make a modern, functional, definition of "capacity," as my testifier said. So I think there are a number of things that we can take from this Uniform Law and put into our law to help just make it clearer and, and better for everyone. So happy to continue to work on this. I think this will be something that will go into the next couple of years to try and come up with the, the best possible fit of the Uniform Law into our specific law. So thank you.

**WAYNE:** Thank you. Any questions from the committee? Seeing none. Thank you for being here. And we have 4 letters: 3 in support and 3 in the neutral. And that'll close the hearing on LB-- one-- sorry-- 3 letters of support, 1 in the neutral. That'll close the hearing on LB1168 and today's hearings.

