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Floor Debate March 6, 2024

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**KELLY:** Good morning, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber for the thirty-ninth day of the One Hundred Eighth Legislature, Second Session. Our chaplain today is a guest of Senator Clements. He is Mike Whitney, Sower Church, Lincoln, Nebraska. Please rise.

**MIKE WHITNEY:** Thank you. If you'd bow your heads and join me in a word of prayer. Lord, I thank you for today. I thank you for all the work and labor that these men and women are doing. I thank you for bringing them to this position in time and, and their life for this season, Lord, to lead us as a, as a people. Lord, I pray for your protection, your, your power, your provision, in all areas of their life, Lord, their private life and their public life. I [INAUDIBLE] your hand of favor and guidance would be on them, giving them wisdom and discernment and knowledge on what is required of them and what is best for us as a state. Lord, we just love you and commit our time to you today. Thank you for today. We commit today to you. In the name of Jesus, we pray. Amen.

**KELLY:** I recognize Senator Halloran for the Pledge of Allegiance.

**HALLORAN:** Please join me in the Pledge. I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one Nation under God, indivisible, with liberty and justice for all.

**KELLY:** Thank you. I call to order the thirty-ninth day of the One Hundred Eighth Legislature, Second Session. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**CLERK:** There's a quorum present, Mr. President.

**KELLY:** Thank you. Are there any corrections for the Journal?

**CLERK:** I have no corrections this morning, sir.

**KELLY:** Are there any messages, reports or announcements?

**CLERK:** There are, Mr. President. Single message from the Governor, concerning an appointment to the Board of Public Roads Classifications & Standards. That's all I have this morning, Mr. President.

**KELLY:** Thank you. While the Legislature is in session and capable of transacting business, I propose to sign and do hereby sign LR312 and

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LR313. Speaker Arch would like to recognize the physician of the day, Dr. Henry Dethlefs of La Vista. Please stand and be recognized by your Nebraska Legislature. Speaker Arch, you're recognized for a message.

**ARCH:** Colleagues, just a quick reminder that tomorrow by 5 p.m. is the deadline for senators to submit to me a consent calendar request letter for any bill which was reported to General File since last Wednesday, February 28, through tomorrow. This means if a committee has voted to advance a bill to General File that is consent calendar worthy, the paperwork needs to be filed with the Clerk by adjournment tomorrow to allow the bill to be considered for consent calendar. Thank you, Mr. President.

**KELLY:** Thank you, Mr. Speaker. Mr. Clerk, for the first item on the agenda.

**CLERK:** Mr. President, first item on the agenda, General File, LB856A, introduced by Senator Fredrickson. It's a bill for an act relating to appropriations; appropriates funds to aid in the carrying out of the provisions of LB856. The bill was read for the first time on March 4 of this year, and placed directly on General File.

**KELLY:** Senator Fredrickson, you're recognized to open.

**FREDRICKSON:** Thank you, Mr. President. Good morning, colleagues. Good morning, Nebraskans. LB856A is the appropriation bill, the A bill for LB856, which provides eligibility for childcare workers to participate in the childcare assistance program. The bill appropriates \$53,366 in general funds for fiscal year '24-25 and \$74,712 in-- for-- in-- for fiscal year '25-26, to cover administrative costs. It also appropriates \$10 million in general funds annually for purposes of the bill. The underlying bill, LB856, was advanced from General to Select on February 21. I ask for your green vote on LB856A. Thank you, Mr. President.

**KELLY:** Thank you, Senator Fredrickson. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. This bill would ask for \$10 million of general funds per year, and the latest fiscal economic forecast did add a little bit to the revenue. But in the budget process, we've already spent part of that \$50 million. For example, child welfare-- foster kids. We had to add \$20 million of expense for-- additional expenses for child welfare. And so I don't believe

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that there is going to be \$10 million available when we get to-- after the budget is passed, for the other obligations that the state has. So I do not support this bill. Thank you, Mr. President.

**KELLY:** Thank you, Senator Clements. Senator Machaela Cavanaugh, you're recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. President. Would Senator Fredrickson yield to a question?

**KELLY:** Senator Fredrickson, would you yield?

**FREDRICKSON:** I will.

**M. CAVANAUGH:** Can you tell us a little bit more about what your bill does?

**FREDRICKSON:** Yes. So-- well, this is the A bill for LB856, but the underlying bill LB856 itself, is a bill that is a workforce-related bill. So essentially, what this bill does is that it will create eligibility for the federal childcare subsidy for childcare providers.

**M. CAVANAUGH:** OK. So this will help increase the childcare workforce in the state?

**FREDRICKSON:** That's correct.

**M. CAVANAUGH:** Which is what is part of the crisis in addressing our workforce shortage?

**FREDRICKSON:** That is correct.

**M. CAVANAUGH:** It sounds like a very valuable program. Thank you, Senator Fredrickson.

**FREDRICKSON:** Thank you, Sen--

**KELLY:** Thank you, Senators. Seeing no one else in the queue, Senator Fredrickson, you're recognized to close. And waive. Members, the question is the advancement of LB856A to E&R Initial. All those in favor vote aye; all those opposed vote nay. There's been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 23 ayes, 4 nays to place the house under call, Mr. President.

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**KELLY:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Vargas has some guests in the north balcony. Members of the North Central States Regional Council of Carpenters. Please stand and be recognized by the Nebraska Legislature. Senators Ibach and Riepe, please return to the Chamber and record your presence. The house is under call. All unexcused members are now present. Been a request for a roll call vote. Mr. Clerk.

**CLERK:** Senator Aguilar voting yes. Senator Albrecht voting no. Senator Arch voting yes. Senator Armendariz voting yes. Senator Ballard voting yes. Senator Blood voting yes. Senator Bosn voting yes. Senator Bostar. Senator Bostelman voting yes. Senator Brandt voting yes. Senator Brewer voting yes. Senator John Cavanaugh voting yes. Senator Machaela Cavanaugh voting yes. Senator Clements voting no. Senator Conrad voting yes. Senator Day. Senator DeBoer voting yes. Senator DeKay voting yes. Senator Dorn voting yes. Senator Dover. Senator Dungan voting yes. Senator Erdman voting no. Senator Fredrickson voting yes. Senator Halloran voting yes. Senator Hansen. Senator Hardin voting no. Senator Holdcroft voting yes. Senator Hughes voting yes. Senator Hunt voting yes. Senator Ibach voting yes. Senator Jacobson not voting. Senator Kauth voting no. Senator LInehan voting no. Senator Lippincott voting no. Senator Lowe voting no. Senator McDonnell voting yes. Senator McKinney voting yes. Senator Meyer voting yes. Senator Moser not voting. Senator Murman voting no. Senator Raybould. Senator Riepe voting yes. Senator Sanders. Senator Slama voting no. Senator Vargas voting yes. Senator von Gillern voting no. Senator Walz voting yes. Senator Wayne voting yes. Senator Wishart. Vote is 29 ayes, 11 nay-- excuse me. Senator Jacobson voting yes.

**KELLY:** The bill is advanced.

**CLERK:** Vote is 30 ayes, 11 nays Mr. President, on advancement of the bill.

**KELLY:** The bill is advanced. I raise the call. Mr. Clerk, next item.

**CLERK:** Mr. President, the next item, LB857A, introduced by Senator Dungan. It's a bill for an act relating to appropriations; to appropriate funds in aid-- to aid in the carrying out of the

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provisions of LB857. The bill was read for the first time on January 4 and referred-- excuse me-- and placed directly on General File.

**KELLY:** Senator Dungan, you're recognized to open.

**DUNGAN:** Thank you, Mr. President. Good morning, colleagues. This is LB857A, so it's just an A bill for the LB857. As a brief refresher, LB857 is creating the Prenatal Plus Program, which does allow additional access to certain Medicaid services to be reimbursed for prenatal services for at-risk pregnancies. Essentially, what we're doing is we're allowing access for reimbursement for nutrition counseling. In addition to that, it's also access to targeted case management. We know that those things overall are going to increase birth weights and reduce adverse birth outcomes. And so the whole concept behind this is ensuring, yet again, that we have healthy moms and healthy babies. So I would encourage your green vote on LB857A.

**KELLY:** Thank you, Senator Dungan. Seeing no one else in the queue, you're recognized to close. And waive closing. Members, the question is the advancement of LB857A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 38 ayes, 0 nays on advancement of the bill, Mr. President.

**KELLY:** LB857A is advanced to E&R Initial. Mr. Clerk.

**CLERK:** Mr. President, LB1035A, introduced by Senator Hughes. It's a bill for an act relating to appropriations; to appropriate funds to aid in the carrying out of provisions of LB1035. The bill was read for the first time on March 4 of this year, and placed directly on General File.

**KELLY:** Senator Hughes, you're recognized to open.

**HUGHES:** Thank you, Mr. President. I rise today to speak on LB1035A. LB1035A is the A bill for LB1035, which creates a Prescription Drug Donation Program here in Nebraska. LB1035A provides \$475,000 per year for operational costs, and the balance being 1 full-time employee for DHHS to oversee the program for the first year, and then a half a FTE after that to oversee it going forward. Colleagues, as a reminder, and I know I've talked to each of you at some point, we currently spend around \$500,000 a year to collect and incinerate unused prescriptions each year. In fact, we dispose of 30,000 pounds of medication each year through our, our disposal program. We will need to continue that program going forward, but I would expect that that-- the volume of

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prescriptions destroyed over time will be offset by prescriptions that are unopened, unexpired, and in tamper-evident packaging and can flow into the new donation program. Further, I would like to remind my colleagues that their green vote for LB1035A will provide direct savings to our state in terms of reduced healthcare costs, as a result of these donated prescriptions finding their way back to help Nebraskans who currently cannot afford them. I'd be happy to answer any questions my colleagues may have about LB1035A or LB1035 itself. Otherwise, I'd really appreciate your green vote. Thank you, Mr. President.

**KELLY:** Thank you, Senator Hughes. See no one else in the queue, you're recognized to close. And waive. Members, the question is the advancement of LB1035A to E&R Initial. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 40 ayes, 0 nays on advancement of the bill, Mr. President.

**KELLY:** LB1035A is advanced to E&R Initial. Mr. Clerk.

**CLERK:** Mr. President, LB175, Mr. President, introduced by Senator Dungan. It's a bill for an act relating to civil actions; adopts the Residential Tenant Clean Slate Act; and provides an operative date. The bill was read for the first time on January 9 of last year and referred to the Judiciary Committee. That committee placed the bill on General File with committee amendments. There is an additional amendment, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Dungan, you are recognized to open.

**DUNGAN:** Thank you, Mr. President. Good morning, colleagues. I am here today to introduce LB175, which is, at its core, a modification and update to laws surrounding the Nebraska Uniform Residential Landlord and Tenant Act. Before I dive into what it all does, I want to take a moment to thank Senator DeBoer for prioritizing this bill. Senator DeBoer has worked on these issues for years and has always been a leader, bringing everyone to the table in order to find compromise and commonsense paths forward on legislation. I also want to take a moment to thank all the stakeholders that I've worked with along the way in getting to this point. The result of many months of work and many meetings, with everyone involved, from courts to attorneys, and representatives of both landlords and tenants, is this compromise bill that incorporates portions of both my LB175 as, as well as LB1115,

both of which came out of the Judiciary Committee 8-0. Let me start by explaining what LB175 does, and then I will explain a little bit more about the committee amendment and the additional amendment that's already been filed. LB175 creates the Residential Tenant Clean Slate Act. This Clean Slate Act is modeled after how we currently handle criminal cases, wherein if a charge is ultimately dismissed or a defendant is found not guilty, the information is sealed from public access. This Legislature made the decision that if someone is not actually convicted of a crime, the potential ramifications of having it follow you throughout your life would be significant. This legislation contained in LB175 follows the same logic, codifying the idea that if an individual is not actually evicted, they should not have such a filing follow them indefinitely into the future. This concept is not new. But you will see, in AM2754, that after meeting with the aforementioned stakeholders, a compromise has been reached wherein we've struck certain original provisions of the Clean Slate Act. As it is written in AM2754, the only tenants that would be eligible for clean slate relief would be: (1) tenants where a trial court has issued an order dismissing an eviction against a tenant; (2) a case where an eviction has been reversed or vacated; or (3) circumstances where a writ of restitution is never executed, meaning the petitioner or the landlord never fully pursued completion of the eviction process. Each of these 3 provisions are necessary to encompass the different ways that each county in Nebraska handles evictions. But all 3 get at the same situation, which is a tenant who has never actually been evicted. In those circumstances, the court would issue an order for clean slate relief, ordering that records related to the eviction proceeding not be a part of the public or disseminated to the public. Let me highlight, colleagues, what this bill does not do. With this compromise amendment, it does not allow any tenant who has been properly evicted to go back and later have their record sealed. It also does not prohibit any landlord from running any kind of background check, nor does it prohibit them from requiring references from past landlords. The goal of this bill is simply to ensure that the court history of an individual accurately reflects the outcome of their court proceedings. I'd like to turn now to the second portion of the bill, which is going to be added in with AM2754, and we will discuss more when that amendment comes up-- which acknowledges the current, likely unconstitutional nature of our landlord/tenant statutes and restores the right to jury trial for both tenants and landlords in an eviction proceeding. This modification stems from a Nebraska Supreme Court case that was decided in 2023. That case, NP Dodge Management Company v. Holcomb, was regarding an

eviction matter. And one of the main challenges was that our current landlord tenant statute is unconstitutional as written, by virtue of the fact that it specifically prohibits the right to a jury trial for an eviction action, 1 of only 8 states in the country to do so. In fact, Nebraska allowed for jury trials in these exact same kind of proceedings up until 1995, when it was seemingly unintentionally removed as part of a larger package. While the court ultimately decided the case on another issue, one of our Supreme Court justices, joined by others, issued a concurring opinion wherein they agreed with the court's ruling on the other issue, but went further to explain in great detail the legal reasoning behind their belief that the ban on a jury trial for evictions is very likely unconstitutional. They specifically go so far as to suggest that the Legislature should take up the issue before it reaches the courts again, seemingly to avoid confusion, chaos, and an abrupt halt in any and all proceedings that would likely occur when our current statute is found unconstitutional. The Supreme Court does not issue these opinions lightly, nor do they do so often. Having read the opinion, I began working with stakeholders, again, across the spectrum, to try and create a solution that is equitable to all parties, functions in all courts, and prevents the legitimate crisis that would occur if and when a case makes it to the Nebraska Supreme Court and this issue is ultimately decided. Colleagues, it's my understanding that cases are currently pending that will force this issue before the court. And so that's why this is something we need to address immediately. The proposed process and procedure is intended to give everyone a fair opportunity to have their rights honored, while balancing that right with the real need for cases to move quickly and efficiently, and for landlords and property owners to have an opportunity to be made whole, both in property and financially. Finally, colleagues, there are several small and logistical changes that will have to be made between General and Select. And I've been working closely with judges, attorneys, senators, landlords' representatives, and tenants' representatives to ensure that we have a process that actually works. For example, a modification will have to be made in order for consumer reporting agencies, credit bureaus, and background check companies to have the ability to accurately reflect someone's history. We are committed to working with everyone between now and Select to address any remaining concerns that they may have. And we've already agreed, for example, to add additional language suggested by realtors, to ensure that attorneys fees can be claimed by both parties, tenants or landlords, in the event that a, a contract or lease is violated voluntarily. I know this issue can be complicated, but I do appreciate your time and



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consideration. I'm happy to answer questions anyone might have, and I do anticipate a somewhat robust discussion today. But I would encourage at the end of all of that your green vote on LB175, as well as the committee amendment, and ultimately, AM2754. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. As mentioned, there is a committee amendment. Senator Wayne, you're recognized to open on the committee amendment.

**WAYNE:** Thank you, Mr. President. Colleagues, I just want to clear up kind of what had happened and why there's an additional amendment after this. So in the committee, we've been-- as you know, we have a lot of bills. And we've been-- this new thing is where you file an amendment-- I, I think it's new to me, because I've done it. If you file an amendment, you have to get a new amendment number, which we never had to do before. And so basically, AM205 [SIC] doesn't-- we have another amendment next, after this that will replace AM205 [SIC] to the committee amendment. So we're going to ask you to vote green all the way through. But the committee amendment does-- incorporates LB1-- LB1115, which is a jury trial. And it also incorporates-- or it changes the-- Section 1 and 2, and it removes language that allows for tenants to request a clean slate when 3 years have passed since the issuance of a writ of restitution or final judgment. That's basically what it does. And as Senator Dungan just explained, that will be what my-- this committee amendment does, and then the following amendment. So I had to drop another amendment to clean up the committee amendment because of how things were being filed, and how-- just-- it just happened in our office that way. So this amendment and then my amendment are technically the committee amendments that were voted out. So with that, I would ask you to vote green on AM2504.

**KELLY:** Thank you, Senator Wayne. Mr. Clerk.

**CLERK:** Mr. President, Senator Wayne would move to amend the committee amendments with AM2754.

**KELLY:** Senator Wayne, you're recognized to open on the amendment.

**WAYNE:** Thank you, Mr. President. So, colleagues, this amendment is technically the committee amendment. But like I said, due to a office issue or how we did it, I had to file this to clean it up. But if you look at the committee amendment-- explanation of amendments on page 2, it walks through exactly what my amendment is. And again, this is

technically the committee amendment. So if you don't know, one of the issues on LB1115 that we're trying to solve-- and I was just asked that question, what are we trying to solve? Well, essentially, the Supreme Court has hinted strongly that if we don't figure out a provision for jury trials, that they can make that whole entire Landlord Tenant Act unconstitutional, or they can say just this provision. We don't have an answer to that. That depends on the Supreme Court. Why does this apply to western Nebraska? Because all your farm leases are a part of the Landlord Tenant Act. Let me repeat that. All your farm leases are governed by the Landlord Tenant Act. So we don't want to-- we want to make sure the Supreme Court says it's not unconstitutional, or colleagues, we will be here in a special session. You will have evictions, at least in Douglas County, that happen Monday, Tuesday, Wednesday and Friday, close to about 100 people a day, basically bogging in the courthouse with nowhere to move, because the Supreme Court would deem this unconstitutional. So, like Senator Dungan said, the Supreme Court has already hinted that people who are being evicted, it is a case, it is a controversy, it is a lawsuit. Therefore, if they request, they can have a jury trial. We don't have a provision in statute that allows for that. So the court can either take this 1 provision and say it's unconstitutional, or they can just say the entire Landlord Tenant Act is unconstitutional. If that happens, that disrupts not only residential leases and apartments and houses, but it also will upset farmland-- farmland leases. They are all governed by the Landlord Tenant Act. You say, why? I don't know why, years ago, we put farm leases in the Landlord Tenant Act. But what I do know is I tried to move Landlord Tenant Act to Urban Affairs, multiple years that I've been down here. And the reason the Exec Board has not done so is because it deals with farming contracts around leases. So this is an important provision. I think we should all be engaged on this because one wouldn't think farm leases would apply to Landlord Tenant Act, but they do. And so, we got to make sure that we get this right in some capacity. And I think it should be debated, and we should talk about it. We should figure it out. But we don't want to leave it to 9 unelected people. Let's just-- or 7 unelected people, to decide whether this provision is unconstitutional or the entire thing is unconstitutional. They've said, hey, Legislature, you guys should figure it out, because the next case that comes before us, we're going to have to rule. And there are a lot of cases right now, pending on appeal, waiting to go up to the Supreme Court. So this bill is trying to get ahead of it. And with that, I will yield the remainder of my time to Senator DeBoer, if she would like it.

**KELLY:** Senator DeBoer, you have 6 minutes, 50 seconds.

**DeBOER:** Thank you, Senator Wayne. So this is my priority bill. It's sort of unusual for me to prioritize someone else's bill, but I'm honored to prioritize Senator Dungan's bill here. The main reason I thought this was important enough to prioritize is because I was concerned about the ramifications if we do not do this. You heard Senator Wayne say, and you know that the committee is also of the position that what has happened here is that the Supreme Court has given us marching orders, more or less, and said we need to do something here. That our current situation is unconstitutional, that we-- that there is a constitutional right to jury trial in eviction cases. And, colleagues, what happens if we don't do anything and they find that, is that suddenly, you have all of these eviction cases have a right to a jury trial. And for reference, it takes longer to trial-- try something by jury than it does by bench. If we do not put in protections such as the ones that Senator Dungan has for landlords, then landlords are unprotected in this situation. In the situation where there is suddenly found to be a constitutional right to jury trial and there are no protections, then what happens? First of all, our courts are in chaos, because having that many jury trials would be problematic. And our landlords are in peril, because it would take longer to evict someone. Now, Senator Dungan has worked with everyone to create a system that would see to those needs and provide the protections for everyone that is necessary. I do like the idea of adding in an explicit measure that says that attorneys fees can be claimed by either party. One of the things that allowing that sort of provision into a bill does, is it allows for some protection against someone just deciding, I'm just going to, you know, ask for a jury trial out of spite, or I'm just going to ask for a jury trial when I have no real claim or cause that would be an appropriate one to take to a jury. So what it says is that then in that situation, that you've done it out of spite or whatever you've done, that there would be an award, or you would have to worry about an award of the attorneys' fees, that-- for that whole thing, for both sides, for your own attorneys' fees and the other side. So it makes you have to think twice before you would go so far as to ask for a jury trial. The other piece that I think is really important is putting the rent that's due during the pendency of the trial in escrow with the court, so that that money is there. It also means that if you don't have the money to live in the place that you're going to live in-- that you're living in, you don't have the money to put in pendency into the escrow with the court in the pendency of the trial. So it also further reduces the

number of folks who are going to be asking for jury trials. The idea is that we were only going to have jury trials for just that narrow, narrow group of people that have the money to put into escrow, that have the ability to pay that amount of money, that are willing to take the risk because they know that their claim-- their case is good enough that they are willing to take the risk of the award of attorneys' fees. So this is a very narrow group of people, a very narrow number of cases that would actually result in a jury trial. Otherwise, if we don't do anything, which we were invited to do, if we do not do anything, then there's sort of mass chaos, right? So then the number of-- I, I got some information. It's not hundreds, but thousands of cases per year in Lancaster, in Douglas County, in other counties. So these evictions, there are lots and lots of them. If all of those had to go to jury trial, I don't know how we would find that many jury pools. I just-- I can't imagine how that would work. It would be a really bad thing to happen to our court system. We've got to have some guardrails. We've got to have some ability to provide for these situations, with some protections for the court and protections for everyone involved, to make sure that we're not just all of a sudden going to find ourselves in a bad situation. We would have to come back. We would have to come back for a special session. And even then, the damage would already have been done. Because these evictions are happening very, very regularly. I don't know if it's every day in every county. I think it's once a week in most. I don't know, but maybe it's every day. I should look that up. I will look that up. But the point is that as soon as that decision came down, it would be immediately effective. And then in the time it took us to get together, to pass a bill, to-- we'd already have-- really had quite a problem in our court system in that amount of time. So what Senator Dungan has done here is very thoughtful. He has included all the parties. He has repeatedly said to anyone who would listen, if you have an idea for another--

**KELLY:** One minute.

**DeBOER:** --safeguard, if you have an idea for another way to make this bill better, he'll take it. You heard, the other day, he talked to some of the judges. And they said, look, we've got to, we've got to add in a, a little technical piece here or there. And he says, absolutely. I mean, this is the situation we're looking at here. We're looking at someone who wants to work with everyone. We're facing a bad thing for our courts if we don't fix this. We-- we're really in a situation where we have to be thoughtful. We're asked to be good governance here, where we're thinking about how do we make this work

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for everyone. And if you have ideas, I mean, I think we're going to have a little bit of a discussion today. If you have ideas of how to make this bill better, I think Senator Dungan is happy to listen to them. I think if you go over and talk to him, I think he would be happy to listen to your ideas. If there are others that you know of that are not in this room, that have ideas--

**KELLY:** That's your time, Senator.

**DeBOER:** Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Masterman would like to recognize some guests in the north balcony, fourth graders from David City Elementary in David City. Please stand and be recognized by your Nebraska Legislature. Senator DeBoer you're next in the queue.

**DeBOER:** Well, all right. I was not quite expecting to be back again so quickly, so perhaps I won't take all of my time this time. But I do want to say thank you to Senator Dungan, for his thoughtful approach to this bill. If you have your decision made already and you haven't heard all the conversation, I would ask you, colleagues, to leave a little bit of an opening to think about this bill. Because, I think it takes a minute sometimes, with some of these issues, to think through all of the ramifications. And I would ask you-- I think we're going to have a good discussion today. I would ask that you open up your hearts, colleagues, to listen to what we're talking about. I wouldn't have prioritized this bill if I didn't think that there was an urgent need for it to have been prioritized, and I think that there are some real dangers if we don't. So at least give us the next couple of hours and listen and think about this. I mean, I know sometimes people say everybody comes to the floor and their decision is already made, but I don't-- I still believe in us, colleagues. Maybe I'm naive, but I think that we still have the ability to listen to each other, to listen to the facts, to listen to both sides of an argument. I heard a, a famous historian once talk about how Kennedy was concerned in the Cuban Missile Crisis because he said, one group of people will tell me one thing. They leave the room and another group of people will tell me exactly the opposite. So he called his political opponent, his predecessor, and he said, what do I do? And the former President said, you get them in the room together. We're in the room together, colleagues. We're in the room together. Let's talk about this together. Let's think through this problem together, because this really is our corporate problem. You've heard what the Judiciary Committee has put together, what we think is the best way to approach

this situation, but we're willing to listen to other things. I know Senator Dungan is actively listening to folks right now, trying to figure out what the best possible solution is. Let's do some old-fashioned legislating today. Let's take a problem that is coming at us and solve this problem together. Let's not run to our corners. I know. It's exhausting in here. It's exhausting to try and think through these problems. There are a lot of problems, a lot of issues, a lot of causes that face us. But let's try to work together to find the best solution. So I'm going to be open to listening to what everyone else says. And I would ask you, colleagues, to be the same way, to think through these issues together, to find a solution to what is coming at us, and to make sure that we protect our courts, we protect our landlords, we protect our tenants, we protect everyone involved. Because this is a duty that we cannot avoid by just trying to ignore it. This is coming. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President. And good morning, colleagues. I rise today opposed to all of the AMs and LB175. I am opposed to LB175 to the extent that I will be taking this 8 hours in a filibuster, unless somebody shows me a card with 25 no votes, in which case I will sit down and we can bring an end to this. It's not anything personal against Senator Dungan, or Senator Deboer, or Senator Wayne, or the work of the Judiciary Committee. And I do agree with Senator Deboer on 1 point. I do ask that we take our time today to listen to debate. She asks you to open your hearts. I'm asking you to open your mind. We're going to-- I'm sorry, Wendy. I just had to-- Senator DeBoer. We're, we're going to have a really good discussion about the mechanics of this bill and what the repercussions actually will be if this bill gets passed, if this doesn't get passed. And we're, we're going to have a debate. And I'm going to try to stay away from the legalese. We'll have some, I'm sure, because we are talking about-- on the second AM we have on the board, AM2754, which brings on the provisions of LB1115 about constitutionality, right to a jury trial, that sort of thing. I'll just handle this now and I'll repeat it throughout. It's kind of absurd to claim that the Nebraska Supreme Court's just going to come in with an Uzi and claim that the entire Landlord Tenant Act is unconstitutional, when it comes to this issue on right of a jury trial. I've reviewed the cases. I've reviewed their opinions. Like, they're not going to come in and rule this en masse unconstitutional. We are not going to be sitting here in a special session with evictions run wild. That's just not how the Supreme Court operates.

That's not--like-- so like, when that boogeyman is pointed towards-- I'm asking you to, like, be realistic. Is the Supreme Court going to repeal an entire, very large set of statutes in order to appease 1 thing? And we will have a debate on this back and forth. I notice Senator DeBoer is shaking her head no at me. But I, I am going to take my time on this, because we do need to go through the Supreme Court, where I think they'll go on this. Because I think it's an entirely different place than where Senator Dungan and Senator DeBoer are claiming it will go. We also need to go through the statistics and how this process works if you are a landlord and if you are a tenant. Because I do think there is this misconception that we have landlords as boogeymen, running around filing eviction notices for people who are 30 minutes late paying rent. That's just not-- it's an abuse of our court system. It's not to say that it doesn't happen, but that's not what we're talking about the overwhelming majority of the time here. I do think this bill is about transparency. I fought against this bill when it was LB128, when Senator McCollister brought it, when I was still in Judiciary Committee. And I'll fight it now. And I'll do it the old fashioned way, through filibuster. And I was actually thinking about it this morning. And I was thinking about it on my drive in to work. Not to give away my address or anything, but I do have to drive on the gravel part of Highway 67 to get to Highway 2 and to get on my way to work. And every day, I have to drive on this gravel highway. And it reminds me of the idiocy of government and like, the problems that government thinks it can solve. But yet, we are sitting here in 2024 with 10,000 miles of paved highways in the state, and we still have 44 miles of gravel highways. And I just happen to live off of--

**KELLY:** One minute.

**SLAMA:** --one of them. Thank you, Mr. President. And I bring up that because it made me think of an old friend of mine, who was one of my mentors and one of my closest friends, former state Senator Scott Lautenbaugh, who was really one of the greats here. And yeah, the sun is still going to rise in the east and set in the west if this bill passes. But for me, I see this as a slippery slope. For now, it's just preventing landlords from doing checks on certain types of eviction notices filed against tenants. But next year, it's going to be the full 3-year Clean Slate Act. And then the year after that, we're going to be getting into New York and California style laws, where you can't even look at the criminal history of potential tenants. So I'm fighting against this. I'm fighting against it the old fashioned way, like my friend and mentor taught me to do. Thank you, Mr. President.

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**KELLY:** Thank you, Senator Slama. Senator Lowe has some guests in the north balcony, members from Youth Leadership Kearney, Kearney, Nebraska. Please stand and be recognized by your Nebraska Legislature. Returning to the queue, Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. Well, I will tell you that I have a lot of concerns about LB175. I visited with Senator Dungan here a few days ago. I told him that I would probably be willing to consider moving this to Select File with substantial amendments. I know there's been some amendments filed, but I'm just going to lay out some of the concerns that I have with the bill itself. I know we seem to be focusing right now on, on this whole constitutional issue, but I think that's a little bit of a sideshow. I think I would like to kind of concentrate more on what the bill itself says. I mean, if we want to deal with the constitutional issue, then let's deal with the constitutional issue separate from some of the other issues that are going on in this bill. I-- as a lender, I can tell you that I've had a lot of experience with, with loaning money to private individuals who build or, or purchase rental properties. And I can tell you, they have a hard time making their payments if their tenant's not making payments to them. But, but people get evicted for reasons other than nonpayment of the rent. They have other hazards. They may be cooking meth. They may be having dangerous animals on the property. They may be doing a whole host of other things that violate the lease that causes them to be evicted. I can also tell you that I am pleased to see that if you went to a jury trial, that you would have to escrow the dollars that would be going towards the rent. But, you know, escrowing those dollars doesn't allow the landlord to make the payments. It seems to me the money should not be escrowed, but it would need to be paid over to the landlord until that jury trial gets done, if they're still occupying the premises. It just doesn't make sense to me otherwise. This is not public housing. This is private property. I would also tell you that what happens in the case of the attorneys' fees-- I can tell you in many cases where it's nonpayment of rent, what's going to happen is by the time you get done with the trial and you spend the money on the attorneys' fees, the tenant just simply files bankruptcy and the landlord gets hold-- holding the bag. I also have, fundamentally, some concerns about hiding past history of a tenant, because I have learned over the years, as a lender, that people tend to not change their practices. I remember many years ago, when we first started the bank, there were situations where we'd make consumer loans and you'd find someone that would file bankruptcy. And, and I really, as a rule of thumb, I found if you file bankruptcy for a



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reason other than medical bills or some unexpected catastrophe, it's-- if it's because of overspending, you can file bankruptcy every 7 years. I, I can give you a whole list. I won't, but I could give you a whole list of people who filed bankruptcy because of problems, got rid of all their debt. Seven years later, guess what? Filed again. Seven years later, guess what? Filed again. That's why it's important for landlords to know who's going into their property. And if they were evicted, why were they evicted? Was it because they damaged the property? Was it because they were cooking meth? Was it because they had animals that they didn't want, that were, that were a hazard to the neighborhood? I need to know that as a landlord, and I should have the right to know that. So that's where my concerns are with, with the bill. I know Senator Wayne had a couple of clarifications that he wants to make as it relates to the amendments that are on the board. So I'm going to yield the remainder of my time to Senator Wayne to clarify that.

**KELLY:** Thank you, Senator Jacobson. Senator Wayne, you have 1 minute, 15 seconds.

**WAYNE:** Colleagues, I'm just-- thank you, Senator Jacobson. Thank you, Mr. President. Colleagues, I just want to be clear. This amendment falls on Senator Wayne. And what I mean by that is, in the committee, there were a lot of things going on. And I made-- I made a-- we made a "make it so" amendment, to include LB1115.

**KELLY:** One minute.

**WAYNE:** As we were reporting out, I, I reported out too early and I forgot to include this amendment. So we talked to the Clerk, and said either we can pull it back and do 1 amendment-- and he said, it's cleaner to just do an amendment this way, so everybody knows what's going on. So if you look at the committee sheet and you look at the amendment, it has an explanation of AM2754. That is the amendment that we all voted on that came out, I think 8-0. There is no issues. So don't be confused by the Wayne amendment up there. That is just me saying that there was a mistake on how I processed this to get it out. That-- and that's nothing more. And if you don't believe me, you can ask the people on my committee: Holdcroft, Bosn, DeBoer, McKinney, Ibach, Blood, DeKay. I'm going through the room. I think that's everybody.

**KELLY:** That's your time, Senator.

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**WAYNE:** Thank you.

**KELLY:** Thank you, Senator Wayne. Mr. Clerk.

**CLERK:** Mr. President. Announcement. The Business and Labor Committee will be having an Executive Session under the north balcony at 10:00 a.m. Business and Labor Committee, under the north balcony, Executive Session, now. Thank you, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President. Good morning. I listened to the conversation with Senator Dungan in explaining this, and I'm trying to figure out exactly what issue we're trying to solve here. I have a concern that this may be different in Douglas County, Lancaster County, than it is in my county. So we're going to clear the record of those people who have been evicted for not paying rent. And this is a scenario that I think-- that I understand-- I'm going to ask-- is Senator Dungan in the area, if he would yield a question? But I think this is what it means. At least I believe this to be the case-- is that if a person has not paid me for 2 months and we go to court. And he walks in and gives me the 2 months' rent, then he and I are square because he's paid me. And then that would be the issue that they would write off of his record, rather than if we actually had a trial and he was evicted. I hope that I'm understanding that correctly. But otherwise, I don't understand how we can have a jury trial. I don't understand where in the constitution that says you can have a jury trial for civil issues. I think jury trials were instigated or started or, or in the statute for criminal issues and not civil issues. So the issue that I have with this, as a landlord, if I'm going to evict someone and now we have to go to a jury trial, and the last eviction that I did cost me \$6, \$7, \$800, and, and the other-- the tenant didn't even show up. So if I got to go to a jury trial, now I'm going to have to hire an-- a lawyer, a lawyer to do the jury trial. It's going to cost me even more. So I'm not sure what solution they're trying to come up with here, but it looks to me like this is a solution looking for a problem. And so at this stage of the game, I'm a no on this bill and on these amendments, until I can figure out what the cost is going to be to me. And I see in the committee statement, there was a significant number of people who testified in opposition. And according to what I seen in the, in the committee statement, I would believe most of those people are landlords. And I think they understand exactly what this would mean to them. And they were in

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opposition. So until someone can clear up, clear up for me why this would not be a bigger burden on a landlord, I'm going to be in opposition to these bills. Thank you.

**KELLY:** Thank you, Senator Erdman. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. Sorry. I was in the back talking with some colleagues. Well, there's already been a very robust conversation going on today, which I appreciate. I anticipated some of this. I want to, I want to say thank you to my colleagues who have asked me questions about this. Like I indicated in my intro, this is a very complicated portion of law, and we have not gotten to where we are today without many, many, many conversations happening, again, with a number of people. I would like to remind my colleagues this did come out of committee 8-0, so this is not something that was strong-armed through. And it was through many of those conversations where we've already really worked, I think, a lot of the guardrails and compromises into this bill, in a way that I think is very equitable, and honestly, just kind of works. I wanted to answer a couple of the questions that I've had already, and I think there's some confusion about what this bill does or doesn't do. As Senator Wayne indicated, AM2754 essentially is the committee amendment. It is fixing the committee amendment that's on the board to make it what the committee amendment was intended to be. In that, there are things that are struck from the Residential Tenant Clean Slate Act in order to accommodate some of the concerns that people have indicated to me they already had. One of those that I keep hearing, I guess, as I'm walking around the floor and talking to people, is a concern that somebody who has been evicted can now go back and ask for their eviction to be taken off their record. I want to be very, very clear. That is not what this bill does. What this bill does, target specifically, individuals who had an eviction action perhaps brought against them, but ultimately that eviction was dismissed or vacated or reversed, because the person who had that brought against them did what they were supposed to do, or worked out some sort of agreement, or otherwise got together with the landlord or the company or the property management company and figured out a solution. So why do we need this? I've said for time and time again, I think 95% of renters are good actors. I think 95% of landlords are good actors. But obviously, there are some bad actors out there. And there are some who aren't even bad actors, but they just have a process and a procedure that is different than maybe we think it is. For example, let's pretend a tenant misses rent by 1 day. Most landlords provide 14

additional days to pay your rent and your fine. There are some companies out there that by practice and by process, file an eviction notice or could file an eviction notice immediately, after 1 day, 2 days, 3 days, whatever that may be. Then something gets worked out between the landlord and the tenant, and the landlord then asks for that to be dismissed or that eviction is ultimately dismissed. Right now, that then, if you do a background check, shows up as an eviction or at least an eviction proceeding against that tenant. What we're trying to avoid here are those kind of people, who are doing what they're supposed to do, or ultimately came to some agreement with the landlord. And the landlord said, I agree. I don't want to pursue this eviction action. We're going to back off. We're going to have it dismissed or it's going to be vacated, because you met certain criteria. And now, it's going to be off your record. Anybody who's properly evicted or has their eviction perfected, at the end of the day, that's going to stay on their record. This does not allow them to come back and ask for it to be sealed. That is specifically what we cut out. So this only goes towards those individuals who never have an eviction actually executed. In addition to that, I wanted to talk a little bit briefly, and I'm gonna run out of time here, about our Supreme Court's decision or the, the concurring opinion. I know Senator Slama had some concerns, or I think brought, brought up the image of them coming in with an Uzi to eviscerate our statute. That's not what I'm saying. But I think Senator Wayne outlined very clearly what the concerns are if/when they find--

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President-- that this statute is unconstitutional, they can do one of two things. They could find the entire Landlord Tenant unconstitutional, and it would go away and we'd have chaos, or they could just strike the provision saying you can't have a jury trial. If they do that, the rest of the statute is unworkable because there are certain provisions in there with regard to timing, that would be almost impossible for us to have a jury trial within that time frame. So what we are trying to do is provide the courts the flexibility to actually execute or have those jury trials when this is found unconstitutional. I would also emphasize, again, we're 1 of 8 states that has banned these. The U.S. Supreme Court has found that you have the right to a jury trial for evictions, along with Alabama, Georgia, Maine, West Virginia, Florida. All of those have already reached the decision that this is, in fact, a legal issue, and you have the right to a jury trial. So, again, colleagues,

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I don't think it is an "if," I think it's a "when." And we need to act now. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Brandt, you're recognized to speak.

**BRANDT:** Thank you, Mr. President. I believe I stand in support of both amendments and LB175 today. I've been doing some research. I've been asking a lot of questions. Would Senator Dungan be available for a question?

**KELLY:** Senator Dungan, would you yield to some questions?

**DUNGAN:** Yes.

**BRANDT:** Senator Dungan, when I do my research, I always look at the committee vote. The committee vote came out 8-0 in Judiciary, which is very heartening, particularly when you have a split committee like that, very well represented across the entire spectrum. But I did notice in the testimony that I believe all the opposition were landlords. Is that correct?

**DUNGAN:** I believe for the most part, yes. I think there might have also been some opposition from the realtors. We've worked with them at this point. There is, in fact, an amendment being drafted right now, that they would be supportive of, and I think that that would also get them on board. They are neutral at this point. I think we can actually get them supportive with that amendment. So we're working on that.

**BRANDT:** And when-- you're saying the realtors are neutral or the landlords?

**DUNGAN:** So the realtors are currently neutral and I think we can get them supportive with this amendment we're working on.

**BRANDT:** And their main concern is what?

**DUNGAN:** My understanding is the main concern about this bill is ensuring that, that cases get heard in an efficient manner, and also making sure that landlords get their money. That is part of why we worked into the statute, after having a number of meetings, the possibility that a tenant, if they ask for a continuance of their jury trial, be made to pay rent to the clerk of the court, which ultimately would be distributed to the landlord during the pendency of the case, to ensure that they're made whole. So that was not originally a part

of this bill. And it was after having multiple meetings and talking to people that we worked that in as a guardrail, to ensure that these cases don't get continued into perpetuity without payment being made.

**BRANDT:** So if I'm a landlord and my concern is this could go to trial, it could drag out for 90 days. I've got a unit not making any money. The, the judge could make that landlord whole in the interim. Is that correct?

**DUNGAN:** That is my understanding. One thing we are not trying to do with this is tell judges what they can and can't do. Certainly, we don't want to overstep. And we've specifically crafted this in such a way to allow county courts or district courts, but usually county courts, to have flexibility, pursuant to their own court rules. So, yes, I believe they would be able to issue that money to the landlord if a decision is made that that's the right choice to make.

**BRANDT:** All right. Thank you, Senator Dungan. Would Senator Bosn be available for a question?

**KELLY:** Senator Bosn, will you yield to some questions?

**BOSN:** Yes.

**BRANDT:** Thank you, Senator Bosn. There's been some concern that there's going to be this tsunami of, of jury trials hit the, hit the market here if, if this passes. And I know you sit on the Judiciary Committee and you showed me some information, historically, in Nebraska, prior to this rule being changed on, on jury trials. Can you tell me about that?

**BOSN:** Sure. So reading from the court opinion, it says the statute providing for actions for possession under the Uniform Residential Landlord Tenant Act states that an action, quote, shall be tried by the court without a jury. And that came from a bill that was passed in 1995. So when the Landlord Tenant Act was first passed, passed in 1974, until 1995, jury trials were allowed. So that was 21 years. It's my understanding that the-- in 1995, the basis for adding the language was that no one was using or utilizing the jury trial option. And so I was looking so that I could answer with a little bit more confidence what that number is, and I haven't found it yet, but my, my understanding, with confidence, is that it was a very, very low number, such that no one was using the right to a jury trial.

**BRANDT:** Thank you, Senator Bosn. That was very helpful.

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**KELLY:** One minute.

**BRANDT:** What-- is that time?

**KELLY:** One minute.

**BRANDT:** All right. Thank you. With that, I stand in support of the amendments and LB175. Thank you, Mr. President.

**KELLY:** Thank you, Senators Brandt and Bosn. Senator Wayne would like to announce some guests seated in the north balcony, members of the Alpha Kappa Alpha Sorority from Lincoln and Omaha. Please stand and be recognized by your Nebraska Legislature. Returning to the queue. Senator Linehan, you're recognized to speak.

**LINEHAN:** Good morning, Mr. President. And good morning, colleagues. I rise in support of the amendments and the bill. And I have been a landlord, early in my, I guess, mid-life. I don't know what early is. I was grown up, but not very old. We had rental property, and I know what it's like not to have your rent-- have your tenants pay rent. I know what it's like to go in and clean up a house that hasn't been taken care of. I know, I know how tough it is to be a landlord. But this is what I also know. I know that the Bar Association has a volunteer project that helps people not get evicted. And if they show up, if they happen to have-- we-- Bar gets enough attorneys to show up, a lot of people end up not getting evicted. But if they don't have an attorney and they don't even know to show up or scared to show up, they get evicted. It's, it's gone way too heavy-- the results are swinging way too heavy to the side of the landlord. We can't-- and I also know, because I have somebody very-- in my family that works in this issue, that this results in moms with little kids getting evicted in December, January, February. And until we come up with some program where that doesn't happen, we need to pass this bill. Now, should it all be on landlords? No. Absolutely not. But we-- for all that we do, we should figure this out. It can't be that hard. Senator Conrad, would you yield to a question?

**KELLY:** Senator Conrad, would you yield to some questions?

**CONRAD:** Yes. Yes, of course.

**LINEHAN:** Senator Conrad, I think you're more aware of what the project is that the Bar does than I am, because you are an attorney and you watch these issues. Could, could you be more expansive on how the volunteer project works at the Bar Association?

**CONRAD:** Sure. Thank you so much, Senator Linehan. And I have had the opportunity to go down to the courthouse and see the, what they call TAP program, Tenant Assistance Program, in action. I've had a chance to observe this on the front lines. So thankfully, due to the leadership of the Bar Association and the law schools, they bring together private attorneys who are acting on a pro-bono basis, with law students to give them experience to represent Nebraskans that are facing evictions. From my understanding and talking to people at the courthouse, everyone is appreciative of this program. Because when people are represented, there's better outcomes, and the system works better for the landlords, for their lawyers, for the judges, for the court staff. And as you noted previously, if folks are not represented, what, what happens is they end up getting default judgments that then impact their credit reports, impact their ability to secure other housing, etcetera. When they are represented, it's a dramatic shift. Those evictions go down to less than 5%. And what happens instead, is the attorneys negotiate payment plans, pay and stay. They negotiate a consensus, plan for moving out, so it doesn't happen in an abrupt manner and disrupt children. There's a host of positive outcomes that happen when Nebraskans facing eviction are represented. But the Bar Association always, always needs more people to step up. And in fact, that is-- because of that experience, I actually have 2 bills--

**KELLY:** One minute.

**CONRAD:** --pending this year to ensure that 1, if we're paying out court fees to public interest legal services providers, they should be providing legal services, number 1. Number 2, to use some of those existing ARPA funds to make sure we provide some bridge funding for the TAP programs to keep them going for another year. So sorry, that's a long-winded answer, but I'm, I'm happy to punch in or, or answer more questions.

**LINEHAN:** No. Thank you. That was very helpful, Senator Conrad. So again, I'm going to stay in this debate. And I'm sure, as things work on the floor, people can talk to each other. But the one senator, when I punch in again, if Senator Dungan is hearing, I want to go more back over how getting off the list-- I don't-- I think we're not going to have time this time, but next time, on how-- it's like-- you--

**KELLY:** That's your time, Senator. Thank you, Senators Linehan and Conrad. Senator McDonnell, you're recognized to speak.



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**McDONNELL:** Thank you, Mr. President. Good morning, colleagues. I'm in favor of AM2754, AM2604 [SIC] and 1-- and LB175. I will yield the remainder of my time to Senator DeBoer.

**KELLY:** Senator DeBoer, you have 4 minutes and 45 seconds.

**DeBOER:** Thank you, Mr. President. First, just for my colleague, Senator Slama. When I say heart, I mean heart and mind. I think there are enough in here that know that I do actually have a mind that I also use. But, you know, maybe I'm, maybe I'm wrong on that. No. I appreciate the conversation we're having here. I certainly don't want us to go into histrionics to say that if the court or when the court finds that there's a constitutional right to a jury trial, that they're going to throw the entire Landlord Tenant Act out. Although, in the concurrence, Justice Papik himself did raise the question of severability of the landlord tenant statute. I too, like Senator Slama, do not think that the court would do that. I would hope they wouldn't do that. I can't imagine they would do that, but, but hopefully they wouldn't. And I'm going to go on that assumption that they wouldn't. That does not nevertheless mean it wouldn't be chaos. If they find that it's severable and the issue of the jury trial is the only one they bring out, for reasons Senator Dungan has pointed out, it still puts us in a really bad position because the statute is not very workable under the timelines that we have for a jury trial, because of how long it takes to gather a jury and to have the jury trials. So the doom and gloom, I think, is what Senator Slama called it. But maybe I'm misquoting her words there. But the sentiment was that, that the doom and gloom that we predicted, she says, well, they're not going to do the severability clause. It doesn't really matter. What I'm saying is that I think they won't say that the Landlord Tenant Act is unseverable. I think they will find as narrowly as they can. And even so, all of the things that I am concerned about still come to pass, because it is the right to jury trial itself that will kick off the problems which I was talking about in my last time at the microphone, which is to say, the jury trial itself-- right-- is going to put our courts into a state of chaos. Because the number of cases that come up that would then be eligible for jury trial would, in fact, overwhelm the courts. That's my concern. I don't think that they're going to say the whole thing is thrown out, because that would be, that would be, that would be a lot. That would be very mind-boggling. And I think that they would be careful with the court system as much as possible, and they wouldn't do that. But nevertheless, just the jury trial portion itself-- and it sounds like we're going to have plenty of time to discuss the other merits. I know

that Senator Jacobson wanted to talk about the what I'll call the stem or tree bill, which is LB175. What we've been talking about a lot is the jury trial, but we'll talk about LB175, which is, the Clean Slate Act. But it's basically mirrored after the way we do a diversion program, the way we do a juvenile court sealing, that sort of thing. Because what it says is, if we really want to incentivize people to properly get their act together in these kinds--

**KELLY:** One minute.

**DeBOER:** --of instances-- so there's a-- there's an eviction filed. What the landlord wants when they file an eviction for payment of rent is the payment of rent. Right? The best situation for everyone is suddenly the tenant can pay the rent, pays the rent. And that's great, because the landlord wants their money. Makes sense. So the, the idea that what we want to do, first and foremost, is get them to pay their rent in that situation, is to say how do we make it so that that is the outcome that, that everybody wants, that the, the tenant wants, that everybody wants, regardless of whether the tenant has already moved out. If you really want the money to go to the landlord, there's got to be something that you can incentivize the tenant with. And that's part of what this sort of Clean Slate Act is, is that--

**KELLY:** That's your time, Senator.

**DeBOER:** Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer, Senator von Gillern, you're recognized to speak.

**von GILLERN:** Thank you, Mr. President. I rise opposed to LB175 and the amendments. I'm, I'm tracking the, the conversations. I'm tracking the changes, which are a little bit overwhelming, to be quite frank. I've heard that the, the 2 bills came out of committee unanimous. That from what I'm hearing, what we're talking about today doesn't look anything like the original bill. So I'm a little skeptical to lean on the committee statements in these conversations now. The amendments presumably have improved the bills, so I'll, I'll continue to listen as the day goes on. But I also hear Senator Duncan-- Dungan mention that there's another amendment that's being worked on right now, which may also improve the bills. So I guess I'm a little confused as to why we're going to burn 8 hours on this today, rather than getting it fixed and then being able to possibly pass it on the floor. But be that as it may, I've got a few comments that I want to make just on

this general topic. And that is-- I mentioned during the conversation about the inheritance tax, this, this group of people that are far more common in our, in our state than people think that they are, and I call them blue collar millionaires. And these are tradespeople, folks that have built their wealth, wealth. They work hard during the day in trade jobs. And in fact, I had a, a, a great conversation with Senator McDonnell the other day. Lots of firefighters own rental properties and work on rental properties. These are folks that, that I knew in-- when I was in the construction industry. They'd work their tails off during the day. And then they'd go home at night and have dinner quick, and then head out and renovate, renovate other properties that they could, could, then lease out and build equity and build their retirement with. Those, those folks-- if those folks don't collect rent on time, they don't pay their mortgage, because these folks are not going out and paying cash for these properties. So they've got a mortgage on them, they've got to cash flow in order to make those work. So these are, these are not rich developers, that-- I think the-- when we hear the term landlord, we're thinking of somebody that-- that's in a, in a, a, a fancy office building that owns thousands and thousands of units. And there are lots and lots of rental properties out there where that is not the case. They're individual owners that have done their best to work hard, to save. Many of them are using this as their retirement plan-- their savings plan for retirement. Senator Meyer had made a great comment not long ago, about his land is his 401(k). Many of these folks, this is their 401(k). They invest in something that builds in equity and that, that generates some profit, some revenue, some margin along the way. And so they do that. So my personal story is my father-in-law had a duplex, years and years ago. And he bought that duplex. He was a realtor and that was his retirement plan. He started working when he was 8 years old, during the depression, and was a World War II veteran, and worked his tail off every day of his life until a stroke disabled him. He was a trusting individual. He didn't run credit apps. He thought he was a good judge of character, but unfortunately, was oftentimes way too trusting. After a stroke, my wife, his daughter and I took over the management of that duplex and tried to keep that income stream flowing for her folks in order to keep them off of Medicaid, because they were just a hair's breadth away from Medicaid. He raised 10 kids, and there was not a lot of margin in that family. As we were managing that, we experienced slow pay. We experienced no pay. We had a renter that had a pitbull that left the unit for the weekend, and just tipped over an 80-pound bag of dog chow and left. And you can imagine what that looked like. We had a tenant that paid cash, cash rent every month and

came to us to drop it off, which we thought was a dream deal, till we realized that they were cooking meth in the house. When they moved out, we had to scrub the walls with Lysol to get the residue off so that we could repaint the walls, replace the carpeting, and, and turn that over to another tenant. My father-in-law was not a rich man. He saved enough for a down payment on a duplex that had a mortgage, and he grew equity in that, again, to help pay his living expenses. He was not a millionaire. He didn't have the margin to afford the abuse of a bad tenant. And if he had the ability to know who a bad tenant was ahead of time, that would have been helpful. And it feels to me that this bill would negate that opportunity. So if it sounds personal to me talking about this, it is. We eventually sold that unit. And again, I bought them a couple of years' margin before they qualified for Medicaid, which eventually happened. There are people out there, unfortunately, that are bad actors and know how to game the system. That's just an unfortunate reality. I agree with Senator Linehan that we need to provide a safety net for families, so they're not put out on the streets with nowhere to go. But again, if you've been through this process, you understand that the eviction process is not immediate. If the rent is not paid on--

**KELLY:** One minute.

**von GILLERN:** Thank you, Mr. President. If the rent is not received on March 1, I can't go slap a sticker on the door on March 2 and move their furniture out on March 3. Minimum, it's a 90 to 120 day-- sometimes 180-day process. Meanwhile, the abuse of the property continues, the lack of cash flow continues, and the negative impact on those people, again, that may or may not have the margin to afford to do that, continues. So I just ask you to consider that. I think the-- it's fair. We're doing what we can to protect renters. There are lots of laws in place that prevent renters from bad acting landlords, and those folks are out there also. But we also need to do what we can to protect the landlords where we can. Thank you, Mr. President.

**KELLY:** Thank you, Senator von Gillern. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President. And, good morning again, colleagues. I am really grateful for both Senator von Gillern and Senator Jacobson's comments about their experiences, their lived experiences, because I do think we might be coming at LB175 from a narrow perception of what evictions look like, where they're taking place. And yes, there might be a couple of bad acting landlords. But we have

so many protections in place, as Senator von Gillern outlined, to prevent landlords from making spurious claims, spurious evictions. And I absolutely agree with Senator Conrad, in that the Tenants Assistance Program is a wonderful program. I really do respect City Councilwoman Amy Melton for her extensive work in fighting for tenants. And I do think there is a disparity, especially in our civil court system, between low-income people and high-income people. And we do see that weaponized. But I don't think that landlord tenant law is the place where we should be tilting things so far in favor of the tenants, that it doesn't even make sense for landlords to rent out properties anymore. In its essence, I see LB175 as the government forcing landlords, again, to subsidize housing for tenant-- tenants that are bad actors. Senator von Gillern is absolutely right. We don't have landlords that are running to court when the tenant is 30 minutes late paying rent to file an eviction action, to pay the court fees, to line themselves up, to go through the process of hiring an attorney, paying them fees. Like, this isn't a one-off, it's 12:30 a.m. the day after rent is due and this person is filing an eviction action. This is where you have genuine bad actors in place that you're trying to get out of your house. Senator Jacobson outlined how this happens a lot of the time in rural Nebraska, in that you have a situation where somebody is actively destroying the property that you own, whether it's cooking meth, having furniture out in the yard, not keeping up with the premises to where it's been a process many months in the making before this eviction action is filed. And how this will operate and where I'm really concerned about the core of LB175 is that when you file this eviction action and you've already made those costs, normally those actions are filed in order to make it clear to that person that you're serious, and to get your stuff and get off the property. Well, when that tenant gets their meth, gets their property, leaves it probably in a dilapidated state, you're left to clean it up. You're going to abandon the court proceedings, because why would you take on additional costs to evict somebody who's vacated the premises, who's fled town and can't be contacted? So under LB175, you couldn't even ask that old landlord if that person was evicted. So you couldn't question about that eviction pro-- proceeding, because it was dismissed. That person took their meth, took their stuff, and got off the property. And where I see a real problem with this is, like Senator Jacobson outlined, in terms of not being able to ask an old landlord honest questions. And this is like a real problem that we're going to have with LB175, the baseline bill, not any of the amendments, which we're going to spend plenty of time talking about

those-- is that you have your old landlord. You do a background check on a potential tenant. They--

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. They see, OK, there's this old landlord we can reach out to because I have questions about this tenant and I want to ask what was going on. Well, how this would operate under LB175, is you could go to that old landlord and ask them what their thoughts were about that person as a renter. Totally fine. The landlord could say, yep, they were cooking meth or yes, they destroyed the property. But the next question is, is, well, why didn't you evict them? And that old landlord couldn't say, I filed it and they left and it got dismissed. You could even get down to landlord number 3. They do this three times in a row. And landlord number 3 couldn't go, yeah, I filed the action. I had to go to court. But it-- then they left, fled town, and it got dismissed. So you're creating this weird situation in the law where landlords can't ask the obvious next question.

**KELLY:** That's your time, Senator.

**SLAMA:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Wayne, you're recognized to speak.

**WAYNE:** Thank you, Mr. President. I, I take offense to when somebody talks about committee statements and being confusing. When I did it, we did exactly what the Clerk told us to do. We did exactly what the Clerk told us to do on this amendment. I came on here and I said the amendment error was on me. I'm the one who kicked the bill out. I'm the one who signs it. There was a "make it so" amendment, which happens in Revenue all the time, Senator von Gillern. All the time. And the "make it so" amendment was to incorporate LB1115 with the amendment. And the amendment had to do with attorney fees and striking that because they were already done and some other changes that Dungan worked with. And when we kicked it out, I'm the one who forgot to attach this amendment. So we had 2 options. I can pull it back into committee, fix the committee amendment, which will take 3 days. Or we called the Clerk and said, how do you do a corrected statement with a corrected amendment? This is the cleanest way to do it. Yesterday, we passed over this bill to give the lobby more opportunity to look at the amendment that was filed. Period. If we're going to start talking

about the credibility of committee statements, then I think we need to remind ourselves that last year we were passing 18 bills in a freaking bill, with multiple amendments. The committee amendment is clear. AM2754 is on page 2 of the committee statement. It lays out exactly what the amendment does. Is the amendment the exact copy of the original bills? No, because through deliberation, Senator Dungan and the committee made minor changes to remove, to remove opposition, to be quite honest. And there will be another amendment that I'm hearing coming because there was one bill we talked about including, which is Senator Dover's bill. But at the time, we didn't have enough conversations with Senator Dover to finalize what that looks like. And from my understanding, that's been finalized today. We had 94 bills in Judiciary-- 93. Some of our most controversial, complicated bills in this, besides, I would say Revenue. Because Revenue has multiple tax codes and multiple chapters. Judiciary has multiple, multiple chapters. When saying all that, is we've had robust conversations about dwindling down a landlord-tenant package. When I say dwindling it down, removing as much opposition as we could to move something along. That is what's before you. Is it weird that there's a Judiciary and an amendment by me that I'm also claiming it's a Judiciary amendment? Absolutely. That's because of my error. Don't punish the bill because of my error. The constitutional issue is not a sideshow issue. You guys all want to stand up and say you're all 2a because it's the constitution. Well, the Constitution of Nebraska also requires for any civil dispute to have a jury trial on, on civil disputes like this. The Supreme Court, in NP Dodge Management v. Theresa Holcomb, which was July 21 of 2023 after we're done with session before this new session, came out and made it clear they are very concerned with the constitutionality of--

**KELLY:** One minute.

**WAYNE:** --these provisions. So either we can fix it here and have as many roundtable discussions to figure out how to do that issue, or we can leave it to non-elected people who were appointed to just say it's unconstitutional. Once they say it's unconstitutional, they do not provide a remedy. They just say it's unconstitutional. So if it's unconstitutional, then the courts are left to scramble. And if it's not in statute and there's no Supreme Court rule which they won't have done, each court can do what they want. We're trying to put some clarity around this topic. I don't know how else to explain it. As far as the rent, if they ask for a jury trial, the judge can order them to put up money for their rent, as long as it takes to get that jury trial. That was a provision that Senator Dungan added to make sure

their owner can still recoup their money, and they're not losing out on the money.

**KELLY:** That's your time, Senator.

**WAYNE:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Wayne. Senator Kauth, you're recognized to speak.

**KAUTH:** Thank you, Mr. President. I rise in opposition to the underlying bill. A landlord needs to be able to have as much information as possible about the person that they are entrusting their property to. I think when people hear the word landlord, they think it's, you know, some evil person who's cramming people into tenement houses. A lot of times, these are people who have relocated and they still have a property that hasn't sold, so they choose to rent it out-- people who are trying to build equity and trying to improve their lives, to leave more for their kids. Well, sometimes when they move up in a house, keep one and rent it out, you don't want that property destroyed. And it's not just not paying the rent, it's how is that house treated? How is that property treated? A landlord has invested their time and their money into that property. It's something that they are using for their future. They deserve to have the best renter possible in that property, and they can't determine that unless they can look at the history of that renter. Creating a clean slate doesn't necessarily mean that there weren't issues. It means that those issues have been covered up. Landlords are risking their investment every single time they let someone into their home to live there and do everything that they normally do. You're taking a huge risk. If a potential tenant has an eviction attempt on their record, that should show cause for concern. You should be-- that should be a catalyst for that landlord to say, hey, I'd like to talk with you about this. It should be up to the owner of that property to determine whether or not the reason for an eviction attempt or an actual eviction-- what that reason was. If it's, hey, I had a medical emergency and I got behind on my rent, a landlord should be able to say, you know what? I understand that, and I think everything else about you is great, so I'm going to say yes. Or they should be able to say no. Just because someone has a property to rent out doesn't mean everyone else has a right to that property. Being a good tenant is a responsibility that actually gets you benefits. It means you get to keep renting. It means you build credibility. For us to say that a landlord doesn't have the right to look back at someone's history,



means that they are getting incomplete information. And, and I haven't checked through all of the amendments yet. But in the original bill, it does say that someone can, after 3 years have passed since the issuance of a writ or restitution or since final judgment was otherwise entered, they can ask for a clean slate. So after 3 years, it's like it never happened. Well, that's going to patterns of behavior. That's out? So George is waving me off on that one. Thank you. That, that did give me great concern. Thank you, George. I am still-- I am opposed to this bill. I think we need to allow landlords to have as much information as possible. Again, they're the ones taking the risk to allow someone into their property, and it has to be a mutually beneficial relationship. So thank you, Mr. President. I yield my time.

**KELLY:** Thank you, Senator Kauth. Senator Albrecht, you're recognized to speak.

**ALBRECHT:** Thank you, Mr. President. Good morning, colleagues. You know, I'm listening here, but I do have some questions. But first, I, I just want to stand up and make it perfectly clear that just because a committee votes something out 8-0 or 7-0 does not mean that it's a-- it's just a foregone decision that everybody's going to just agree. Over the years, this is my eighth year, I vote people's priorities out for a reason, because it's for them to win or lose on the floor of this Legislature. I'm going to go into closed session at 11:00 and I'm going to do something maybe I don't want to do, but yes, I'm going to vote it out because it's a priority bill. So that doesn't always mean that they should be in lockstep with the bill throughout the whole journey. So for newer senators that are sitting on the floor, you don't have to feel bad no matter which way you vote. It's your conscience. You're the one that heard the testimony. I understand that there's a-- you said that-- Senator Dungan, that there's a-- something with the realtors. I just checked, and it's still a hard no with them. So I just need to sit here and listen to the debate and find out where I'm going to sit on it, because while I agree with Senator Linehan, a lot of these people that are being evicted are women. You know, we need to find out where the other party is so that they can help pay their rent. But at the same time, I do have questions about who's-- who does pay for them to leave their job, to have to go to court. Do they have to pay? I understand, from listening to Senator Conrad, that there are, are agencies or organizations that help with this. If-- Senator Dungan, you're just coming back in. If you can help and I'll yield the rest of my time to you, I want to know how when these folks get evicted, who do they contact? How did-- who pays for this? What

happens on the other side of the-- with the landlords? You know, do they have to pay for an attorney to be represented in court, and the other party does not have to pay? I mean, tell me a little bit more so that I can wrap my head around exactly what would happen there. So I'd like to yield the rest of my time to Senator Dungan. Thank you.

**KELLY:** Thank you, Senator Albrecht. Senator Dungan, you have 2 minutes and 30 seconds.

**DUNGAN:** Thank you, Mr. President. Thank you, Senator Albrecht. I apologize. I missed the first part of what you were saying. I was running in and out, but I did hear you ask about attorneys and attorneys' fees and who do they contact. So that's actually a really good point of clarification, and one that we had a number of conversations about, prior to the bill actually being put together. There was a concern that if you have these jury trials that people would not be able to get attorneys fees, right. So normally in civil cases, there's some ability for whoever prevails to also get attorneys' fees, so they get that money to pay for the attorneys' fees. The current landlord tenant statute allows for either the landlord or the tenant to recover attorneys' fees, so long as the other party is found to have violated the contract or the lease voluntarily. And so we actually added, into this bill, language clarifying that they would be able to get attorneys' fees. And we were told it was unnecessary at that time, because the statute already covered it. We are actually-- and one of the things I talked about with regards to amendments, working again, with the realtors, and I can go talk with other folks out in the lobby. We are actually working on an, on an amendment to clarify that language, to ensure that this bill makes very clear that attorneys' fees can be claimed. Because we do not want to make it so somebody is paying all this money for an attorney, and then if they prevail, it just is out of their own pocket. So we're trying, like I said, again, to make it as equitable as possible. In general, in these circumstances, people can proceed pro se, which means they don't have an attorney if they want to, or they can hire an attorney if they decide to go that route. There are some--

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. There are some opportunities for landlord-- or I'm sorry, for tenants to have legal counsel, kind of like what Senator Conrad was talking about, the Tenant Assistance Project, where people who need help kind of walking through the court

system can have an attorney work with them for free. But there's a number of different avenues that people can go through to get that legal counsel. But we do want to ensure, and I believe the statute already covers it, but we're going to clarify with language that at the end of this jury trial process, there would be an ability to get attorneys' fees. Because we want to make sure people are made whole, on both sides of the aisle. Thank you.

**KELLY:** Thank you, Senators Albrecht and Dungan. Mr. Clerk, for items.

**CLERK:** Thank you, Mr. President. Number of items, quickly. Your Committee on Transportation, chaired by Senator Moser, reports LB1031 to General File with committee amendments. Additionally, your Committee on Judiciary, chaired by Senator Wayne, reports LB441, LB876, LB892 and LB1085 to General File, all having committee amendments. Amendments to printed: Senator Dorn to LB942. Notice of committee hearing from the Appropriations Committee. Additionally, notice that the Revenue Committee will be holding an Executive Session under the south balcony at 11:00 a.m. Revenue Committee, under the South balcony, 11:00 a.m. Additionally, the Education Committee will be having an Executive Session in room 2022, following the Executive Session of the Revenue Committee. Education Committee, Exec Session, room 2022, after the conclusion of the Exec Session for Revenue. That's all I have at this time, Mr. President.

**KELLY:** Thank you, Mr. Clerk. Senator Bosn, you're recognized to speak.

**BOSN:** Thank you, Mr. President. I rise in support of the amendment. My-- the best way to explain this is there's, there's 2 bills here. We have the Clean Slate Act that applies to what information a landlord can find out about a prior tenant, and their rental history. And then we have the right to a jury trial. So in conversations-- I, I understand everyone's reluctance over the jury trial issue. And, oh, my gosh, we're going to explode jury trials and the, the consequences will be fiscally unmanageable. As I kind of answered for Senator Brandt, I didn't find an exact number. But it is my understanding that for the 21 years that the jury trial right was in statute, there was such a small number of those cases that no one raised any red flags when the language was changed. I don't say that to mean that we shouldn't have the right to a jury trial on that, just to put it in proportion that with, the, the situation that it is, I, I don't know that we're going to see a significant change. And even if we do, I think it'll be a short-lived experience. That doesn't change that if you have the constitutional right to a jury trial, whether you like it

or not, you have the constitutional right to the jury trial. If all of a sudden I said, I don't think people who have committed first-degree murder should have the right to a jury trial, that doesn't mean we don't have the right. It just-- it is expensive to have those jury trials, but it is the constitutional right that we have. That-- I was provided the case, ultimately that Senator Dungan had quoted. And that is a Supreme Court case found at 314 Neb. 748. The case is called Holcomb, H-o-l-c-o-m-b. It's a case from 2003-- from July of 2003. And in that concurring opinion-- and I know parts of it have been read already. I, I, I just want to read a part of it, that talks about the jury trial right. It says, although this court has never had occasion to consider whether the nature for an action for possession under the NURLTA-- that's the Landlord Tenant Act-- means that a party to such action is entitled to a jury trial. Many other courts have concluded that similar actions by a landlord to evict a tenant and recover possession of real property are legal in nature. That's the important thing-- are legal in nature, and are thus, subject to similar constitutional jury trial guarantees. It, it then goes on to talk about a Supreme Court decision, Pernell v. Southall Realty, which was a case from 1974, where the U.S. Supreme Court held that the District of Columbia's summary eviction statute, which did not provide for a jury trial, was inconsistent with the jury trial guarantee set forth in the Seventh Amendment to the Constitution. So those of us that are, that are standing here saying, listen, like it or not, I think that the law is what the law is, and we're going to be really kind of turning our nose at the opportunity to set up the guardrails to have an appropriate system for the courts to follow when jury trial rights are requested, I think we're going to have a bigger issue if we don't have some sort of guardrail. That goes to the second portion of the bill, and that is the, the Clean Slate Act. And I, I think there's a lot of misnomers because I think some people still think it's, oh, 3 years post your, you know, red mark, it's, it's clean slate. And that isn't what the language does. And to the extent there's confusion over the amendments, I can assure you in the amendment, AM2754, that is removed. Right now, what it says is if I'm a tenant and I don't file my rent and it's due on March 1, if my landlord does an automatic filing of--

**KELLY:** One minute.

**BOSN:** Thank you-- of my failure to pay, and it gets automatically filed, and my check comes in on March 2, do you think that landlord really wants to evict me? Are those the kinds of people any of us want to evict? The answer is no, but the filing is already there and the

mark is already on my record then. And the reality is, I don't think there's a single bad, good, or otherwise landlord out there that's going to say, yep, I want that filed. I want her gone. That's not the intention. And so what Senator Dungan's bill does is says, let's take those situations where the, the grievance has been resolved to the satisfaction of the parties, and let's not make that a red mark forever on this person's record. There's more to what the, the language does. I don't want to mislead anyone and tell you that's all it does, but I'm out of time. So, if you have questions, I'm happy to answer them. Thank you, Mr. President.

**KELLY:** Thank you, Senator Bosn. Senator Linehan, you're recognized to speak.

**LINEHAN:** Thank you, Mr. President. So, a few facts here. And I know that all landlords are not evil, or they're not slum landlords. I, I know that. I've rented. I've been a landlord. But here's the situation. There are some bad landlords. Let's not pretend that all the landlords are good and all the tenants are evil. That's not true either. I have some information about evictions filed last year in Douglas County. I think last year. And this is somebody who works with people that are getting evicted. And mom and pop landlords don't evict often, with or without reason. So that's true. You got your house, it's part of your property. You got maybe 2 houses, whatever. I've got a son who's got 2 rental houses right now. And he's just had to evict somebody, because they hadn't paid rent for like 3 or 4 months, and the house is a mess. So I get the other side of this. But here's what happened in Douglas County last year. 78% of the filings in Douglas County last year were by landlords who filed 4 or more times. OK. That's interesting. 61% of the filings were by landlords with 10 or more filings. A third of the evictions filings were by landlords who filed 40 or more evictions. A third. So we're not talking about mom and pops. We're not talking about young people who've, instead of taking their money from COVID and buying a swimming pool, bought a rental place. That's not who we're talking about here. We're talking about big corporations, who-- I like big corporations. I've stuck up for them before. We're talking about people. This is just paperwork, just grinding. It could be a mistake. Somebody sent their check, they didn't put a stamp on the envelope. It could be a lot of things. And unless they're competent enough or they even understand what's going on to get a lawyer, they're automatically going to get evicted without having a chance to have a judge hear them. That's what we're trying to get ahead of. We got a lot of people-- is Senator John Cavanaugh available for a question?

**KELLY:** Senator John Cavanaugh, would you yield to some questions?

**J. CAVANAUGH:** Yes.

**LINEHAN:** Senator Cavanaugh, have you spent time working with the Lawyers Project at the Bar Association on evictions?

**J. CAVANAUGH:** I have.

**LINEHAN:** And when you showed up and you were there because an attorney was there, what was your success rate in working these out so the people weren't evicted?

**J. CAVANAUGH:** Well, it-- that's a question of how you measure success. Most everybody that I have worked with there ends up vacating the premises. But what happens is you have a negotiated settlement, wherein the person who's being evicted either agrees to pay some additional amount to have a time limit-- or a, a time certain to be evicted or to leave, and then maybe the eviction, you know, doesn't get executed. And if, if you want me to give you an anecdote, I'd be happy to. One, I guess, great example was, I showed up one time and represented a person who showed up not knowing they were going to have a volunteer lawyer to help them. And the only reason they showed up that day is because they had to go to work-- they worked for a local telephone-- telemarketing company in Omaha. And they had to go to work, and they didn't want to come home that night and have had their apartment locked and their dog inside and all of their stuff there. So they showed up to court. We helped them. We connected them with some of the, the local services, who then helped them pay a month so that they-- it out and the landlord got some of their money that they were expecting, and they got the person to voluntarily leave. And we didn't have to have a contested litigation. So a lot of the benefit that the lawyers in particular bring to this situation is to kind of settle those cases.

**KELLY:** One minute.

**J. CAVANAUGH:** Obviously, there are the cases where they-- there is some contested issue. And those, the success rate when there's a contested issue, is probably higher, but the ones that are-- where there's no real issue, those just get settled and we-- and the lawyers facilitate settling that in a more appropriate fashion.

**LINEHAN:** So I, I think Senator Bosn had really good points too. Thank you, Senator Cavanaugh. Senator Bosn's point about getting rid of a

record because they were never evicted, because there was confusion where the landlord agreed, I don't know why we wouldn't do that, folks. It's like getting a bad credit mark on your credit that you don't deserve. All of us would fight that, right? You get-- you got a mark on your credit record. You don't deserve it. It says it didn't-- you didn't pay your utilities. Or I've fought with American Express because down here I have lost a bill once in a while and had a late payment. So-- but you, you address those things because we all know how--

**KELLY:** That's your time, Senator.

**LINEHAN:** Thank you.

**KELLY:** Thank you, Senator Linehan. Senator DeKay, you're recognized to speak.

**DeKAY:** Thank you, Mr. President. Would Senator Dungan yield to a question?

**KELLY:** Senator Dungan, would you yield to some questions?

**DUNGAN:** Ooh, shocking. Yes.

**DeKAY:** Thank you. From the-- could you explain the timeline to me from the time that the tenant is first late on their rent until they're notified to the final eviction notice, going through the whole process, either through bench or trial?

**DUNGAN:** Yeah. So I'm going to try to simplify this as much as possible. But speaking with practitioners who work in this area as well as reading the statutes so let's say going back to Senator von Gillern's example, March 1, you're late on rent March 1. As soon as March 2, you could file the 7-day notice saying we're demanding rent, right, so March 2. 7 days pass. At that point, the eviction's filed on day 8. So March 8, essentially, at that point, you can file that eviction. By statute currently for a bench trial, meaning just a trial in front of a judge with no jury, it has to happen between 10 and 14 days after that filing. So by statute, eviction hearing must take place within 10 to 14 days. OK? No sooner than 10, no later than 14. If there's good cause, the tenant can ask for one continuance. And after that, it has to be extraordinary cause, which just doesn't happen. The continuance length is ultimately up to the judge because, again, we can't tell the courts really what that judicial discretion would be. But from speaking with people who practice in this area,

what they say is that a lot of times these continuances are, you know, on one week somebody says, I'm not ready to go forward today. And the judge says, great, I'll be back on Monday. Can you come back Monday? And parties all say yes. So the process right now is actually pretty quick. And that's part of why we have to make these modifications. Because let's pretend, which I believe is going to happen, the Supreme Court finds unconstitutional the provision that says you can't have a jury trial and they cross that line out, but they leave everything else. That means that a county court would have to have a jury trial between 10 and 14 days after that eviction is filed. That is impracticable and almost impossible for a jury to get a jury pool there that quickly. So that was part of our efforts here was to say, when this happens and when this ultimately is found unconstitutional, we want to make this work for the county court. So that's part of-- that's part of the process and procedure we were trying to accommodate for.

**DeKAY:** OK, with the time spacing in between day one and final eviction, what could-- who incurs the costs of the lawyers, who incurs the costs of the court system? And also for the landlords, how are they reimbursed for the lost rent that they might be waiting on during that time frame?

**DUNGAN:** Well, so part of what we tried to work into the bill, like we said, was that if there's going to be a continuance after that initial jury trial, they can be made to pay rent to be held by the clerk of the county court, which could be distributed to the landlord whenever they see fit, whenever the judge sees fit. So during the pendency of that entire case, let's say this does get continued for a month or for whatever reason, and the tenant is made to pay that rent, the landlord can come to the judge and say, I need that money to be made whole, and the judge could order that money be distributed to the landlord. So it's ultimately up to judicial discretion. We wanted to leave as much judicial discretion there as possible to make sure people are being made whole. Currently, like I said, attorneys fees are, are given to whichever side may win an eviction notice if the other person is found to have violated the lease or the contract voluntarily. So if you willfully violated your lease, you can be awarded attorney fees at that hearing. And right now, a lot of times, just to be honest with you, tenants don't have lawyers and the landlords do have attorneys. Many of my friends are attorneys who work with landlords. So--

**KELLY:** One minute.



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**DUNGAN:** Thank you, Mr. President. --we talk a lot about this. And so, again, what we're trying to do is ensure that they do get made whole, both the attorneys and the landlords, by affording them those fees.

**DeKAY:** OK. Thank you. I yield back the rest of my time. Thank you.

**KELLY:** Thank you, Senator DeKay. Senator Slama, you're recognized to speak. And this is your last time on the amendment.

**SLAMA:** Well, thank you, Mr. President. So I did give Senator Dungan my word that if anything came up during the day, I'd give them a heads up and let some-- let him know. If we were to white copy LB175, just LB1115 with the changes that Senator Dover wants, I'll pull off on the filibuster. And Senator Wayne has the details on this, so like preview of coming events. But until that happens and we do a substitute, I'm just not going to be on board with ending the filibuster. But I am grateful that Senator Wayne took some time to talk about the procedure and process and kind of pulled back the curtain. I think that is one of the most valuable parts of filibusters is not only the people of Nebraska get a front row seat to the procedure and the process, but we also get to talk about it. And I want to give-- and I almost never do this-- a positive shout-out to somebody in the press. So Zach Wendling, who is now with the Nebraska Examiner and he's under the balcony, and he's probably terrified at what I'm about to say next. Don't worry. It's good. He had this really interesting tweet a couple of days ago that I wanted to point out. So he, God bless him, and if you're a page up here and you like the thought crosses your mind to do a project like this, for the love of God, don't do it. But he sat down and tracked all of the motions that were made last year and tweeted out who made the most and what the numbers were. And that was his college of journalism project for-- got like a semester grade. Bless him. It's actually really handy information, and it plays into something that I think it's important for, not just this body to know, but the people of Nebraska. So out of 1,160 motions that were made last year, Senator Cavanaugh, Machaela, made 437 of them; Senator Hunt made 359; Senator Conrad made 128; I made 41-- I mean, kind of rookie numbers-- and then kind of in the tail end of things, Senators Linehan and Clements were tied with 17 motions apiece. And I say that not because I'm encouraging people to make more motions or slow things down. I do appreciate being able to slow things down today because we haven't had many filibusters. They're a great time for other work to go on behind the scenes, like certain tax packages to be negotiated, certain Christmas tree bills to come into being. But Senator John Cavanaugh was running a card. And I do appreciate that, because we

normally see the women senators doing all the work when it comes to filibusters like this. This is a trend that's happened more since I've been here and Senator Linehan and that class has been here because I think we have some really outstanding, hardworking women on the floor. But here's the deal. We're all getting out of here in the next few years. You guys or girls are going to have to pick it up when it comes to filibusters, making motions, running cards. It's an-- it's an art. It's not a science. But just to kind of prepare everyone for that, I am going to walk through if we don't get the white copy on LB175 and I don't pull off on this filibuster, which I'll probably do after lunch. And just to give everyone a heads up, I am going to take time on LB62 as well. If we do get beyond that, I want to give fair warning to Senator Cavanaugh.

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. The order in which I'm going to file motions is you can find it, Rule 7(C), Section 3. So page 49 of your Rule Books, the precedence of motions, which I think is important if you're trying to build up for time. I'll file a reconsider on the vote on the AM. And then after that, once that's handled, I'll file to recommit and then to bracket it, and then reconsider on all of those votes. So it's a really easy way to take time and not have to ask people to help you out. Because you will find, if you're doing this right, that you're doing filibusters on your own. And if you don't need to ask for help, the better. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator von Gillern, you're recognized to speak.

**VON GILLERN:** Thank you, Mr. President. Caught me off guard. Senator Dungan had-- I had prepped him to ask him about the eviction process. And, and then Senator DeKay asked about that and added some clarity to that. One of the things that I don't think I heard come up in that was the, the, costs related to that. And I-- and maybe, I'm sorry, we were just Execing. So if that was said and I missed it, my apologies. The costs related to that, it sounds like the-- under your bill, if the jury trial moves forward, the judge would have the ability to assign legal expenses to either side. And that would be a way to maybe penalize bad actors that have a consistently bad record. Is that the case? Excuse me, would Senator Dungan yield to a question?

**KELLY:** Senator Dungan, would you yield to some questions?

**DUNGAN:** Yes. That's easier than me just nodding at you while you're talking.

**von GILLERN:** Thank you. Yeah. Nodding doesn't make it on the record I understand.

**DUNGAN:** Correct.

**von GILLERN:** Thank you. So my question, I think you heard my question, what happens with the costs?

**DUNGAN:** So the costs-- under my bill, you're asking what happens with the costs that are being attributed. So there's 2 separate things we're kind of talking about here. There's the attorneys fees, which would be ordered at the end of the case, the way that any civil action normally is. And that's just normal process and procedure. Like I said, there's already the ability for that to happen. But our bill will clarify that both parties can get attorneys fees at the end of the case. The other cost aspect is the rent. And our bill specifically says that if it is continued for a jury trial past that first jury setting, that rent can be collected by the clerk of the county court and then ultimately distributed to the landlord whenever they see fit. So it won't be just at the end of the case. If the landlord-- let's pretend in some hypothetical situation, which I don't think would happen, this jury trial gets dragged out for months. In the event that it got dragged out for months, and they're collecting rent along the way, and the landlord comes to the judge and says, hey, I need that in my pocket because I just own 2 properties and this is my living, the judge would have the ability to order that money disbursed to the landlord. And so we specifically left it open in that way to not say at the end of the case, because we wanted to make sure they could be made whole along the way. So the attorneys fees would come at the end of the case, the way that any civil matter would, but the collection of the rent would be collected as it went along and then ultimately distributed pursuant to however the court saw fit.

**von GILLERN:** OK. Thank you. I see Senator John Cavanaugh waving at me, walking through the building. Would Senator John Cavanaugh yield to a question?

**KELLY:** Senator Cavanaugh, would you yield to some questions?

**J. CAVANAUGH:** Just one, though. Yes.

**von GILLERN:** Just one. I'll make it a long question. So, Senator Dungan talked about the costs incurred and so on, and it sounds like you've got a history of working through this, through volunteer through the bar association and so on. So you're probably very well qualified to answer this. What, what does a typical settlement look like? And I'll just pick a round number. If, if \$1,000 in rent was owed and claimed for by a landlord, what does a typical settlement look like? Is there some ratio of that that typically is repaid or is the full amount assessed? And then also, since you only allowed me one question, the-- what are the odds of collecting that once a judgment has been rendered?

**J. CAVANAUGH:** Compound question. So I don't know the odds once a judgment is rendered. I guess so your compound question I'll answer in a couple parts. So I-- a negotiated settlement would be where we would come in. You have somebody agree and say we're going to pay X amount to be able to stay another month and to not execute the eviction. In that case, you would generally pay-- they would pay the money upfront. And a lot of the way that has been worked out is community groups like MACCH, Metro Area Continuum of Care, who kind of facilitated the ARPA funds that we had in Douglas County to help, you know, keep people in emergency-- emergency rental assistance money.

**KELLY:** One minute.

**J. CAVANAUGH:** And so they would basically agree to pay the money, the landlord would agree to let the person stay. And so they would get all of whatever the agreed upon money is, and whether that's all of the back rent, plus rent for a month going forward, they would get all of that. When you have an eviction that's executed and they order a restitution of premises, and then they order a judgment against the person for fees, you got to go to collections court and try and collect it. And it's like getting blood from a stone sort of situation.

**von GILLERN:** Yeah. Been there before. Thank you. So 2, 2 quick questions before I run out of time I want the, the body to consider. And that is what happens when one customer doesn't pay you what they owe you. And the response to that is you overcharge your other customers. So other tenants are paying the price for bad actors. And that's unfortunately the case in many different scenarios. If Senator-- I'm not going to ask Senator Wayne to yield to a question because I'm out of time. But we had some conversation about the current delay for jury trial in Douglas County--

**KELLY:** That's your time.

**von GILLERN:** --that if someone would like to comment about that, I would appreciate that. Thank you, Mr. President.

**KELLY:** Thank you, Senator von Gillern. Senator Vargas, you're recognized to speak.

**VARGAS:** Thank you very much. I rise in support of LB175, the amendment, more importantly, the underlying new amendments and the work that's going to be done between General and Select. The reason why I'm standing in support of this is, you know, I've worked on different issues related to landlord-tenant laws. The way that I'm looking at this is we are creating a process by which individuals can petition the court. There's not a guarantee. We may be enshrining or putting in statutory the right to be able to. But the number of hoops that a tenant would still have to jump through to be able to petition the trial court to seal records of a proceeding, especially under very specific, specific circumstances is still very, very narrow. We're making people jump through hoops on purpose. This is about creating some level of equity in the system. It's not completely equal on either side. And at times, we're passing this legislation to address some of the inequities, right? In this instance, we've seen a lot more eviction proceedings. We've seen many of them that have been dismissed in certain cases. We're seeing that have an effect on tenants' ability to be able to be in a safe and healthy housing. And this is creating a process to make sure that that is one less reason for a tenant not being able to be in a home. I want you to remember that what we're trying to do is make sure people are in our workforce. That's, that's the end game here. So if somebody is trying to get into the workforce, I want you to imagine what it looks like when somebody is not able to have safe and healthy housing for themselves, their families and their kids. How possible it is for them to step into any of the open positions that we currently have in many different industries if they're not able to actually have safe and healthy housing? This is not guaranteeing this. This is still providing a process still within the court system, a petition, and is not guaranteed in every circumstance. This is the reason why I support it. It's actually pretty sound in terms of both the intent and the continued work that Senator Wayne and his committee are working on. And I appreciate Senator Dungan. Because at the end of the day, we should be looking at creating the processes for the court system to be able to take these up. That's what this is doing. And removing an unnecessary, sometimes a biased standard that will make it more difficult for individuals to

be able to stay in housing. As we've talked about just recently, we're trying to get more people into the workforce, off unemployment and make sure that they are taxpayers actually contributing. We're trying to remove these kind of barriers to make sure that more individuals are not making it harder on them. So I do support this. I know there's still cleanup amendments and negotiations that are happening. But it wouldn't be the first time that we, we sort of entrust the Chair and the introducer to do this work between General and Select. I support that. It also saves us some unnecessary time. And I appreciate everybody that's been engaged in this conversation so far. But I stand in continued support of LB175, the underlying work that's been done and that is still being done, and the need and the necessity to be able to pass these current amendments, AM2754. Again, my past work, I've worked on landlord-tenant legislation, trying to create processes with fair and equitable standards to make sure that we are not putting more people in the street, more importantly, not making it harder for people to get into other housing options, so that they can be able to work and provide for themselves and their families.

**KELLY:** One minute.

**VARGAS:** With that, I want to thank you. And I ask for your support on LB175 and the underlying amendments and the continued work that's going to be happening between General and Select. Thank you.

**KELLY:** Thank you, Senator Vargas. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. I apologize for the delay. Colleagues, I am still talking with a number of people and trying to work a few things out. But I want to talk a little bit more about-- I guess we could take a step back and look at this from sort of a logistical perspective. I think people are still confused about what is on the board. So AM2754, the one that says Wayne up there, the bottom amendment, that is what should be the committee amendment. So when we are voting on the amendment, the committee amendment that came out 8-0, that is the Wayne amendment that we're voting on. There are not a bunch of sort of bizarre changes that have happened willy-nilly. What it does is it is combining portions of LB1115 into LB175. The modifications that have been made on LB1115 as it is being incorporated into LB175 are small changes that we have made to accommodate concerns from the interested parties. Those interested parties have been judges, the courts, attorneys, landlords' representatives, realtors and tenant folk that we've gotten together

with and met with to make sure this actually works. So I understand that this is slightly confusing, and I understand that there's a lot of things on the board, and I understand that this has gotten a little bit complicated. But I just want to make sure that we are, in fact, talking about the same thing. AM2754 filed by Senator Wayne is essentially what the committee amendment should be. And it also is 2 bills, both of which came out 8-0. So I want to highlight that because I think a lot of people have just said, oh, I don't even know what that amendment is. I don't know what it does. I haven't had a chance to read it yet. Let me explain that in a little bit more detail. LB1115 was creating the process and procedure for the right to the jury trial, which ultimately I believe is going to be a thing we need to have. LB175 is providing that clean slate relief only for individuals who were never evicted. So if at any point in time an individual has been properly evicted or had an eviction notice or an eviction action perfected and ultimately adjudicated or completed, then that person cannot come back and get this 3-year lookback. I know Senator Kauth at one point in time said she was concerned about this 3-year lookback where they could come back and ask for it to essentially be expunged. That has been taken out. We have also made it very clear that we are continuing to be willing to work on these things. And I think Senator Bosn did a very good job of articulating the importance of why we need this clean slate relief. I also want to reiterate something that I said in my opening, which is that we currently, as a state, already do this for criminal charges. If you have been charged with a crime and ultimately had that charge dismissed or you were found not guilty, your record is sealed upon that background check. So this Legislature has already agreed that that is a thing that we should do. The language in LB175 and the effort behind LB175 is to do the same thing that we already do with criminal charges. If you've not actually been evicted, then you shouldn't have that on your record. Now a couple points of clarity. In the event that somebody gets an eviction, let's say notice and it's set for a hearing and that person just doesn't show up, it still goes forward. There is still an eviction action, and that landlord can complete the eviction and then get the writ and ultimately evict the person.

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. So that would still go on the record. So if somebody just doesn't show up, all you have to do is follow through the action and then that person would still have that eviction. In addition to that, under this structure, if you want to

ensure that somebody has that eviction on their record, you can continue to go through with the action even if they don't show up, because it is up to you, the landlord, to follow through with that and many will. And then that would be on the record. And then you can make sure that that-- that's there for the future. In addition to that, there's been a lot of concern about whether or not landlords can do background checks or contact other past landlords. Absolutely you can. You can request references. You can call those references. You can say, what were they like as a tenant? And that person can say, they smashed all my windows. They did X, Y and Z. They were a terrible tenant. That is allowed under the statute. So the idea that landlords would not have any information about their tenants as they're applying or potential tenants is incorrect. And I want to make sure that that is clear on the record.

**KELLY:** That's your time, Senator.

**DUNGAN:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator DeBoer, you're recognized to speak.

**DeBOER:** Thank you, Mr. President. Well, colleagues, I appreciate the conversation that we're having. I think we are, in fact, trying to really understand each other and get to the bottom of the concerns here and things like that. So I would like to continue this conversation, and I think that Senator Dungan is making some valid points. So I will yield him the remainder of my time.

**KELLY:** Thank you, Senator DeBoer. Senator Dungan, you have 4 minutes, 30 seconds.

**DUNGAN:** Thank you, Mr. President. Thank you, Senator DeBoer. Those who know me know that I can go on and on a little bit. And so I apologize if I'm talking too much about these things, but I think they are noteworthy and important. And I want to make sure we make these points clear on the record. And I really do hope my colleagues are listening. But I also want to make sure that these things are clear moving forward. In the event, which I do believe will happen, that the Supreme Court does find our current landlord-tenant statute unconstitutional, if this Legislature fails to act, I want it to be very clear that there was some warning. So, again, I have practiced law for some time. I know many others in this room, some others in this room have, maybe not as many people in here are lawyers as other



Legislatures, but there are some. And I've spoken with many other lawyers as well. It is rare, and I mean that literally, it is very rare that the Supreme Court of Nebraska issues a concurring Opinion of this matter. This is not a thing we see frequently. This is not a thing that happens often. And for them to issue it and have other justices join in with it is something that we should take note of. It is ended-- the last thing that is said in this Opinion is: The state of affairs may be of interest to the Legislature. The Legislature may wish to itself consider the constitutionality of and reassess the NURLTA's bench trial provision. So I think that that is really, really noteworthy. This is not some cockamamie scheme that we came up with to try to figure out how we can insert jury trials into this. The issue, too, is that we actually allowed jury trials until 1995. According to University of Nebraska College of Law journals, as I said earlier, we are one of 8, 8 states that specifically prohibit the right to jury in these kind of eviction proceedings. I think there are 22 other states that specifically allow for it, and a few that are silent, but their case law says they actually would probably allow it. So we're in the-- we're not just in a slight minority here. We're in the vast minority. And so to act as though this is going to be the end of the world or to act as though this is going to overly burden our courts in such a manner or a way that they would not be able to accommodate it, I just-- I think is genuinely incorrect. Having practiced in county court and in district court, I will tell you there are a number of things, multitudes of things that are set for jury trial. When I worked as a public defender, my caseload at certain times was about 180 to 190 cases. I would have 40 things set on a jury list for a jury term. I would have 40 cases set. And I will tell you that the vast majority of times all of them went away. They were settled. They were worked out. We figured out a deal. And so the idea that suddenly there's going to be this massive flood of jury trials in our courts I think is just incorrect. Do I think there will be an uptick in the amount of things that are set for jury trial? Absolutely. But that already happens. We already have a number of things that are set for contested hearings in our landlord-tenant courts. So there may be an uptick of things that are set for a jury trial. But do I think there's actually going to be a flood of litigation where there's these long, drawn out jury trials? I do not. Because think about this, colleagues. Think about the person who's actually having a jury trial on this kind of issue. We're talking about somebody who probably has the money to--

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. --has the money to pay rent, is saying, I want to stay here and perhaps there's some issue of fact over a violation of a separate lease provision. I really don't think you're going to see a bunch of jury trials where people are saying, I can't pay rent, but please, please, please find that I can stay here. That's just not going to happen. And so we're talking about a very small amount of proceedings. We're talking about a very small amount of litigants. And at the end of the day, as Senator Bosn I think pointed out in a very articulate way, this is not whether we like it or not. Right? This is-- this is the constitution, and we will make it work. Our courts are very versatile, and they will find a way to make these things work. And in fact, I've worked very closely with a number of judges to figure out the logistics of how this would operate. And I'm confident that we've provided enough leeway to actually permit them to effectuate this in a way that would make sense. So, colleagues, again, please know what you're voting for. AM2754 is the committee amendment, and I'm asking for your green vote on that as well as the other AMs and LB175. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Machaela Cavanaugh, you're recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. Senator-- Mr. President. Good morning, colleagues. I rise in support of AM2754, AM2504 and LB175. I did want to comment and I'm going to yield my time, but I did want to comment on, on a comment that Senator von Gillern made about overcharging. And it, it brought up an, an issue that I think is really important and that is with our childcares. He's exactly right. What we do when we have childcare subsidy kids and they are only-- childcares are only reimbursed for attendance, not enrollment, that means if a kid is sick, the childcare does not get reimbursed for that day if it is a childcare subsidy client. So that means that the only way that the childcare can make up for that lost revenue-- also, they get paid less per child for childcare subsidies-- but the only way they can make up for lost revenue is to charge more for the full-paying families. And so that is an offset. And it's something that we as a Legislature could address. I think Senator Day has a bill that would close that loophole and pay for enrollment for childcare subsidies, not just attendance. So I just thought that that was an interesting fact that I wanted to bring up, because I love talking about childcare. And I, if Senator Slama would like, I can yield her my time. Yes. I will yield my time to Senator Slama.

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**KELLY:** Thank you, Senator Cavanaugh. Senator Slama, you have 3 minutes, 20 seconds.

**SLAMA:** Thank you, Mr. President. Thank you, Senator Cavanaugh. I did just want to reset because I don't know that I'll be back on the mic before we break for lunch. But just reset where we're at. We are currently in a filibuster on LB175. And just transparency to everybody on the floor, everyone at home, if somebody wants to pick up this filibuster after-- if, if what I'm asking for is met, that's totally fine. I don't think that they will. But my condition on stopping the filibuster is bringing a white copy, which is replacement language, on LB175 that just has the corrected language that Senator Dover is asking for to AM2754, which is LB1115. So the realtors have brought correction language to LB1115. What I'm asking for is for LB175 to be replaced with LB1115 so nothing of LB175 would remain. If that's met, I'm not saying I'd be a yes. But I would back off and not take it 8 hours. But I am grateful for the chance to negotiate and talk about this. And Nebraskans get to see how the sausage gets made in a lot of this. But if we are really here wanting to clarify the Supreme Court's, I think very narrow Opinion, that would be entirely severable without much issue. I'm OK with doing that and moving forward that way. But otherwise, when it comes to the clean slate language, I'm not on board. I will take it 8 hours. I believe sunlight is the best sanitizer. And if landlords can't ask the necessary questions, we as a government are just forcing landlords to subsidize bad behavior by tenants. And I was going to say-- I have lost my train of thought. I am a little bit sleep deprived. Win did not sleep well last night. But we are doing our best. So with that, thank you, Mr. President. I just wanted to give everybody an update as to where we are at and where we are going to head this afternoon hopefully.

**KELLY:** Thank you, Senator Slama. Senator McDonnell, you're recognized to speak.

**McDONNELL:** Thank you, Mr. President. I rise in favor of LB175, AM2504 and AM2754. And I yield the remainder of my time to Senator Dungan.

**KELLY:** Senator Dungan, you have 4 minutes, 45 seconds.

**DUNGAN:** Thank you, Mr. President. Thank you, Senator McDonnell. For those who are wondering why we keep talking as well when Senator Slama keeps talking, I'm just going to be totally transparent for those watching at home. We're trying to get to lunch. I think we got some modifications that could be made. I think that we're going to continue

to talk with other individual people. So we are just trying to make sure that we can get till a break here, because I do want to talk with Senator Slama about things that she may suggest and possible other modifications that can be made. I think that reasonable minds can disagree about what we should do, but I certainly think that compromise is something we all work towards. So I am happy to try to speak with Senator Slama and others about what they would-- what would be palatable, what wouldn't be palatable modifications that we can make. I think I've been very candid as well about the modifications that have already been made. And so I continue to be open to the possibility of working with those who oppose LB175, because I do think there's a world in which we can find an agreement. So I want to just make that very clear, that I am open to the possibility of coming to some consensus here. And I certainly don't think we just have to keep banging our head against a wall. And I certainly don't want to make Senator Slama talk for 8 hours if she doesn't want to. So I'm trying to be as helpful as possible here. Colleagues, I want to again reiterate the importance of clean slate. So the last thing that we're trying to do here is trying to put any of our landlords in a bad position where they don't have information that they need in order to make an appropriate decision about whether or not they should lease a property to somebody else. I have friends who are landlords. I have friends who own buildings. As I said earlier on the mic, I have friends who are attorneys for landlords. This is not about punishing one side or the other. I think we can all agree again that 95, if not more, percent of actors on the tenant side of things are good, on the landlord side of things are good, and that we do have bad actors in those margins. Senator Linehan made a very good point earlier that we do have these bad actors from time to time. But we have to ensure we are not perpetuating a system that punishes tenants just because of the bad actions of those bad actors. In addition to that, I think there are circumstances, again, in which an eviction action can be filed almost automatically, and it's not even somebody being bad. It may not even be malicious. But having that automatic filing upon a day late on rent or upon 1 day or 2 days late on rent could really, really, really ruin a tenant's future ability to rent any kind of unit. If you fail to pay rent and you rent out to some massive company or corporation that has essentially an automatic system in place, or maybe attorneys on, on file who file these eviction notices en masse, it's entirely possible that you could have that eviction filed and then ultimately satisfy any of the needs or concerns of that landlord company or that that property management company, and then have them dismiss it. And in that circumstance, it should not follow you into

perpetuity. There is no reason to punish somebody if there's not actually been an eviction that has ultimately been effectuated. Now, I agree, if somebody is a bad actor and they've been properly evicted, it makes sense to be able to have that information provided to future landlords. But that's not the population that we're talking about here, and we have to legislate based on the bigger picture. We can't legislate just based on a couple of bad actors on either side of this entire issue. In addition to that and I know I said this pretty quickly at the end of my last time on the mic, so I want to make sure I reiterate it here, you are still allowed as a landlord to inquire about the past behaviors of a tenant. I know when I rented for quite some time when I was in college--

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. --college and law school, on every single application I filled out, they asked for references. They were like, give us the number and the address and the name of the last either property management company or landlord that you worked with. And I had to list that, and they would ultimately contact those people because I often knew my prior landlord and they'd say, hey, I got a call from so-and-so's company and they were asking about you as a tenant. That is still allowed. Landlords are 100% able to call and say, hey, what were they like as a tenant? And if they say they were bad actors, they didn't pay rent on time, they were a problem, they caused issues then that future landlord or potential next landlord can take that into consideration. So we in no way, shape or form are limiting the ability of individuals to make an informed decision. We are simply trying to ensure that other people who are unintentionally late on rent, or other things like that, don't have this haunt them for the rest of their life, which again, is exactly what we do with criminal convictions that have been dismissed. So colleagues, again, I would encourage your yes vote on

**KELLY:** That's your time.

**DUNGAN:** --the amendment. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Fredrickson, you're recognized to speak.

**FREDRICKSON:** Thank you, Mr. President. Good morning, almost afternoon, colleagues. I rise today in continued support of the committee amendments. Well, it's actually Senator Wayne's amendment, but I

understand from what Senator Dungan was saying earlier, it's actually the committee amendment, as well as the underlying Judiciary amendment and the legislative bill itself. I've been listening closely to debate. I am, frankly, as Senator Dungan mentioned earlier, but as I understand, there are some things being worked out with some folks on this bill that hopefully we can get some more consensus around. So try and take a little bit of time here. I do want to take note of something Senator Slama said earlier, which I thought was very-- a very astute observation. Senator Slama had mentioned that the primary filibusters-- filibusterers in the Legislature are the women of the body. And I had the distinct honor of being sat kind of in between, I think 2 of the primary filibusterers on both sides of the spectrum, Senator Slama to the back left, and Senator Machaela Cavanaugh to the right. So there's a lot of focus on this area of the body and I always enjoy their, their conversation. So with that, I will yield the remainder of my time to Senator Slama.

**KELLY:** Thank you, Senator. Senator Slama, you have 3 minutes, 40 seconds.

**SLAMA:** Gosh. Senator Fredrickson, you are a gem. And I do have, even though my Twitter mentions may not agree, I do have empathy. And I empathize with you being in between Senator Cavanaugh and Senator DeBoer and I. The only thing I think we are missing here is perhaps if Senator Hunt would like to sit where maybe Senator Dorn is and if Senator Lowe, because he's one of the best filibusterers in this place, because even if you do get angry at something he says, he says it in such a soothing way that it's really difficult to get really mad at him. But I am really thankful that you did yield me time, especially without giving me a heads up, because that spark of adrenaline I had as I was talking to Senator Bostelman about the ongoing negotiations reminded me about what I forgot to say. And it is a very well deserved thank you. So these filibusters don't just happen. We don't just get up here and-- well, sometimes we do and talk about our feelings for 8 hours. I don't talk about my feelings. I like to come at this with facts. And I have in any of these filibusters. Senator Dungan said he didn't want to make me talk for 8 hours if I didn't want to. But coming into this, I am always prepared. And I have this binder of probably a few days' worth of things to talk about on LB175. And this is thanks to an awesome staff that I have. I am so grateful for their work. And I had failed to give them the proper shout-out for helping me get prepared for today and preparing what I call the "filibinder" so filibuster binder. So I just wanted to thank them. I've been really blessed to have really awesome staffs, and I'm

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kind of waxing on this because I am looking back at some of the awesome staff members I have had throughout the years on my way out. I wouldn't be able to be half the senator I am without them, for better or for worse. So with that, thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Ibach has some guests in the north balcony, 40 fourth graders from Pershing Elementary in Lexington. Please stand and be recognized by your Nebraska Legislature. Senator DeBoer, you're recognized to speak and this is your third time on the amendment.

**DeBOER:** Thank you, Mr. President. Colleagues, there is one thing I, I did want to talk about on the underlying bill, LB175, for a couple of reasons. One, just as a kind of a public notice sort of conversation. And second, because of this bill itself. So one of the things that happens with evictions is that landlords, of course, understandably, of course, want to-- if they're going to have to do an eviction, they want to get the process started as quickly as possible so that there is as little time between when they start the process and when an eviction is actually in place. Understandable. So what happens is when someone is late on rent, even if it's only a couple of days, they will sometimes as a precautionary measure or to try to get that period of time shortened between when they file and when the, the, the case is heard, they might file it within those first couple of days. They might file it within the first couple of days. They might file it in the week. They have, you know, the 7 days and then they can. And here's the situation that, that happens kind of frequently, which is that they file it and the person says, oh, no, you know, I have the money. You know, something happened this month. I just needed a little extra time. They file it, but then maybe 8, 10, 11 days late, they get their money. And that person may have been a model tenant for the rest of the time. There was a car accident. There was a, who knows? There was a sickness. There was whatever. Things happen in people's lives. I don't fault the landlord for filing the eviction. They have to. That's what they have to do in order to try and protect themselves. A lot of times smaller landlords will try to work something out with their tenant. That's true. But the bigger, bigger landlords will sometimes, just as a matter of course, do this after the 7 days. And if it turns out that, you know, actually, they were just-- it was a week or 2 they needed, they got it taken care of, that eviction filing right now will still appear, even though everything got dismissed, taken care of, all of that. Now, Senator Slama rightly pointed out that it'll say dismissed next to it if you go to the right things. But if I'm a landlord and I'm looking at that, I don't see the context around that

it was only 7 days. It was only 8 days. It was only 9 days. I don't see that context. And so I may say, forget it. Anybody who's even had one filed against them, that's it. This is the situation we're trying to deal with here. We're trying to deal with the population of people in which something went wrong one time in their life for a couple of weeks. They had the case dismissed. They paid all the money. The landlord got the money. Maybe the landlord got the money with, with a, a late fee. Just trying to think of the word. But now they have this on their record. What we're saying is that we want to have the ability to get rid of that off the record. And maybe in these discussions that happened later, maybe we should talk about how we can, can make that work in a way that everybody's happy with. But I think you can all see that these are real circumstances that people find themselves in. And when that happens--

**KELLY:** One minute.

**DeBOER:** --are you now just going to be lumped with someone who got evicted and it's a whole bad thing, right? The cooking meth person is very different than the I-was-2-weeks-late person and I paid it all. So the one-size-fits-all right now it just isn't working. The we're going to have this appear on your record isn't working. So I would say hear ye, hear ye, landlords of Nebraska, if this does not pass, I would ask you look at dismissed for what it is, which is that things got taken care of. This is not a blemish on someone's record. It shouldn't be. We should seal these. That's why I prioritized LB175. Thank you, Mr. President.

**KELLY:** Thank you, Senator DeBoer. Senator Jacobson, you're recognized to speak.

**JACOBSON:** Thank you, Mr. President. As I continue to listen to this, I keep thinking about the kid who went to school and said the dog ate my homework. I have a hard time believing that a landlord is going to evict somebody for being one day late on their rent. I have a hard time believing they're going to evict them for being 7 days late on their rent. If they're a model tenant, why would you evict them? It's a business proposition. Nobody wants to evict a model tenant, but you can't evict a bad tenant fast enough if they're cooking meth, if they've got vicious dogs, if they're tearing up the property, a whole list of things out there. We just seem to be chipping away at landlord rights and forgetting about the fact that we're capitalists. People that invest in these properties are investing in these properties as a business. Many of them are borrowing money. I think about during the



pandemic, I had an individual who owned a-- 2, 8-plexes here in Lincoln. During COVID, remember, there was a moratorium on evictions. So what happened? People who could otherwise pay, what did they do? Quit paying. This individual had 2 tenants that quit paying. We had a mortgage on the property. He was getting a little panic. He had another job, good job, and fortunately could pick up the shortfall. But he was sitting there thinking, what happens if everybody in the building quits paying their rent? Now who's getting evicted? Now the owner of the property is losing his property because he's not making his payments. And oh, by the way, the big bad bank that's taking the property away, we've got regulators that we're dealing with that are saying, wait a minute, you've got this borrower here now that's 90 days past due, now you've got a problem loan. Now we've got to classify it. You got to put money in your loan loss reserve if you're going to continue to keep this on your books as a good asset. And if you don't do that, you're going to have to ultimately write off the asset if you don't go foreclose and get the money. There's a chain reaction here, folks, and there's a point here when we make a deal. It's like the student loan forgiveness. What's going on? You signed agreement that said you're going to pay the money back. When you lease a property, you sign a lease that says, I will pay you on this date, and I've got this much grace period. So if you don't trust the mail, set up an ACH. Set up an auto debit, but make sure that payment gets there in time. I-- my frustration is we just chip away and chip away and chip away. And we talk about these one-offs that, well, they were just a couple of days late. Do those happen? I'm sure they do. But the lion's share don't. If I'm a ten-- if I'm a property owner, no matter how big I am, it's a lot of hassle to kick a tenant out, bring a new tenant in, work through the process of making those changes. Nobody wants to do that. They're going to look and as hard as they can to figure out a way to keep them in there. And now you're the next tenant. Now you're the next landlord, and this person's coming to you that had been evicted. And for whatever reason, the landlord backed off. They didn't do the eviction because the guy moved out and paid up. But you still got the problem. They still didn't pay. They still were a problem. But now the new-- the next guy is not going to see this. Those are some of the practical problems that are out there, concerns I continue to have with the bill.

**KELLY:** One minute.

**JACOBSON:** As I said before, I confirmed-- I committed to Senator Dungan that I would vote yes on General and I will. But I'm still unconvinced on Select. The only thing that's compelling me to vote

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this on Select is cleaning up any constitutional language, which I think is what Senator Slama is wanting to do with the changes that she's suggesting. So I'm anxious to see what happens here afterwards. I might also just mention that I'm not sure why we're requiring a judge to tell the person what their rights are. It seems to me that's what the attorney's job is. And I think we're introducing something new in the criminal justice system that is unnecessary and it's not being done elsewhere in the criminal code. So I'm concerned about that language as well. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Mr. Clerk, for items.

**CLERK:** Thank you, Mr. President. Your Committee on Judiciary, chaired by Senator Wayne, reports LB934 to General File with committee amendments. Additionally, amendment to be printed from Senator Bosn to LB137. Notice that the Executive Board will meet upon recess in Room 2102 for an Executive Session; Exec Board, 2102 upon noon recess. Additionally, the Agriculture Committee will be meeting in Room 2022 for an Executive Session at 1:30 p.m.; Agriculture Committee, 1:30 p.m., 2022 Exec Session. Finally, Mr. President, priority motion. Senator Cavanaugh, Machaela Cavanaugh would move to recess the body until 1:30 p.m.

**KELLY:** Members, you've heard the motion to recess. All those in favor say aye. Those opposed, nay. We are in recess.

[RECESS]

**KELLY:** Good afternoon, ladies and gentlemen. Welcome to the George W. Norris Legislative Chamber. The afternoon session is about to reconvene. Senators, please record your presence. Roll call. Mr. Clerk, please record.

**CLERK:** There's a quorum present, Mr. President.

**KELLY:** Thank you. Any items for the record?

**CLERK:** I do, Mr. President. Your Committee on Revenue, Chaired by Senator Linehan, reports LB1047 and LB1134 to General File, LB1134 having committee amendments. Additionally, amendment to be printed from Senator Conrad to LB287. And an approved reference report from the Executive-- from the Reference Committee concerning several gubernatorial appointments. That's all I have at this time, Mr. President.

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**KELLY:** Thank you, Mr. Clerk. Please proceed to the first item on the afternoon agenda.

**CLERK:** Mr. President, LB175. When the Legislature left the bill this morning, pending was the bill itself, a committee amendment, and an amendment to the committee amendment from Senator Wayne.

**KELLY:** Returning to the queue. Senator Conrad, you're recognized to speak.

**CONRAD:** Thank you, Mr. President. I yield my time to Senator Dungan if he so desires.

**KELLY:** Senator Dungan, you have 4 minutes, 50 seconds.

**DUNGAN:** Thank you, Mr. President. Good afternoon, colleagues. Welcome back. As we last were here on as the Legislature turns, we were having conversations regarding LB175 and the many amendments on the board. So I want to be very clear. I am going to take some time and we're going to talk a little bit more here. And I see there's some other people in the queue, because we did reach an agreement over the-- over the lunch hour, at least, with some of the interested parties. I need to talk with Senator Slama about it. I'm waiting for some language, but there is a version of the bill that we are now getting an amendment wrapped up to that I've been told the landlords support. I've been told that, I believe, the realtors support it. I'm still waiting on one other person to have a conversation with. But we are waiting on that amendment, and once I get eyes on that, I'll have a conversation with individuals about that. But we need a little bit more time. So just letting everyone know that is why we are going to be stretching a little bit. While we are here, I think it's important to talk a little bit about why this jury trial right is something that I believe is going to be inevitable. I don't want to just sit here and read the opinion, because I know that can be a little bit boring. No offense to Justice Papik, who wrote it. I'm not saying his writing is boring, but I'm not just going to sit here and read a legal opinion. But I do think it is important to talk about why he says, quote, I believe the bench trial provision may rest on constitutionally fragile ground. Colleagues, one of the most important parts of our Nebraska Constitution is Article I, Section 6, which says unequivocally, the right of a trial by jury shall remain inviolate. So you have a right to a trial by jury. He says, we've long understood this provision to preserve the right to a jury trial as it existed at common law and under statutes enforced when the Nebraska Constitution was adopted in

1875. So what that means is, if you had a right to a jury trial when the Nebraska Constitution was adopted in 1875, it would make sense that you have a right to a jury trial now. And in fact, you are constitutionally afforded that right. There's multiple cases that have said that time and time again. As a result, when a party contends that it's constitutionally entitled to a jury trial, what the court does to resolve whether that's right or not is they look at whether or not the action is equitable or legal in nature. Now, I'm not going to bore all of you with my sort of piecemeal explanation of the difference between an equitable action or a legal action. But a legal action, essentially, is one that results in an actual gain of damages, right? So like money, or property, or a thing. That is a legal action where the actual benefit you get is, is substantive in nature. An equitable action is slightly different. An equitable action is something that can be determined by looking at the facts and determining, for example, like who-- whose name would be on a contract, or, or things like that. So it's not that same kind of damages or receiving actual physical property. And what they specifically say in here is that the relief awarded if the landlord prevails is restitution of the premises. So in an eviction action, the actual relief that you are given is the restitution of the premises. You are getting physical control back over that property. Therefore, the court has found time and time again that an action for restitution of premises is a legal action and not an equitable action. He says in this opinion, just two years ago, we observed that an action for restitution of premises brought under the Nebraska Uniform Residential Landlord Tenant Act is an action at law. That's settled. That is-- that is settled law. That-- there's not any dispute, at least in Nebraska, about whether or not this restitution for premises is a legal or equitable action. So this isn't just Nebraska. There are many other courts that have concluded that similar actions by a landlord to evict a tenant and recover possession of real property are legal in nature, and thus are subject to a similar constitutional jury trial guarantee. The most notable of those the court outlines is the United States Supreme Court, in a case called *Pernell v. Southall Realty*, already made the determination that you have a constitutional right to a jury trial by virtue of the fact that an eviction action is legal in nature. So if the U.S. Supreme Court has decided that, why does it not pertain to us? That's a fun question. The answer is, in that case, the US Supreme Court was talking about a District of Columbia summary eviction statute, which was analyzing the Seventh Amendment. The Seventh Amendment, because it's actually federal land, doe-- was applying--

**KELLY:** One minute.

**DUNGAN:** --in D.C. Thank you, Mr. President. But it did not apply to states. So the U.S. Supreme Court has already reached the decision way back in the '70s, that these kind of actions are eq-- I'm sorry, legal in nature and therefore, have a jury trial guarantee. Bouncing off of that, there have been many other states that have made similar or almost identical analyses. I listed a few of those earlier, but I think it's important to note that, again, supreme courts in Alabama, Georgia, Maine, West Virginia and Florida have all reached that same opinion based off of that same analysis that the Supreme Court used. I will go ahead and stop there, as I'm sure that I'll talk more about this in a little bit, but I need to go check in with some people. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Machaela Cavanaugh, you're recognized to speak.

**M. CAVANAUGH:** Thank you, Mr. President. Good afternoon, colleagues. I hope you all had a good lunch break. So, as Senator Dungan stated, he is working on an amendment to come forward soon. So I thought I would just take this opportunity to share a little bit more with you all from the Intergenerational Poverty Task Force report that I started talking about yesterday. So this is page seven of the report, Minority Families in Poverty. In 2015, Nebraska had higher rates of minority families in poverty than the nation as a whole. A little over a quarter (25.3%) of Nebraska's African-American families with children under 18, were in poverty, compared to 21.6% of black families in the United States. The same pattern is reflected in the data for the state's Hispanic families. Almost a quarter (24.4%) of Nebraska's Hispanic families were in poverty, compared to 20.1% for the country as a whole. Asian families in the state fared even worse compared to the national levels. 22.1% of Asian families in the state living in poverty, compared to 8.7% nationally. Across the board, households headed by single women had higher rates of poverty than the national rates. The poverty rate for African American families headed by women in Nebraska, was 7.4% higher than the country as a whole. Hispanic families led by women had a poverty rate 8.6 higher. families headed by Asian women had rates over three times higher than the national rate. There's a figure, now employment. As reflected in Figure 3, in 2015, the majority of Nebraska families in poverty were headed by someone who was employed. About two thirds of both married couples and single families were headed by someone who worked full or part time. Almost 71% of households headed by single females worked full or part

time. I thought that these-- this information was, you know, apropos to the conversation today about housing, because what we're really talking about is affordable housing, secure housing, keeping families in their housing, finding the best way forward to ensure a fair and equitable housing policies. I think that there's a misunderstanding that there's an intention to harm landlords. But the reality is that we need to be doing more to ensure that families can stay in safe, secure, affordable housing. I, I know landlords, and I know of a landlord in Omaha who took on a client or a tenant who had been evicted. And it was sort of an emergency situation. And they, they took her in, and she was a single mother, and there were problems with the home that she was renting from them. And she didn't tell him about the problems because she was terrified that she was going to be evicted if she made too much trouble. And he told her, you, you really need to tell me when there's problems, I want to-- This is property I want to invest in, I want to keep it nice. So if the water heater goes out, or, or there's a broken window, or whatever it is, please let me know and I will take care of it. I promise I won't evict you. But she has been trained to think if I make a problem for my landlord, I'm going to get evicted. And this is something that we need to face, is a reality for a lot of single mothers. Specifically that they are concerned about getting evicted because they make too much trouble. And I call it good trouble.

**KELLY:** One minute.

**M. CAVANAUGH:** Good trouble, when you're a parent and you're trying to ensure that your child has a safe place to live, a warm place to live, that they don't have bedbugs and cockroaches and freezing rain coming in through a broken window and they have a hot shower. So I think that the-- that we kind of got off track today on focusing on the bad apples of tenants when the reality is we're trying to help single families, working families to stay in their home and be safe. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senators Ibach and Conrad would like to recognize some guests in the north balcony. Students, alumni, and supporters of the University of Nebraska here for I love N.U. day. Please stand and be recognized by your Nebraska Legislature. Senator Linehan, you're recognized to speak, and this is your third time on the amendment.

**LINEHAN:** Thank you, Mr. President. I-- I'm going to try not to sound like I'm lecturing. I'm going to try and sound not like grandma, but

I'm afraid it's going to sound a little like that. So we're about that time in session where we got a lot of work to do. And the only way we're going to get it done is if we all get along. Another thing that's the only way we're going to get it done, is you're going to have to trust your committees just a little bit. I am perplexed by this whole conversation. We do, I wish Senator Hunt was on the floor because I'm going to quote her. We did last year, how did she say it, rolled and stacked the committees. We did. We weren't secretive about it. And I'm saying we, it's the majority. But there's one committee, Judiciary. Chairman Wayne got to be Chair, but we made sure we had four conservative votes on that committee. Four conservatives. A prosecutor, even Senator Bosn. I feel bad for them because they're all in their early careers here. But they, they decided this was a good idea. And I'm very, very proud of them, because they have stuck to it. Because they actually know a lot more about this than any of the rest of us. But somehow we're not listening to them. It is-- it is not-- we're not saying landlords can't evict people. We're not saying that, you know, people ought to get free rent. We're trying to help a little bit on the edges, guys. A little on the edges. Here's some statistics for you. Through 2016 to 2019, there were 6,286 evictions. In 2022, there were 8,650. In '23, there were almost 11,000, 27% increase in one year. This is a problem, folks. And alls you have to do is read a newspaper. We have homeless tents in Omaha. We have places popping up. I drove by Westroads the other day. It was very clear to me in that corner at 96th and Dodge, where you can never see anything in there because it's all trees, and it's all leafed up. But there were piles of trash. People are living there. So that's not a problem we can solve, I'm not even saying nobody's got a bill to solve that. But we're, we're refusing to, like, tinker with the edges. It doesn't make any sense to me. So the main reason I'm talking though, is I do want to tell Senator DeKay, Senator Holdcroft, Senator Ibach, Senator Bosn. I have passed bills on this floor, I have lost by fili-- I have lost several times on a filibuster. But you don't give up about doing the right thing, and the things you know. And you're all coming back, and whatever happens with this, you'll have another swing at it. So hold your head up high and be proud of yourselves, because you know what you're doing. Thank you.

**KELLY:** Thank you, Senator Linehan. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President. Yes. Tough act to follow. And if it was appropriate to clap on the floor, I'd be clapping right now. Senator Linehan and I have, as she stated, she's lost some fights on

the floor. I've been on the side that won when she lost. And she's won some fights on the floor, and I've been on the side that she won and I lost. And-- but it should really tell you something when Senator Linehan and I are on the same side of an issue. This is-- this is a, a good bill. This is a good compromise. As she pointed out, the committee, committees this year are structured in a certain way, and particularly Judiciary is structured in a way that if something comes out of judiciary unanimous, it's probably been negotiated to within an inch of its life to solve a problem in the most narrow way possible. And that's what this bill does. And so you all know, and I'm-- actually, this is the first time, I think, I pushed my light on this bill, which is kind of funny. I was out counting. I talked to everybody, counting everybody's votes. If I didn't talk to you, it's because I couldn't find you. But I did ask-- answer a few questions about having volunteered in landlord-tenant court. I volunteered through the Volunteer Lawyers Project in Douglas County, had the opportunity to see how these courts work and how they don't work. And I've seen the-- what is happening with folks who didn't have representation before. And now people come to court when they know there's going to be representation. People are showing up more. You know, this is kind of evolved over the years where landlord-tenant court was-- many people just didn't show up because they didn't expect anything different to happen. And then we had some moneys available for emergency rental assistance, and which was a great win-win, because people got to stay in their apartments and landlords got to be made whole through getting paid back rents. And we helped people. And that was something we started doing during the pandemic because we discovered or-- we knew, but had not really considered, that stable, safe housing is a part of a quality health care system, really. And we know that people becoming unhoused in a one day turnaround leads to homelessness, leads to loss of employment, leads, leads to problems in our schools, leads to crime, leads to a whole lot of other problems and social ills that we hope to address by creating other structures to help people remain housed, but without putting or taking away the rights of property owners. And so that's what we've done on previous bills in this space, and that's the balance that's being struck here, is that we're helping this bill. Where are we? LB175, AM2504, AM2754. So AM2754 I think would be best described as the committee amendment, which is really the package of the bill, and it includes jury trial, which I know a right to jury trial, which Senator Dungan just sort of went through the federal constitutional implications of that. He's previously discussed the state, Supreme Court implications going forward and why this bill is kind of come to us at this point.



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**KELLY:** One minute.

**J. CAVANAUGH:** Thank you, Mr. President. And I, I was not, not on Judiciary, was not part of the negotiation of this, but I did-- was privy to some of the conversations about the jury trial negotiations. And I would tell you that Senator Dungan, and Senator DeBoer, who worked on this bill, have negotiated on this and made it less expansive than I probably would have personally done and-- but did find ways to make it work better. And there is a legitimate concern that if we don't solve the problem, a solution will be forced upon us. And I'll push my light again, because I haven't talked very much and I have more to say on that topic. But it's not a Chicken Little situation to say that there is a real possibility that we're gonna have to solve this problem. And so this is a opportunity to sol-- get out in front of it and solve the problem in a constructive, collaborative way before we have to scramble to solve the problem. And so I appreciate the work that Senator Dungan has done on this. I appreciate the work of the Judiciary--

**KELLY:** That's your time.

**J. CAVANAUGH:** --Committee on this. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Ibach has guests in the south balcony. Fourth graders from Pershing Elementary in Lexington. Please stand up and be recognized by the Nebraska Legislature. Senator Blood, you're recognized to speak.

**BLOOD:** Thank you, Mr. President. Fellow senators, friends all, I do support both the amendments and the underlying bill. As you heard earlier, the Judiciary Committee has more work to do on many, many things. And now I'm being called to go into Exec, but I would like to yield the rest of my time to Senator Dungan.

**KELLY:** Excuse me. Senator Dungan, will you yield to a question?

**BLOOD:** No, I'm yielding my time.

**KELLY:** Senator Dungan, you have 4 minutes, 25 seconds.

**DUNGAN:** Thank you, Mr. President. And thank you, Senator Blood. I appreciate your hard work. And as was already talked about, I know the Judiciary Committee has a lot going on right now. So thank you for your hard work on that committee. I want to take a second to genuinely thank everybody on the committee for working through these-- these are

not easy subjects. And even attorneys that I talked to who don't specialize in landlord-tenant law struggle to fully understand all of the things that we're, we're talking about here. And the problem is you're dealing with just so many different layers. It gets really complicated. And members of the Judiciary Committee, not everybody has a legal background. And I know it can be difficult to sort of grasp these. But I want to say thank you to all of the members of the committee for working through this. Senator Linehan is spot on, that, I think, trusting our committees is vital. I know the work that I do on the committees is trying my hardest to help craft packages and things that are-- the bills that come out in a way that makes sense, and we rely on committee statements. You know, we really do, genuinely, people watching at home, we do our best to review every piece of legislation that we have before us, but the sheer multitude of things that are on our desk make it difficult to see every single aspect of every single thing. So a committee statement is huge. And when we get a committee statement and we look at it and it says something came out 8-0, or 7-0, or 9-0, whatever, how many people are in your committee, what that means or that indicates to the rest of the body, or what it should indicate, I think genuinely, is that there's agreement. And especially with the Judiciary Committee, that is split down the proverbial aisle 4-4 when you're talking about people on different sides of different issues, when you see something in consensus, I think it is usually indicative of the fact that a lot of hard work has been done to get there. I won't walk you through all of the efforts that we went through with LB175 and the attached bill that we're-- well, the AM2754 is LB1115. But it was many, many, many months of work, and many, many, many meetings that happened between myself, my incredibly hard working staff, and a lot of the advocates on both sides of this issue, and the experts on both sides of this issue in an effort to find a way to craft legislation that was both achieving a certain goal, but was also workable. One of the things that I always think of as an attorney when I'm here is when I read a piece of legislation, I think, how does this actually work or operate? And when you start to actually look through these, sometimes we legislators have a really good idea, or we think we have a good idea, and we try to pass a law that changes the way the courts work or the way something happens, but then you actually are in the courtroom trying to make it work, and judges and attorneys, as practitioners start to think to themselves, how do we do this? How does this operate? And that's been the real challenge with LB1115, which was the bill that has the right to jury trial restored for the eviction actions. And I say restored again to remind my colleagues that we had

that right up until 1995. But it was really the practitioners that I wanted to speak to. And so, as recently as yesterday, I spent about an hour on a zoom call with a county court judge, representing judges all across the state, and other experts talking about questions they had of how this would work.

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. And what we could do to make this operate. And they raised a number of, I think, very legitimate questions. And that's why you have to crowdsource these things. That's why you have to talk to people in order to fully understand what the pitfalls might be, what the benefits might be. And so I actually think Senator Slama was spot on when she said, it's good that we're slowing down and having these conversations, because when you start passing large pieces of legislation that modify the way our courts work, it can be very tricky. So that is a long, roundabout way of saying I appreciate the input from the experts. I appreciate the help that I've received time and time again from judges and attorneys. And I really do think what we came up with in LB1115 was the result of a lot of thorough analysis, and, as I said in my opening, is likely to have tweaks on Select. So please, if you have questions, if you have concerns, come talk to me. We are open to modifying things very clearly and we are happy to work with other colleagues. Thank you, Mr. President.

**KELLY:** That's your time. Oh, thank you, Senator. And Mr. Clerk.

**CLERK:** Mr. President, the Judiciary Committee is currently meeting in room 2102 for an Executive Session. Judiciary Committee is in room 2102 currently for an Executive Session.

**KELLY:** Senator Erdman announces three guests under the south balcony. Dillon Metz from Bridgeport, Kaitlyn Miller from Maxwell, and Jeff Metz from Angora. Please stand and be recognized by your Nebraska Legislature. Senator Walz, you're recognized to speak.

**WALZ:** Thank you, Mr. President. I yield my time to Senator Dungan. Thank you.

**KELLY:** Senator Dungan. That's 4 minutes, 54 seconds.

**DUNGAN:** Thank you, Mr. President. And thank you, Senator Walz. I think this is the most I've ever actually talked in a row on the microphone. Certainly not the most I've ever talked in my life. There's many times

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I've talked a lot more and pontificated longer than this, but this is the most times I've ever talked back to back to back. And I will say I have a newfound respect for senators like Senator Slama and Senators Machaela Cavanaugh when I know they've had to do this for long periods of time as well. So I do appreciate the, the experience of getting to do this. Just to finish up my thoughts, briefly, before we continue to delve into a couple of the other issues with regards to clean slate and jury trial. There's-- like I said, there's multiple modifications and amendments that are going to have to be made between now and Select. That is the way these things work. And I have been very open about the fact that we are willing to modify things. I've been very open about the fact that I'm willing to work with everybody, and I'm actually very pleased to say again, there's been another amendment that we're currently waiting on. So I apologize for the delay. We're in-- over the lunch hour. I was able to meet with representatives from landlords, and I really do think we found something that everybody can agree on. So we're just waiting to get that up on the board. In the meantime, I want to go back to the Supreme Court decision that Justice Papik and a couple of other justices ultimately wrote as a concurrence in that Holcomb case. There's a couple parts that I do want to read verbatim, because I think that they're important to highlight here, and I'm trying to make sure I find the right section. So one thing that I think is interesting is how justices or legal scholars can reach similar conclusions from different areas. So obviously we're all aware that some people are originalists, right? Wherein they believe that a certain thing should be the way that it was when the Constitution was first written, and that we should see the Constitution not necessarily as a living document, but as something of a more structured document, and look to it from a more historical perspective. I know the U.S. Supreme Court has recently moved into a more originalist perspective. And I think it's really interesting when you start to analyze the history behind some of the ways that we've reached our current structures. Of particular note, on this opinion, it says a landlord tenant eviction proceeding in 1875 would have been triable to a jury under both the Nebraska Code of Civil Procedure and the forcible entry and detainer statutes then in effect in Nebraska. The fact that these statutes codified the same right to a jury trial that existed for real property possession actions of common law is unsurprising. In 1866, the territorial legislature of Nebraska adopted and declared the common law of England to be the law in Nebraska to the extent not inconsistent with the US Constitution, the organic law of this territory, or with statutes passed by the legislature, now codified in Nebraska by Statute 49-101. The jury trial provision in

the Nebraska Code of Civil Procedure and forcible entry and detainer statutes that existed in 1875 thus could be understood as the Legislature's attempt to faithfully implement the common law right to a jury trial in possession actions as the law in Nebraska. Despite all of the foregoing, NP Dodge and the Attorney General, who filed a brief defending the constitutionality of the NURLTA, the landlord tenant statute bench trial provision, argued in this case that Article I, Section 6 of the Nebraska Constitution does not require that actions for possession under the Residential Landlord Tenant Act be triable to a jury. Their primary argument in support of this position was that such, such actions are special or summary proceedings. They contended, under a certain case, that the constitutional right to a jury trial does not extend to special or summary proceedings. So--

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. I don't want to go too deep down into what a special or summary proceeding is, but the Supreme Court responds, the argument has-- however, has some flaws. As an initial matter, the statement that NP Dodge relies on from that case is dicta. Dicta as a fancy way of saying it wasn't the main holding of the case. The issue in that case was whether the jury trial guarantee applied to a quo warranto proceeding. Furthermore, other dicta in that case is contrary to the argument of NP Dodge and the Attorney General's argument in their brief. That case quoted other language from the same Arkansas Supreme Court opinion that stated, so far as our research has extended, the right of trial by jury at common law only extended to criminal prosecutions, and in actions where a freehold or goods and chattel were in dispute. The term "goods and chattels" includes personal property, choses in action, and chattels real. So once again, this goes back to what, what you're--

**KELLY:** That's your time, Senator.

**DUNGAN:** --actually trying to gauge. Thank you, Mr. President.

**KELLY:** Senator Conrad, you're recognized to speak. Next in the queue, Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. You know, as a landlord, I look at this, and I, I try to pick good tenants. And, and by doing so, I look at their reference letter. If that reference, reference letter doesn't show anything, I-- it shows a red flag to me. And I think that will be the case of this, is it may have the opposite effect of, of

what we want to do. So if, if a tenant comes to me or a prospective person comes to me, and they have no prior rental on their application, what am I supposed to assume? With that, I yield the rest of my time to Senator Slama.

**KELLY:** Senator Slama, will you yield to a question-- yielded time, and it is 3 minutes, 57 seconds.

**SLAMA:** Thank you, Mr. President. No worries. You'll get there someday. And thank you, Senator Lowe. I, I do appreciate again the people sharing on the ground level what their experiences have been like as landlords, as tenants. I've been a tenant. I haven't been a landlord. If I end up following Dave Ramsay's financial advice, I will end up being a landlord someday, passive income, whatever. But I appreciate the discussion. I, I am in kind of a little bit of confusion, just based on where we're at with debate, because I keep hearing that there's an agreement, but everybody who's a point person on the floor for the opposition to this bill has no idea what's going on with it, and I would love to hear what the agreement is. I'm hopeful that it's what I was discussing, which is the LB1115 language that Senator Dover had offered. And eliminating the core language of LB175. If it's not, I mean, we can be here for another 2 hours and 45 minutes pretty easily. I already showed off my wonderful filler binder that my staff has put together, but I really would love to be looped in. So I will ask if Senator Dungan will yield to a question.

**KELLY:** Senator Dungan, would you yield to a question?

**DUNGAN:** Yes.

**SLAMA:** So I'm going to ask this question, and I'll let you have the remainder of my time because we can't double yield. But would you be willing to share with the world what this agreement language is?

**DUNGAN:** Yes. Is that a-- OK, is it a question or a yielding of the time? Just to make sure.

**SLAMA:** I'm asking you a question, but I cannot yield you time because I'm double, so.

**DUNGAN:** No, I understand that, and I'm not trying to be evasive. I remember there's that episode of The West Wing where I think Josh gets up on accident and says they have a secret plan to fight inflation, and everybody's wondering what the secret plan is, and he can't really get to it. No, it's-- the reason that I'm waiting to actually go into

details about it is we're waiting to actually get the language back. Ultimately, in talking with the representatives from the landlords, and in talking with the representatives for the realtors, and in talking with other interested parties from the court and also the advocates world, what I believe the amendment that we're trying to get together, what it would do is, unfortunately, Senator Slama, I don't know if you're going to like it, but we'll keep talking about it, remove the portion with regard to the jury trial. So LB1115 would not be a part of the bill. It would remain with the clean slate portion, the LB175. It would still be limited only to people who have not actually been evicted, so it still keeps out that three year look back. It also would only be allowed to be used one time, and that is to prevent against repeat offenders, which I've heard a lot of concerns about.

**KELLY:** One minute.

**DUNGAN:** Thank you, Mr. President. Wherein somebody would continuously have these evictions brought against them and for whatever reason not ultimately perfected or executed. So you'd only get the benefit of the clean slate one time, and that's to really protect the people who need it. In addition to that, I believe it also incorporates a bill from Senator Dover that had been discussed in committee that I believe came out 8-0 that has to do with e-notice for landlords. And so once I get that actual language, I'll be able to get it up and we can talk more about it and I'll go into more detail about it, but that is what we're currently waiting for. That is my understanding of the outline.

**SLAMA:** Thank you, Senator Dungan. I appreciate that clarification. I'll be clear that I'm not on board with that proposal. Obviously, we'll discuss it more. If we need to take it overnight, we will. But if we're eliminating the LB1115, I mean, clearly, the constitutionality portion of this isn't as urgent as we've been discussing if we're just eliminating it, which is the concern I was hoping to address in negotiations--

**KELLY:** That's your time, Senator.

**SLAMA:** Thank you, Mr. President.

**KELLY:** Thank you, Senators Slama and Dungan. Senator Machaela Cavanaugh, you're recognized to speak. And this is your third time on the amendment.

**M. CAVANAUGH:** I am very tempted to yield my time, but I see they are speaking off the mic now, so I'll let them sort it out and I'll just take my time. I did have to Google Dave Ramsey because clearly I'm not great with my money. And at first I thought that Senator Slama was saying, Bill Ramsey, who's the weather man in Omaha, and, you can always tell how bad a storm is based on his shirt sleeves. So at the start of, like, reporting on a storm, Bill Ramsey will have his shirt, he'll-- What? Randby. Oh, well, yes, Randby. Sorry. Thank you, Senator Moser. Bill Randby, he will have his shirt just buttoned at the sleeves, and I think we're going to have a winter weather storm. And then as the blizzard snownado comes-- or what did we have a couple of weeks ago? An Arctic blast? I don't know. So then he starts rolling up his sleeves and if his sleeves get all the way up above his elbows. We are in for it. Whatever season it is, there's going to be a tornado tearing down houses, there is going to be a snow tornado, there's going to be a monsoon. If Bill Randby has his shirt sleeves above his elbows, all bets are off, I hope you went to the grocery store, Gopuff is going to be shut down, you can't get your, your drinks or food delivered to your house. I really hope you have e-- enough toilet paper. That's really-- that's kind of a critical one. Oh, Dave Ramsey, this is-- this is a group effort. Thank you, Senator Walz and Senator Moser. Dave Ramsey has a program that Senator How-- former Senator Sara Howard followed and was on-- oh, she was on his show. That's right. I have no idea how she got debt-free in this job. But she did it. She must have eaten a lot of ramen. I think that actually once Senator Lowe talked about his son eating ramen and ketchup packets to-- for a month, right? It was for a month to stay on budget. That sounds very unhealthy. I hope he doesn't still do that. See, I, I'm always listening. I'm always listening to the floor debate and-- you-- if you-- if you listen sometimes, you know, it might droll on, especially when the other Senator Cavanaugh gets on the mic and he just uses his, like, soft voice. And I'm an attorney, and I want you to fall asleep and I'm going to say some Latin words, and then you're going to just fall asleep and not listen to what I'm saying. But sometimes if you listen, he'll Rick roll you. So, yeah, obviously, I'm just kind of chatting with myself. This feels familiar. This is like last year when I would just kind of chat with myself. I will say I appreciate the shout out from Senator Dungan on the filibustering Senator Slama and I have done. I, I will say, however, Senator Dungan, until you have done it in heels, you just-- you don't even know what a real filibuster is all about. You got to do it in heels too. So, how much time do I have left?



**KELLY:** A minute 30s.

**M. CAVANAUGH:** Wow. Great. That's, that's great. That's really awesome. It's Wednesday, March 6th. Who knew I could run out of things to say? Oh, I hate to do that to you. Senator Slama, would you like the rest of my time?

**KELLY:** One minute. And Sena-- Senator Slama, you have one minute.

**SLAMA:** Thank you very much, Mr. President. And thank you, Senator Cavanaugh. No, no, I'm grateful we're here. Negotiations are ongoing. It doesn't sound like I am amenable to the proposed amendment, but we haven't seen language yet. So I've told Senator Dungan in good faith, I will reserve judgment until I see it in black and white. But I am, grateful that my filibuster against big government has stunned Senator Machaela Cavanaugh into silence. So God bless us, everyone. I'll leave it on that note. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President. I missed a bit earlier. Was Senator Machaela Cavanaugh making fun of my speaking style? She was making fun of my speaking style. I would gladly make fun of her speaking style, but I do not possess the theatrical skills to do so. So, I would-- I do have other things to say about the bill, but just to go off of what she was talking about, I think she was hinting at the old adage that Fred Astaire was a great dancer, but Ginger Rogers had to do everything Fred Astaire did backwards and in heels. And so she was better. Which, of course, there's the Fred Astaire house in Omaha that there was great article in the Omaha World Herald fairly recently about the restoration of that house. That was very interesting. I'd encourage everybody to go read it. It's a house that had not been updated. It's more than a hundred years old. Still-- I don't think it had electricity, so it hadn't really-- still kind of pristine to its older age. So apparently I, I do have a-- can have a monotonous speaking style, as I'm told. With the grayness in here and everything, it does feel like I could put some people to sleep. I could certainly try. But I will-- I digress, I'll go back to the bill, talking about-- we, we are circling around. I think fol-- some folks are off the microphone learning about what's potentially in an amendment that we're waiting from drafting that maybe helps solve some of the concerns that have been articulated. And like Senator Slama, I would encourage everyone to reserve judgment until we see what the

actual amendment does, as we've all learned many times here that there are ideas, and then we put them into language and they can look very different. Someone's idea looks different in legislative language than someone else's idea. And so it's important to wait and see exactly how it actually comes together. But I'm given to understand, and based off of my conversation with so many of you, all of you really, when I was counting votes earlier, that this amendment will solve a number of people's issues once we get it. And to go back to why this is important. You know, we were, while I was talking last time on the microphone about the detrimental effects of people becoming unhoused in a quick fashion. And I-- when Senator Linehan asked me a question earlier, I told her the anecdote about one of the times I was volunteering at the landlord-tenant court, and this individual came in and, you know, said they were just there to make sure that they didn't go to work and come home to find their door locked with their dog inside. And, we were able to connect them with services, and we were able to negotiate with the landlord where the landlord got the back due rent, plus some forward looking money. And they did still want the person ultimately to vacate, so they agreed to let them stay for another month while they got their stuff out and found another place. And let them, you know, pay for that month. That-- which was a-- you know, beyond this person's wildest dreams. They were so happy about not finding themselves homeless at the end of that workday. And the landlord received somewhere in the thousands of dollars as a result of that negotiated settlement, whereas when Senator von Gillern asked me earlier what happens-- so that result of that was that the landlord got, you know, three months rent, and some costs and things paid, and that was guaranteed money. And then-- but if they had gone to trial that day and there had been the determination by the judge that a restoration of premises should be issued and the person should be evicted--

**KELLY:** One minute.

**J. CAVANAUGH:** Thank you, Mr. President. The landlord, yes, would have been able to go and change the locks, and that person would have come home and their dog would have been locked inside and they wouldn't be able to get their stuff, and all of those terrible things would happen. But the landlord would have been out all that money and then had to file a, a collection action against that person, and then seek that money separately, and again, trying to get money from somebody whose reason that they became unhoused was because they didn't have money, it's going to be hard to collect that money, and it's going to take time, it's going to take more money to collect it, and you're

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going to have a-- you know, just more expense and less money ultimately. So there's a lot of great reasons why the Volunteer Lawyers Project is really important. There's a lot of terrible ancillary effects as a result of people becoming unhoused in these crises. What these bills, this bill as a package does, is just ensures when somebody has a legitimate claim or defense, they have an opportunity to litigate that in under a jury right--

**KELLY:** That's your time, Senator.

**J. CAVANAUGH:** Oh, thank you, Mr. President, I'll push my light again.

**KELLY:** Thank you, Senator Cavanaugh. Senator Jacobson, you're recognized to speak, and this is your third time on the amendment.

**JACOBSON:** Thank you, Mr. President. Well, I don't want to sound like a broken record here, but I just want to kind of come back to the basics. I'm just a pretty simple guy. I kind of think about this from the standpoint as a lender. I loan money to people to buy, build, or purchase, you know, rental properties in many cases. Sometimes it's single family residences, sometimes it's fourplexes, duplexes, or larger apartment complexes. And the deal I make with them as a lender is we'll loan you the money to purchase this. And then you agree that every month you make a payment to us to pay the loan off with interest, and you keep the taxes current and you keep the insurance current. And here's their deal. Their deal is that they're going to rent to people who will pay them rent on time every month within a certain grace period, so that they can collect those rents and be able to pay the taxes, the insurance and the principal and interest payments to me. It's an interesting concept, and if everything works well, you'll be able to one day pay the property off and build wealth. It's a unique part of capitalism. But where you run into problems is when the government gets involved and makes deals that changes the game in the middle of what you've been doing, and suddenly says, like we did during the pandemic, you can't evict anyone. Well, it's a novel idea. It's the kind thing to do. But it does disrupt their ability to get those monthly payments that make payments to me, and it jeopardizes them losing the investment that they invested in with an understanding that the people that came into their property would pay them when the rent was due. Now, we've heard a lot about people that are just a few days late, but have been model tenants otherwise. Well, you know what? You're not going to get evicted. You might start an action. Yeah, I get some of these major mega owners might start an action. But you know what? You get paid, it all stops, and you stay

where you're at. So you don't get-- you don't lose the house. You're not looking for another place to live. And I can tell you, if you're homeless, it's because you can't afford to make the rents because you're not taking a job, many of which are available out there, that would allow you to live in a place and be able to pay rent. Maybe not as nice a place as you had before, but you wouldn't be living in the street. There's plenty of jobs available. This is possible to get jobs. In fact, here's a novel idea, some have two jobs, and they're able to stay in housing. My concern is we keep chipping away. My other concern is this. How many times-- just think about this, there's young lawyers coming out all the time from the university and other places, and they're looking for income. So I can picture now where you just simply put up at every apartment complex or run ads in newspaper: If you're being evicted, give me a call. So what do they do then? So they're going to say, well, if you're in the middle of eviction, here's what we can do. Instead of paying your rent each month, you pay-- this month, pay it to me. I'll file an action against the landlord to prevent the eviction, we'll threaten a jury trial, we'll do all this other stuff, and we'll make the landlord settle with us. And then we'll get this wiped away from your record. So when I said earlier, is, is this going to be possible? Yeah, I think it's probable. Not possible, probable. We always like to talk about that unique situation where somebody just missed, just late, and they got thrown out and they had trouble being able to find another place because this is on their record. I'm afraid that would be the minority situation.

**KELLY:** One minute.

**JACOBSON:** I think there would be-- this would really be gamed under the current process. Now, I've been heard some pieces about the amendment. If the amendment comes back, I've heard that the amendment would eliminate the jury trial, which is unique, because I thought that was one of the biggest problems we're trying to fix was to have this jury trial thing. I still remain concerned that if the tenant-- if the landlord is not able to stay current on his payments, and if the rent payments are not coming every month of somebody getting evicted, that's a problem. That has to be in place. And I won't support anything that doesn't have that in place. So I'm anxious to see the amendment and hopefully we can keep moving forward. But again, there are problems with the bill the way it's drafted today. I appreciate the work of the Judiciary Committee, but I'm not sure any of those were landlords. So if you are a landlord, you understand it a little bit different perspective. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Senator Fredrickson, you're recognized to speak. Next in the queue, Senator Walz. Senator Hansen, you're recognized to speak.

**HANSEN:** Thank you, Mr. President. Is Senator Dungan on the floor? I was hoping to ask him a couple questions. If not, I can ask Senator Cavanaugh. OK. I got lawyerly questions I was hoping to ask. And pardon my non-lawyerly verbiage. I, I just thought of some of these questions when I was downstairs listening on, you know, while I was doing some work. And I don't think I heard them on the mic yet. And so I think these are maybe some that I've asked you before, and some maybe you can kind of clarify for me. So I think you mentioned before that these-- to put-- so if someone gets evicted and they-- and want to go to a jury trial, we're expecting it to somewhere take about 3 to 4 weeks, typically around there by time by the time a jury trial's put together? Would you-- on average. Oh, will Senator Dungan, yield to a question?

**KELLY:** Senator Dungan, will you yield to a question?

**DUNGAN:** Yes.

**HANSEN:** Can I ask you that same question?

**DUNGAN:** Sorry, can-- and I apologize, I was trying to follow, is it about how long it would take before somebody goes to a jury trial?

**HANSEN:** Yeah, I'm trying to put timelines together here. So yes, and I got a few questions, so--

**DUNGAN:** Sure.

**HANSEN:** --just FYI.

**DUNGAN:** So here's part of the complicated factor, and I'm going to give you the most lawyerly answer of all time, which is frustrating. It's-- it depends.

**HANSEN:** That's a good political answer too.

**DUNGAN:** It is, I know, every county court and district court does their jury trial terms, we call them jury terms, slightly differently. And that's part of the reason that we did not, in this legislation, originally dictate the terms and the timing of when they have to have the jury trial. I can tell you that in Lancaster County Court, which

is where I practice, usually speaking, there is a jury term every month or every other month. And so--

**HANSEN:** I know like certain counties, like where I'm at, you get called in, they have to put it together. And so it usually can take longer than perhaps someone serving in a term who's already prepared to, to be there, correct?

**DUNGAN:** That is correct.

**HANSEN:** OK. So is, is potent-- is, is it possible then, that sometimes these, instead of taking 3 or 4 weeks, could take 3 or 4 months?

**DUNGAN:** So if we're talking about a criminal case, yes. I've had cases that were set for jury trial that have had to get continued. But I-- to the best of my knowledge, and I practiced for almost a decade, never had a case that was continued just because the court ran out of time during their jury term, the judge always found a way to get my case in during the jury term. The only continuances that happened were ones that we asked for. And that's why in this bill, it means that if-- it says that if you are a tenant asking for a continuance, that you would have to pony up the rent if ordered by the court to ensure that that does get continued. So I don't believe there's ever going to be a circumstance where they just simply run out of time.

**HANSEN:** Not run out of time, but like 3 or 4 months, but say, OK, you mean instead of 3 or 4 weeks, you say, well, we got your-- we got your trial set up for three months from now.

**DUNGAN:** I don't believe that would happen. No, I think the jury terms are going to be much, much sooner than that.

**HANSEN:** And, and this is just a question I had, and it may or may not be the case, but is it possible, then, that we can sometimes maybe see a sympathetic judge that to the plight of an individual such as this, that may, intentionally or not intentionally, perhaps prolong, a trial or, you know, for like instead of a month, maybe take it out three months because I know that person's going to have to pay rent?

**DUNGAN:** I, I think the number one thing on most judges' mind is judicial efficiency, usually, when they're running their courtroom. And so I cannot imagine a circumstance where they would drag it out just to try to be sympathetic to that extent. I know in all the courts that I've practiced in, the judges are primarily concerned with, a, effectuating the law properly, and this law does say that they have to

do it as quickly as possible pursuant to local court rules. And so I don't see or foresee a situation where a judge would intentionally continue it out. Generally, continuances are granted at the discretion of the judge for good cause.

**HANSEN:** OK. You don't see it, but I could see maybe a possibility of that. But you're saying it's unlikely?

**DUNGAN:** I think it's very unlikely, yes.

**HANSEN:** OK. All right. So that's, that's one of the concerns I had, you know, so we would have maybe not a tenant paying rent, which I'm not too terr-- which I'm-- that's beside the point, is that, in my opinion, I think it's more important that we're seeing a landlord who's not receiving that rent, possibly for a month or 2 or 3 months while they're awaiting this whole process to take place.

**KELLY:** One minute.

**HANSEN:** And you brought up that point about in counties such as Lancaster and Douglas and maybe Sarpy, I don't know for sure, but they have that-- those terms in a jury, where in such a county such as mine, we don't it takes-- it takes longer for that to happen. Also, one other quick question. And so then in your opinion, have you seen an increase, dramatic or not, perhaps in nonprofits or lawyers doing pro bono work in cases such as these in recent years?

**DUNGAN:** I have not seen a dramatic increase when it comes to, like, nonprofits or pro bono work. I know that there is the Landlord Tenant Assistance Project that has cropped up, at least, that I've been able to see at the Lancaster County Court that I think is an arm of the bar association and often goes through University of Nebraska Law School. But it's not like a nonprofit that sort of cropped up and propped up those individuals. It's primarily students or other individuals who are working for the Landlord Assistance-- Landlord Tenant Assistance Project, which is usually very small, and I will tell you, they're often-- I see them there and they're running around working many, many cases.

**KELLY:** That's your time, Senator.

**DUNGAN:** Thank you.

**HANSEN:** Thank you.

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**KELLY:** Thank you, Senators Hansen and Dungan. Senator Erdman, you're recognized to speak.

**ERDMAN:** Thank you, Mr. President. Good afternoon. I wonder if Senator Dungan would yield to a question?

**KELLY:** Senator Dungan, would you yield to a question?

**DUNGAN:** Yes.

**ERDMAN:** Senator Dungan, is it true we're waiting for an amendment to come down?

**DUNGAN:** I just handed it to the clerk about 28 seconds ago before answering Senator Hansen's questions.

**ERDMAN:** OK, so there is actually an amendment in the works?

**DUNGAN:** It's-- yes. It is-- it has been submitted, it should be live soon. It's what I was outlining to Senator Slama earlier, and I will be happy to talk to it when we actually get to it.

**ERDMAN:** So have, have you visited with Senator Slama about this?

**DUNGAN:** I had spoken with her both prior to lunch and after lunch, after she asked me on the mic about what it contained. I don't know that it addresses all of her concerns, but it certainly addresses the concerns of many from outside the body and other people that I've talked to, from both the landlord and the realty world.

**ERDMAN:** Well, I think that that would be a good idea, but I, I visited with her a few minutes ago and asked her if she knew what the amendment was, and she was puzzled by that. And so I, I think unless the amendment has been negotiated with her, it may be a little difficult to get your amendment passed. And what I was going to do is call the question. That's all I have for you, sir. I was going to call the question, but I found out that Judiciary and Education are having Executive Board mee-- or committee meetings, and I didn't want to bring them back. But I'm not sure the amendment is going to accomplish much. And so we'll see what the amendment is. And the next time I come up, I'm going to call the question. Thank you. I yield my time to Senator Hansen.

**KELLY:** Senator Hansen, you have 3 minutes. 30 seconds.



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**HANSEN:** Would Senator Dungan yield to a couple more questions?

**KELLY:** Senator Dungan, would you yield, yield to some questions?

**DUNGAN:** Yes.

**HANSEN:** OK. I just want to-- I only have a couple more questions. I just ran out of time last time, and I appreciate you answering the ones that I had before. And so I was going back to the idea that there, there might be nonprofit organizations or lawyers possibly doing pro-bono work, specific for cases such as these. And so, like, in, in your opinion, is there an incentive for somebody representing somebody who has an eviction? Is there-- is there an incentive for them to take it to a trial versus not?

**DUNGAN:** No, not to the best of my recollection. The vast majority of these cases are actually settled very, very quickly and in their first appearance. So Douglas County and Lancaster County handle this separately, or handle it differently, rather. So Lancaster County, from my understanding, because I don't-- I have not practiced in this exact area of law directly, but my understanding is oftentimes what happens is they show up and there's a conversation between the tenant and the landlord's attorney and they'd say, hey, if you do X, Y, and Z, we don't want to go forward with an eviction action. And they continue it for a period of time. And assuming the tenant fulfills those obligations, then the eviction action is dismissed. And that's the people we're talking about here. Douglas County, on the other hand, what I-- my understanding is oftentimes they will show up, they will enter the eviction order then, but then they will, I think, continue out the effectuation of that eviction or the writ, and they'll give a list of things that the tenant has to fulfill. And if they fulfill those things, like paying something or moving your stuff out, they will then vacate and reverse that convic-- sorry, eviction order, which is what this also seeks to address. And so there's not really an incentive to drag it out and take it any longer than that. Most people want to resolve these things. The only way-- the only reason you'd really want to go to a trial is if you say, I have money, I want to pay you that money, and I want to stay here, but maybe there's a dispute over some factual violation of the lease. And so, no, I don't see any monetary value to dragging it out, especially not from a tenants perspective when they oftentimes don't have that money.

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**HANSEN:** I, I think that's a question I kind of had. And that's-- I'm, I'm a little-- somewhat ignorant to the, to the topic, I think, here. And that's why I'm asking somebody these questions--

**KELLY:** One minute.

**HANSEN:** --is, is if somebody representing a case such as this, if they will end up getting paid more going to trial versus not.

**DUNGAN:** You know, I think attorneys fees are always flexible. I don't represent landlords, but I certainly think that it's possible that taking something to a trial is going to result in more attorney's fees. But we also accommodate in the bill for the collection of those attorney fees by the prevailing party. So--

**HANSEN:** OK. One more question before we're out of time, I'm sorry. And so if, if a trial like this does take two, three months, and then so that the fees then and the, the ruling is found against the person with the eviction, then they have to pay those three months, possibly of, of rent. Correct?

**DUNGAN:** The court may order-- yes, the court will order the tenant to pay the rent during the pendency of the case that's been continued if the tenant is the one asking for the continuances.

**HANSEN:** OK. Is it likely that they'll pay the rent if they're three months behind, and they couldn't afford it in the first place, or would that just kind of be wiped out?

**DUNGAN:** If they can't pay the rent--

**KELLY:** That's your time.

**DUNGAN:** --the case wouldn't be continued.

**HANSEN:** OK. Right. Thank you.

**DUNGAN:** Yeah.

**KELLY:** Thank you, Senators Hansen and Dungan. Senator John Cavanagh, you're recognized to speak and this is your final time on the amendment.

**J. CAVANAUGH:** Thank, thank you, Mr. President. I burned through those three times in the last 45 minutes, so. I just couldn't resist

interjecting myself in the conversation Senator Dungan and Senator Hansen were having. Just a few thoughts to Senator Hansen's question about judges being favorable toward tenants and prolonging the case. Obviously, as tack with Senator Dungan's comments, judges are all interested in upholding the law, judicial efficiency, doing the right thing and, and not, you know, not really playing games. But there are judges who obviously have philosophies and perspectives. And if you have one such favorable judge or judge that you like, and anybody who practices in any court regularly knows the personalities of the judges, you more than likely would waive jury trial and set it for a bench trial rather than prolong-- keep coming back and risking that judge, you know, being moved to another jury docket or another, you know, court. If you draw the judge that you like, you're probably going to try and get it resolved in front of that judge at that point in time by waiving the jury and having the bench trial, which in landlord tenant court is held that day. So I think that's probably what's more likely to happen, though there are-- I have not seen judges who are going to be overly friendly to tenants. So that's, that's one part of that conversation that Senator Dungan and Senator Hansen were having. I'm trying remember what the other question was that I thought-- felt so strongly about. So, I do think that we have the amendments on file, so we might be getting to it. I haven't had a chance to take a look at it myself yet. And I'd be-- I am curious to hear folks' thoughts on the further compromises that have been put forward. And I would go back to the conversation that Senator Linehan started this afternoon about the work of the committee and how they kicked out this bill 8-0, because of the compromises, and that we're obviously here in our, I don't know, fourth or fifth hour of this debate. And Senator Dungan's working to find other-- more ways to compromise to make this bill work for more of the interested parties. And so the, the iterative process of the Legislature that we've talked about so much this session where we have by-- you know, the, the conflict nature of this place where somebody brings a bill, we have a hearing, people ask questions, hopefully constructive, thoughtful questions that then get us to a place that helps get to understanding what the bill is trying to do, get to place where we can figure out ways that we can do the-- serve the intent of the bill and the people of the state of Nebraska in a way that works for the most people. And then the committee, obviously, after that hearing, could construct an amendment that contemplates what was raised at the hearing, kick out the bill, and then it gets on the floor. And there are those of us who are not serving on the committee, who then have our opportunity to be heard on bills, and then, you know, so you might run into other

opposition that wasn't raised before, in the committee or at the hearing or other perspectives, which is why, obviously, we are all part of the conversation at every-- at this stage. And it's not surprising that you get to the floor and there's a necessity to find further changes and compromises that bring more interests, or represent more people's perspectives and interests, to get a bill to become a law, which is what the goal is here, of course. So I think that's, that's where we're at is a-- another proposal after hearing the comments--

**KELLY:** One minute.

**J. CAVANAUGH:** --of the folks this morning. Thank you, Mr. President. After talking to people off the floor, after talking to the people who are in the lobby here in particular who have had problems with this bill, I think that's what this amendment we're going to see here in a few minutes represents, the fruits of that labor of this conflict, that's derived from that adversarial process and got us to another step along the way to get to a, a new proposal that is addressing those concerns. So, I look forward to hearing the introduction of the new amendment. Thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. As I stated before, I'm a landlord. I do have some houses that are not the Taj Mahal. They and-- they are lesser quality houses, but we try to maintain them as best as we possibly can, and we try to make sure that the tenants are comfortable. But also with that, we're able to rent them at a discounted rate to these people. These people would probably not be able to rent anywhere else, but we make them comfortable and, and we make the houses as best they can. They're older houses, and probably in the, in the next 10, 15 years, we'll, we'll tear them down, put something new up. If there's ever a problem with those facilities, we try to fix them and we try to make it as best we can. I'm going through the same process right now on my first rental property that I've had, and my last tenant lived there for 30 years, and I hated to see her go. But she got married and, and, they had a-- he had a family. My little one bedroom house was not quite big enough for everybody. But she loved that little house. She was a good tenant. And, you know, she got behind several times in her rent. Sometimes it was just a month or a half a month. But I knew she would be good for it, so I kept her. And she would make up that rent. One time it was

over the Christmas holidays. I forgave her rent because it was Christmas and that's the right thing to do sometimes to good people. But you know, LB175 and, and the following amendments doesn't do anything for landlords that are honest and true. It does things to the landlords that are honest and true that we don't need. With that, I'd like to yield the rest of my time to Senator Jacobson if he would have it.

**KELLY:** Thank you, Senator Lowe. Senator Jacobson, you have 2 minutes, 35 seconds.

**JACOBSON:** So do I owe you a favor, or how does this work? I'm trying to figure that part. Always. All right. Great. Thank you. Well, let me just finish up where I kind of began before. And again, as we start thinking about what happens on the gaming of the system. And I always worry about this on any legislation that we pass is when we start messing with the agreements that are out there. When we start messing with law, people enter into contracts with the current set of statutes that are in place. And then we start messing with the statutes, and all of a sudden it has a negative impact on the contracts that we've entered into. Because the way the bill is written now, this is retroactive, OK? This goes back to anyone who's had an eviction and had it stopped. And at the end of the day, I'm trying to figure out what the real problem is here, because landlords-- at what point do I, as a banker, not have rights to your credit bureau? Or is everything going to be blocked that's bad on your credit bureau, so I have no way to know how to underwrite a loan? And if that happens, what do you-- what's the default? The default is the person with a high credit score pays more because I don't know that you have the high credit score, you might have someone with a low credit score and I've got a likelihood of loss because you're less likely to pay. If I went in to buy an insurance policy from an--

**KELLY:** One minute.

**JACOBSON:** --insurance agent, the insurance agent is going to ask me to fill out some information, and it's going to ask me, are you-- do you have any terminal-- have you been diagnosed with a terminal illness? And if you mark yes, they're probably going to underwrite the loan-- the life insurance policy differently, which might mean they'll turn you down. Because-- and if you mark-- and if you're not asked that question, you're not required to disclose it, how is that fair to the insurer who is taking on a tremendous risk where you know something that they don't know? And, and this is part of the problem with this,

we're sharing truthful information. We're not hiding misinformation. We're sharing truthful information. Thank you, Mr. President.

**KELLY:** Thank you, Senator Jacobson. Seeing no one else in the queue, Senator Wayne, you're recognized to close on AM2754.

**WAYNE:** Thank you, Mr. President. I am tempted to call the house just because I missed this opportunity with nobody on the floor. But I won't, because I'm in Exec right now, I'm going to go back to Exec. But here's what I will tell you. And I'm just saying this for the record. And when you say for the record, you act like you don't know what you're saying is actually going into the record, but it is going into the record. So everything you say is technically for the record. So it's kind of one of them pet peeves when people say, I just want this on the record. Well, when you're talking, you're on the record, so you don't have to say that you want this on the record because it's already on the record. But I'm on the record. And so I want to say something for the record. And that is September or October, we will be here on a special session. So when you're thinking about-- when you are thinking about you're, you're having a harvest and all that during that time, we're going to have 1,000 jury trials pending in Douglas County, and Lancaster County, and Sarpy County that we will not have a solution for. We will not have a solution for-- and guess what, landowners, you won't get paid, because there is no mechanism when you go to the jury, or when they ask for a jury trial, which they are doing right now. Everybody in Douglas County-- not everybody, 80% are asking for jury trials. So it's already working its way up to the Supreme Court. When it's ruled unconstitutional, I'm going to give July, August, September, October, we're going to be back here. Because there's going to be a thousand property owners who have lobbyists out here in the hallway who are saying, we're not getting any money, and the courts are not doing anything about it. We got jury trials till December or going into next year. How do I know that? Because I have a jury trial that's a two day trial that I just scheduled for March of 2025. Otoe County. I have a trial right now for August and September, which is a half a day of trial. So I am going to do what the introducer of this bill wants, which is withdraw my amendment. But mark my word, we will be here in a special session because there is going to be a thousand families and a thousand property owners who have no solution to what's going on, because the Supreme Court is going to rule this provision unconstitutional, and we decided not to step up today. I withdraw my amendment. Thank you, Mr. President.

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**KELLY:** Thank you, Senator Wayne. Without objection, that's withdrawn. Mr. Clerk.

**CLERK:** Mr. President, an announcement. The Education Committee will have an Executive Session in room 2022 today at 3:00. Education Exec Session today at 3:00 in room 2022. Some additional items, Mr. President, a new A bill, LB1087A, introduced by Senator Jacobson. It's a bill for an act relating to appropriations; appropriates funds to aid in-- to aid in the carrying out the provisions of LB1087. Additionally, LB685A, introduced by Senator Lowe; it's a bill for an act relating to appropriations; to appropriate funds to aid in the carrying out of the provisions of LB685. Amendments to be printed, Senator Riepe to LB204A. New LR, LR317 from Senator Walz. That will be laid over. As it concerns LB175, Mr. President, Senator Dungan would move to amend the bill-- excuse me, amend the committee amendments with AM2908.

**KELLY:** Senator Dungan, you're recognized to open on your amendment.

**DUNGAN:** Thank you, Mr. President, and thank you to those who have been a part of this conversation and continue to listen in and work with me. Senator Wayne, I think, is absolutely right. We are going to have an issue on our hands. Unfortunately, today, based on conversations we had and based on all of the vote counting we did, there simply aren't the votes in this body to address the issue of whether or not we should reinstate the right to jury trial for evictions. And so what this amendment does, AM2908, is it essentially does-- it gets rid of the entire jury trial portion. So we're cutting out all of LB1115, which I'm very disappointed about, because we did work very, very hard up until now to figure out a proper way to make that all work. And, and frankly, I think we still need to do it. I'm not totally convinced we can't figure out another way to take care of that here in the near future. I'm going to keep working on it and I'm going to keep talking to my colleagues, because I think there is some consensus that it's an important issue. I'm glad people are hearing about it now because I think we can come to some consensus. But AM2908 effectively cuts out-- it does, it cuts out all of the jury trial portions. What it leaves in is two things. Clean slate, as limited to those who have never actually been evicted, like we were already talking about. But the major change that it makes, and this is-- this was done in discussion with landlords' representatives, this was done in discussion with realtor representatives who both say they not only are neutral on this, but in fact support this amendment, it allows you to have clean slate relief one time. One time. And the reason for that is what we're

trying to do is we're trying to capture those individuals that we've already talked about where due to potentially a lapse in payment or some sort of other catastrophic event happens, those individuals are unable to pay rent on time. And let's say that an eviction notice gets filed immediately. And that gets filed, and then they are able to pay their rent. They would be able to achieve clean slate relief on that eviction for that one time. If, however, they continue to be, quote unquote, bad actors and have these issues happen time and time again, they would not be eligible for clean slate relief. And so do I think this covers the entirety of the problem? No. Do I think that Senator Linehan and others had hit the nail on the head that this is an issue that needs to be addressed in a broader capacity? Absolutely. But I really do think, based on the conversations that I've had, that this satiates the concerns of every single entity that came in, and was in opposition to LB175 originally. Because the opposition we had was from the landlords and it was from, I believe, some realty companies, maybe some property management companies. But I have been working very diligently all day long to go talk to the interested parties, to see whether or not this would be OK. And as I said, they have said it is fine. Senator Slama and I have spoken about it, and I am aware that this does not address all of her concerns, given that I think she had more concerns with the clean slate portion than she did the jury trial portion. But I do believe that AM2908 is a consensus amendment amongst all of the interested parties, and I'm talking about landlords, tenants, advocate groups, everybody that I've been talking with diligently throughout the entire day. And I think that AM2908 does address our concerns. In addition to that, AM2908 contains a bill that was originally introduced by Senator Dover. That is a bill to allow for e-notice, so electronic notice, and e-communications between landlords and tenants. It effectively, as was explained to me, brings landlord-tenant relationships into the 21st century by allowing for email summons, email notice, and things such as that. It came out of the committee 8-0. It was something that was supported across the board, and my understanding is it is something that both the landlords and the tenants want. And so we decided to add that in there, because I think that makes this even more of a consensus bill. So, again, colleagues, I would appreciate your support on AM2908. We've been working diligently to try to come to some conclusion. I'm hopeful that maybe Senator Slama and I can work something out moving forward. But I anticipate we will hear a little bit more about whether or not she is in support of this amendment. Thank you, Mr. President.

**ARCH:** Senator Slama, you are recognized to speak.



**SLAMA:** Thank you, Mr. President, and good afternoon, colleagues. So I took a moment because we've got pages on the floor and God love them. Like there are ten people on the floor right now, and they're intent and paying attention. And I had one of the pages come up to me earlier in the session and go like, my job's just to get, like, water and coffee. No, your job is to learn as much about politics as you possibly can, and God willing, you learn enough to run away from it as fast as humanly possible. I tried to explain what was going on here because I, I see two diverging paths here of debate, and I'm just curious as to where we veered off and failed to communicate, in that with this amendment, we're getting rid of the LB1115 language, which I said, if you narrow it to where we can address the Supreme Court's issues and you leave out the language on LB175, so if you replace the language of LB175 with narrowed language on LB1115 so that we can prevent the world from ending with a Supreme Court decision ruling landlord-tenant law unconstitutional, so we don't have a special session where all the Democrats are running around going, I told you so, I told you so, the Supreme Court came at Landlord-Tenant Act with an Uzi. But now we have an amendment on the board that restores the language of LB175, eliminates the thing that we evidently have a constitutional crisis over, and we're pretending like it shifts votes. It doesn't shift votes. I don't care if you were out in the lobby discussing it with the landlords and the realtors. The lobbyists don't have a vote in here. The senators who are elected do. And not one of the senators who has expressed concern over this issue has expressed, oh, LB175 isn't my problem, it's the jury trial that's the problem. We're sitting here going, my God, there's a constitutional crisis, and we're willing to be bipartisan about this, thoughtful about it, and address this issue. But here we are with an amendment going, eh, never mind. I, I guess the constitutional problem wasn't as big of a deal as we thought. So now we're narrowing LB175 by giving it a one strike rule, which I am opposed to, because once again, how do you have that work if the record sealed? And it gets to the core of, again, this is a big government bill that I'm going to take eight hours on. But I've been very clear about what I'm asking for and about what small government conservatives are asking for. It's not just, oh, do I agree, it's I am making what a large number of other senators are making very clear to me, very clear on the mic, to Nebraskans, to Senator Dungan, in that we're willing to talk if we're getting rid of, like, the constitutional crisis that's going to keep Justice Papik, and this is nothing against Justice Papik, up at night. Like, cool, we're game for that. But if we're going to do this whack-a-mole of, oh, well, the landlords and the realtors said the jury trial thing was

a problem. OK, well then evidently this constitutional crisis wasn't as big of a deal as we thought. So we should probably just kill LB175. So, like, now I'm just sitting here going, well, I'm going to talk this thing to 5:00 because clearly the message isn't getting across, and I can just read all of the stuff that we've put together for me filibustering this, because clearly we've diverged, we've gotten to a point to where there's clearly somebody out in the lobby trying to undercut this negotiation, and a disinterest in actually addressing what we're claiming is the real problem and the need to pass LB175.

**ARCH:** One minute.

**SLAMA:** So I'm sitting up here going, OK, red vote all of it, because clearly we're not going to come to an agreement. Clearly this doesn't have 33 votes. If we want to take it to a test vote, that's fine. But I want to make it abundantly obvious that nobody's changing their minds based on the language for LB1115 getting eliminated. That's actually what was going to bring people on board because of the supposed constitutional crisis that just isn't going to happen now. So what I'm going to do is sit back, wait for us to take a vote on this, vote, probably, present not voting, file a motion to reconsider, and then go through all the motions that I was talking about to take us to 5:00 to where maybe if we sleep on it, we can come to a logical conclusion. Thank you, Mr. President.

**ARCH:** Seeing no one left in the queue, Senator Dungan, you are recognized to close on AM2908.

**DUNGAN:** Call the house.

**ARCH:** There has been a request to place the house under call. The question is, shall the house go under call? All those in favor vote aye; all those opposed, vote nay. Mr. Clerk, please record.

**CLERK:** 9 ayes, 5 nays to place the house under call, Mr. President.

**ARCH:** The house is under call. Senators, please record your presence. Those unexcused senators outside the Chamber, please return to the Chamber and record your presence. All unauthorized personnel, please leave the floor. The house is under call. Senator Dungan, you are recognized to continue with your close.

**DUNGAN:** I can wait also, can't I? Until people-- I can-- OK. So I will start closing, but I will probably end up repeating myself as we get more and more people in the room. Colleagues, what you're voting on

here, AM2908, is an amendment that was worked out that pares down the original bill that we were talking about earlier today. So originally, the whole process and what we were going with here was LB175 was being amended in order to include the restoration of the right to a jury trial for eviction actions. And so had that have been successful, what we would have wound up with between LB175 and LB1115 was a combination bill, which Senator DeBoer prioritized because she understood the importance of trying to figure out this issue before the Supreme Court gets there. Senator Wayne, I think, did a very good job of articulating what the problem is going to be if and when the Supreme Court reaches a decision saying our current landlord tenant statute is unconstitutional. And so we were trying to address that. We were trying to, to get ahead of that and make sure it wasn't a problem. Unfortunately, we ran vote cards today and the votes simply weren't there. And so, you know, to, to, to push back, I guess, gently and respectfully on the idea that, oh, I guess it's not actually that big of a deal. No, it's an incredibly important deal. It's a very, very big deal. But there weren't enough votes in this body to actually get there. And what's been tricky, and I think one of the predicaments we've run into time and time again is with these bills. I was talking to people and not actually getting a clear idea or answer as to what their issues were with it. In addition to that, we have a bill, two bills rather, that came out of Judiciary 8-0. So part of the reason I think this was scheduled when it was is I don't think we anticipated there being quite this much pushback, because when these came out of the Judiciary Committee, they were unanimous, because we had worked very hard to come to some common sense solutions on these problems. And that's a problem that we weren't able to come to that same solution today. But ultimately, over the lunch hour, I'd met with a number of individuals, senators included, talking about what their issues were with the bill. And a number of senators told me their issue, again to push back on what Senator Slama just said, a number of senators indicated to me that their problem was the right to the jury trial portion, because they didn't know how it was going to work, they had questions about it, there was a lot of hesitation. And so ultimately what we decided is that we would take out the right to a jury trial portion and just have the clean slate portion. In addition to that, yet again demonstrating my willingness to continue to pare down this bill, we did so even further. So what is currently in AM2908 is two things. One, it is a clean slate provision, where if an individual is never actually evicted or doesn't have an eviction action against them perfected, or come to an actual adjudication, or disposition, rather, then they would have clean slate relief, or they

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could apply for clean slate relief, meaning that it would be taken off their record. We limit that further in AM2908 to one time. One time they can get clean slate relief. And that is intended to capture those individuals who had something bad happen, and unfortunately were-- had an eviction action against them brought. And then they settled the issues. We don't want that to follow them forever. But AM2908 makes it so you only get that relief one time. If you are a continuous bad actor, and if you continue to have evictions filed on you time and time again, then those still show up in your history. So we talked with the landlords, we talked with the--

**KELLY:** One minute.

**DUNGAN:** Thank you Mr. President. We talked to the landlords, we talked with the realtors, not just that they're special interests, but because they are the only ones that came in in opposition to this bill. And they said they're not only neutral on it, they are supportive. They support AM2908 being attached into LB175. So colleagues, please, please, please, when you're voting for AM2908, know that it is the culmination of a lot of work. It is the culmination of a lot of conversations from people across the entire spectrum. It represents a true compromise amendment. And please do not let the disdain of one person about this bill deviate you from the fact that this came out 8-0. And also, by the way, includes I apologize, I forgot to mention again, a Senator Dover bill that also came out 8-0, allowing for electronic notice between landlords and tenants. So consensus bill, I don't see any opposition that has continued to come in from the people who this actually affects. And I would encourage your green vote on AM2908.

**KELLY:** Thank you, Senator Dungan. Seeing no one else in the queue, you're recognized to close on the amend-- OK. Members, the question is the adoption of AM2908. All those in favor vote aye; all those opposed vote nay. Record, Mr. Clerk.

**CLERK:** 32 ayes, 11 nays, Mr. President, on adoption of the amendment.

**KELLY:** The amendment is adopted. Raise the call. Mr. Clerk.

**CLERK:** Mr. President, Senator Slama would move to reconsider the vote just taken on AM2908.

**KELLY:** Senator Slama, you're recognized to open on the motion.

**SLAMA:** So, as promised, I outlined exactly what would happen. I don't have any disdain. I don't approach any kind of bill debate with any kind of disdain. So claiming that I have disdain is inaccurate because I have no feelings on this. I just don't like big government, and this is a big government bill. We're still in a position now with LB175 where we have all the big government parts that people didn't like. Everyone who was on the fence with this bill in the morning told me, you know what? LB175 itself is a problem, but we're willing to deal with it if we can get the LB1115 jury trial language on, because there's a Supreme Court decision in which they reference problems with right to a jury trial when it comes to evictions. OK. Well, I made it clear that that was a thing that we were willing to negotiate. So I brought this motion to reconsider because we've now eliminated that part of LB1115 that we talked about just having to add, otherwise, the Supreme Court was going to rule all landlord tenant law with all the ag leases and all the rentals unconstitutional. And so we're back to the baseline bill, LB175, which prevents another landlord from asking a landlord on a background check as to whether or not they evicted a tenant. Here's why that's important. Let's imagine for a second that we have a tenant in a property that's not paid rent, that's cooking meth, whatever. Like there's so many different options you can do in rural Nebraska. It looks different than in Omaha, I'm sure. Common problem we have, tenant not paying rent and tenant not up-keeping the premises. Let's just say they're cooking meth on the kitchen stove. It does happen. Ask any of the rural landlords on the floor. It happens more often than you'd like. You go through the two week mandatory waiting period before you can serve an eviction notice on them. All right. So you file the eviction notice, you pay for a lawyer to file the eviction action. And before your hearing date, the person cooking meth in your house, a few weeks down the road and they've now had a month and a half of basically free reign over your premises, they take their stuff the night before the hearing and they get out. So you as a landlord don't have anyone to evict anymore. Your eviction action is dismissed. The person has cleared the premises. You're now out month and a half worth of rent. You have damages that you're never going to get because the person skipped town. And you also have lawyer fees. So landlord number one is left holding the bag. Tenant one, cooking meth, late on rent, hangs out for a month and a half in your property for free, is now trying to rent another property. This landlord, the second landlord, landlord number two, is now looking into this tenant's rental history. Nothing comes up. That's weird. You reach out to the landlord. Landlord one he was stuck with a month and a half of no rent and a lot of damage to his place. Landlord number two asks

landlord number one, well, did you evict tenant one that was so terrible that supposedly caused all this damage to your house? You can't even say that you filed an eviction action against him. What we're doing right now with this bill is subsidizing-- forced subsidization by the government of landlords for bad actors. Like, we're not sitting here going these tenants at 12:30, 30 minutes past midnight on the day that they were supposed to pay rent, are getting eviction actions filed against them. You file these actions when you've hired a lawyer, when you're willing to pay court costs. It's not something that's to be taken lightly, and it's not something that's spuriously filed. And we've had examples brought of bad actors. There are bad actors, landlords and tenants. There's inequality in our justice system, especially on the civil side. I'll be the first to admit that, and I will be the first to say that things like the Tenant Assistance Program are wonderful things that help fill the gap in our justice system. However, when we have legislation like LB175, it's big government that ties the hands of landlords, that prevents other landlords from finding out bad actors before they get on their property. So no, I don't have disdain with this bill. I don't have really much feeling for it at all other than it's big government. I've told everybody what I was going to do. I didn't want it to get to this point. I don't know where we got off the rails in terms of negotiating where we were going to go and why. But now we're sitting here with a bill that's going to go until 5:00. Ideally, Dungan's going to-- Senator Dungan's going to have the night to think about it. I, I'm guessing we have a veto override scheduled for tomorrow, to where ideally, we have some time to circle the wagons and make this a better bill. Because at the end of the day, what we're looking at here is a bill that, yes, it's been parsed down. We now say one strike. You get one freebie, you get one rental property that you get to destroy, and we don't get to talk about it. Next year it'll be the three strike rule. And then the year after that, it'll be the three year automatic erasure of any eviction notice that you get. And then we'll have a bill like New York and California has now, where the landlord can't even look into your criminal history with certain misdemeanors and felonies. It's a clear slippery slope that we're going down, and I'm not going to vote for it. And I'm going to do everything in my power to support small government, support the people who try to make housing affordable in our state, and housing available in our state, by offering it to tenants, by blocking this bill. I made it clear that I'm very concerned about the constitutional issue. I am all for working together with Senator Dungan to avoid a special session. I think Senator Wayne has been really operating in good faith when he's

also been dealing with a bunch of Executive Sessions of his own doing, admittedly, in the Judiciary Committee. And I'm unclear as to why we're sitting at this point today, after having argued for most of the day that we're facing a constitutional crisis if LB1115 doesn't get attached to LB175 now going, meh, it's not that big of a deal, I guess. So at the end of the day, no, I don't have disdain, no, I don't have feelings. I made it very clear what I was going to do at the start and where my negotiating point was. That didn't follow through. So now I'm following through with what I said I would do. I will file a reconsider here, and a bracket, and an amendment, and a reconsider on all of those things. We'll take it eight hours. I didn't want to have to get it to this point. It'll need 33, because I'm not going to let this slippery slope start sliding when it comes to landlord and tenant law in Nebraska, because I've seen in New York and California where this goes, and I'm going to stand here and be really annoying about a bill that Senator Dungan is going to say is no big deal, because it is a big deal. It's the first step in being a really big deal in cutting into the availability of affordable housing in our state. So I'm not going to be--

**KELLY:** One minute.

**SLAMA:** --next year. Thank you, Mr. President. I'm not going to be here next year for the slippery slope step two of bringing back unlimited bites at the apple in terms of if the case is dismissed and the tenant moves out a month and a half the night before the hearing. I'm not going to be here two years down the road when we have unlimited clean slate tenant law, so long as you're three years out from your last eviction. And I'm not going to be here the year after that, when now, suddenly, you can't consider criminal records when it comes to renting out your property. I'm all for private property rights, I'm making a stand for private property rights today, I don't care if it goes eight hours, I'm fine with that. I have the time, I have the binder, and I'm ready to go. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Hansen, you're recognized to speak.

**HANSEN:** Thank you, Mr. President. I was hoping-- I was just going to ask a question of Senator Slama that she can expound on. I do respect her opinion on matters such as this. She might have-- she might, she has more experience than me in matters of legalities when it comes to tenant law. And so, I, I, I'm hoping, because I want to make sure I'm not missing something with the amendment and and with what your

concerns are, can you expound maybe just a little bit more on the, the big government aspect that you were talking about before?

**KELLY:** Senators.

**HANSEN:** If, if Senator Slama will-- actually I'll yield the rest of my time to Senator Slama to answer that question.

**KELLY:** Thank you, Senator Hansen. Senator Slama, you have 4 minutes, 13 seconds.

**SLAMA:** Thank you, Mr. President. And thank you, Senator Hansen. No, I appreciate that. And I think we're both on the floor as small government conservatives here. And the problem with LB175 from a big government versus small government perspective is we are getting government involved in the landlord tenant relationship, and blocking potential landlords' view from tenant misconduct. So backing up to square one with LB175, how it operates and the problems therein. And I'll start off with saying I, I'm grateful for Senator, Senator Linehan and her speech. When I was on Judiciary Committee and it was 7-1 and then 6-2, like it was hard, and I get it. And I have all the respect in the world for the Judiciary Committee. However, just because a bill comes out of committee doesn't mean it's ready for prime time, doesn't mean it's ready to go. But from a big government perspective, we are saying that tenants' misconduct is entirely excused, so long as the eviction action is dismissed before it gets to its hearing day, and we're only giving them one bite at the apple, we're only giving them one time to destroy the property, or cook meth, or not pay rent, or try to be squatters at the property at which they're renting. And my big problem with that is it's just another erosion of private property rights when it comes to the landlord-tenant relationship. We're saying you get one freebie, one freebie that you can't ask as a new landlord for this tenant, you can't ask, you cannot see, you can't even consider if this person had an eviction action filed against them if it was dismissed, if it didn't follow through the multi-week, sometimes multi-month process of evicting them from the property. You get one freebie. And that's a problem. That's a bad precedent to be setting in the state of Nebraska, to go, you can't look, you can't ask. It's, it's like going to a bank and asking to take out a loan and having the bank be unable to see that you filed for bankruptcy when you apply for a loan. It's the same idea. For me, sunlight is the best sanitizer. And I have a really big problem with bills like this where we say, oh, it's big government, but it's a small big government bill. Because what we're



doing is incrementalism. We're trying to make something palatable, just enough so that a senator who believes in private property rights, believes in small government, doesn't take it eight hours. We're just trying to make it palatable enough to where it just seems unreasonable to take eight hours of time on it, and then next year, we'll have another little bill that says, so long as the eviction action was dismissed, you get unlimited bites of the apple. And we'll say that that's no big deal too.

**KELLY:** One minute.

**SLAMA:** Because-- thank you, Mr. President. Because who's going to be willing to take that eight hours? And it's incrementalist big government policies that erode private property rights, that erode our liberties. So I'm sitting back as a small government enthusiast going, no, I'm not going to let that happen, because I'm on my way out, and you know what? I'll be that person who raises my hand and stands in the way of private property rights being eroded in our state. I will be that person. Like this will go the full 14 hours. If he ends up getting 33 votes, fine. But there has to be somebody standing up for private property rights and the availability of affordable housing in this state, and I'll be that person. Thank you, Mr. President.

**KELLY:** Thank you, Senator. Senator Lowe, you're next in the queue.

**LOWE:** Thank you, Lieutenant Governor, and thank you, Senator Slama, and thank you, Senator Hansen. You know, here we are. This is the reason why I came down here, to try to stop government from taking over little bits at a time. Little nibbles, little nibbles away at our freedoms. And that's what-- that's what this bill does. Takes away just a little bit of our freedom. We won't notice it. Ask the frog you put in the cold water and then turn the heat up. He doesn't notice before it starts to boil. That's not a pretty sight. But here we are with maybe nine, ten people on the floor. The ice cream downstairs must be pretty tasty. You know, as we look at this, as a landlord, I look at my freedoms to rent a house to who I want to. And when I don't know if that person has committed crimes or anything else, I don't know what's going to happen in that house. I think I deserve to know. Because I don't need that house laying empty any longer than I need to after I have to go back in and fix it up after I get a tenant who has destroyed it. That costs me money that I have to borrow from the bank, because I own these. The real owner is the bank. And the bank owns them. Well, actually, it's probably the state owns them because we owe high property taxes in Nebraska. And I have to pay the property tax

that is extremely high. It's based on the sale of property around me, even though it's not comparable. I have 2 buildings in downtown Kearney that sit next to another building. I value my 2 buildings that are \$150,000 apiece, which is more than I paid for them and what, what I believe I can sell them for. But they have a, a buyer that's willing to pay \$325,000 for the building that's right next to mine. Guess what my buildings are going to be valued at next year on my taxes? Not \$150,000, not \$185, but they will be valued at over \$350,000 because the building next to my 2 buildings isn't as large as my 2 buildings. So my taxes are going to go up. What happens when that happens? My tenants are going to get a raise. They're going to get an exorbitant raise because their leases aren't due for another 2 years. And I have to eat those taxes for 2 years. So I've got to make up time once I do renew the, the lease. And I'm very sorry for those tenants because it's not my choice to raise their leases. This will also occur with houses, with apartments that we have, the-- because now we have to rent-- or now that we rent to tenants that we don't know who they really are or what they've done to other apartments, we don't know what's going to happen to these apartments, and so we have to raise our rents on all the apartments. Why? Because we pass LB--

**KELLY:** One minute.

**LOWE:** --175-- thank you, Lieutenant Governor. And we don't need to. We don't need to do this. This is not helping at all, especially those in the lower income, because they will take the brunt of it because they can't afford anything nicer than what they're living in. They're not living in some place with a 2-car garage attached on. They're living in a place where they may still have to park on the street or, or just park off the street without a garage. It is these tenants that this will affect, and I'm sorry for them if we pass this bill. Thank you, Lieutenant Governor.

**KELLY:** Thank you, Senator Lowe. Senator Slama, you're recognized to speak.

**SLAMA:** Thank you, Mr. President. And thank you, Senator Lowe, for outlining your concerns about this bill. So the first thing I'm going to read is, again, I think there's a lot of unfamiliarity with this process and what it looks like. So I'm going to read, from the Lancaster County web page, the eviction process. One of the most frequently asked about civil procedures is the eviction process. The information contained on this page is for informational use only. For detailed information or legal advice, please contact an attorney or

research the references provided at the end of this article. Legal eviction in Nebraska must be accomplished through a civil court lawsuit of forcible entry and detainer filed by the plaintiff/landlord versus the tenant that is to be evicted. The Sheriff's Office role in the lawsuit is through the service of three different types of civil process generated by the procedure. Services the Sheriff's Office provides in the eviction process are listed below in their respective order. 1. Notice to quit. The first step is for a plaintiff landlord to provide a written notice demanding the tenants vacate the property. The plaintiff will prepare a document referred to as a quote, notice to quit, end quote, and may choose to have the Sheriff's office serve this writ. There are no statutes that dictate a particular type of service or return day for a notice to quit. The Sheriff's Office policy is to attempt service as soon as practical, and service can be either personal, residential, or may be accomplished by posting the notice on the door of the residence. The Sheriff's Office does not provide forms for these notices, nor give advice as to their content. The notice to quit is not, and this is in all caps, not a court document, and does not order removal of the occupants. It's simply a notice for the tenant to vacate the property by a specific date or the case will be taken to the court for eviction. After the service of a notific-- notice to quit, should the tenant fail to move, the plaintiff must then commence suit in a court with jurisdiction in order to proceed. 2. Summons of forcible entry. A summons, a notice of the suit, may be sent to the Sheriff's Civil Division for service. The summons contains a time and date for trial, and must be returned to the court within 3 days of its issuance. Service of the summons may be personal or residential. 3. Writ of restitution. If the landlord prevails at trial and is awarded judgment, a writ of restitution may be issued. A writ of restitution orders the sheriff to remove the defendant and restore the premises to the plaintiff in the procedure described below. A writ, a writ of restitution must be executed and returned to court within 10 days of issuance. Because of this relatively narrow window, it will be executed without delay. To expedite the process, the plaintiff should provide a contact name and phone number for their representative. LSO writ of restitution service; eviction procedures. Unless some other type of action is specified in the writ of restitution, service will be executed as follows. Deputies will contact the plaintiff, plaintiff's attorney, or authorized agent to set up a time/date for restoring the premises to the plaintiff. The Sheriff's Office requires the plaintiff or their authorized agent to take possession of the premises--

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**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President-- at the time of the eviction. Should the plaintiff choose to change the locks on the residence, the Sheriff's Office is not obligated to stand by while the residence is being secured. Deputies will serve the defendant's copy by personal, residential, or posting. An additional notice from the Sheriff's Office will be served/posted, indicating that the residents have a specific time frame to vacate the property. I'll continue reading this on my next turn on the mic. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Bostelman, you're recognized to speak.

**BOSTELMAN:** Thank you, Mr. President. I do have some questions about the unconstitutionality of the case we're talking about. I believe it's the NP Dodge case in that-- we're talking about-- that the court had. And I'd ask Senator Slama if she would be available to answer some questions, help me understand a little bit better. Would Senator Slama yield to some questions?

**KELLY:** Senator Slama, would you yield to some questions?

**SLAMA:** Yes, sir.

**BOSTELMAN:** So is the, the court-- is it-- it is, in the NP Dodge case, and did it not rule that it is unconstitutional?

**SLAMA:** So-- and I appreciate you asking that question, Senator Bostelman, because the ruling that was being referenced as to the need for LB1115, which has just magically dissipated now, after the lunch hour, was that there was a concurring opinion that alluded to if the right to trial was not clarified in the Landlord Tenant Act, that that entire section might be rendered unconstitutional. So that was the concern that was being raised as to the need for LB1115, and that we needed to tighten and clarify our language when it came to right to a trial by jury with the landlord tenant statutes for our state.

**BOSTELMAN:** So that was based on 1 justice that, in a concurring opinion, speculated that it may be?

**SLAMA:** Yes. That was the concurring opinion of Justice Papik, in this particular case.

**BOSTELMAN:** OK. I don't believe that there's-- there is-- has been a case that has been appealed to the appeals court with this?

**SLAMA:** So I'm not familiar with the entire docket. Senator Wayne has made reference to this. And I trust his word on this, in that there are some cases that might be on point when it comes to this particular issue on appeal. I'm not familiar with those specific cases. But if he's claiming that there could be cases on point that might be appealable, that might lead us to a special session in September, should the court rule very, very, very broadly when it comes to our landlord tenant statutes-- I mean, Senator Wayne is a qualified, competent attorney who practices in this area. So, I'd have to say that there's likely something that at least gets within spitting distance of the constitutionality of the right to a trial by jury in our landlord tenant acts.

**BOSTELMAN:** OK. I, I believe the Attorney General has filed a brief in the NP Dodge case defending the constitut-- constitutionality of Nebraska's Residential Landlord Tenant Act. Do you know about that?

**SLAMA:** I don't. And I'll put a pin in this, that if I do find that opinion, I'll read it aloud on the mic, just for the sake of getting it into the record. As Senator Wayne referenced, anything you say on the record is in the record. You don't have to say it's on the record because it's automatically on the record. But I have heard of that opinion, and I definitely would like to get that into the record if given a chance.

**BOSTELMAN:** OK. Thank you, Senator Slama. I appreciate the opportunity to have-- to ask questions, Senator Slama, and have some more clarification for myself, specifically to the NP Dodge case. I'll see if I can't find that brief myself, and look it up. So, thank you. I yield the rest of my time back to the Chair.

**KELLY:** Thank you, Senator Bostelman. Senator Slama, you're rec-- you're next in the queue. And this is your last time before your close on the motion to reconsider.

**SLAMA:** Thank you, Mr. President. And good afternoon again, colleagues. I am grateful for Senator Bostelman's questions when it comes to the NP Dodge case. Because that was the entire urgency surrounding LB175 this morning, right, is oh, my God. There's this unconstitutional provision of the Landlord Tenant Act when it comes to right to a trial by jury, that we need to address in LB1115. Otherwise, we're all going

to get pulled in from harvest come September, because we're just going to have a mess of right to trial by jury eviction cases, because all of our landlord tenant statutes will be ruled unconstitutional. Well, we've now abandoned LB1115 entirely. We've said, we don't have the votes. And I've been very clear that I am more than willing to address this issue in a bipartisan, narrow fashion to clarify any language that we may need to address referencing that concurring opinion in NP Dodge, to ensure that we're not sitting here in a special session. But LB175 has now eliminated any reference to LB1115. And it's simply a you get 1 free shot at-- as a tenant, of destroying a property and getting evicted and going through that process, and your next landlord can't ask your old landlord about it. So I am now taking time, speaking out about the erosion of property rights. Oh, thank you. OK. Again, shout out to my staff. I was literally just handed the case, the AG's opinion, everything I need. So on my next turn on the mic, we'll explore this. Shout out to my wonderful office staff. They keep me functioning and I'm so grateful for them. They are rock stars. But I will get back to the eviction process, because I do think people are under the impression that this is somehow a quick process, that if somebody fails to pay their rent, by the time they wake up at 7:30 the next morning, they'll have all their stuff thrown outside in the yard. The locks will have been changed in their sleep. That's just not what this process looks like. It is a very long, arduous process, where the landlords already have to jump through hoops in order to get somebody who's not paying rent, breaking the law, destroying the property. One senator brought up that sex trafficking is a problem in some of their rental units in their district. I'm not going to reveal who that was, because I want them to be able to share that experience on their own. But it's not an overnight process. And landlords are left jumping through these hoops. So this is just from the Lancaster County web page about what the process for eviction looks like. And we have to go through 3 stages. We've already discussed them: notice to quit, summons of forcible entry, writ of restitution. So right now, we're talking about the writ of restitution. So we get through all the notices, it gets through its hearing date, and the judge goes, yep, you're evicted. You're out of the prop-- you're off the premises. You have to do it within 10 days of the judgment. So we've already had the hearing in court. We've provided all the notice. The day has come. So by Sheriff's Office policy, 3-days' notice is given whenever reasonably possible, to allow the defendant time to voluntarily vacate the premises and remove their personal property. This time frame also aids the plaintiff from having to dispose of property under the Disposition of Personal Property Landlord and--

**KELLY:** One minute.

**SLAMA:** --Tenant Act. Thank you, Mr. President. Generally, the Sheriff's Office will not execute writs of restitution at night or on weekends or holidays. At the time of the eviction, the deputy will arrive at the location and remove any occupants from the premises if necessary. Occupants will be advised of trespassing violations they could be subject to if they return. Tenants with personal property remaining in the residence must contact the plaintiff to arrange for removal. Provisions for such are set out in the Disposition of Personal Property Landlord and Tenant Act. Deputies will not take part in the disposal or removal of personal property unless specifically ordered by the court. And I will take this up once I'm through getting-- talking through the AG's Opinion on the NP Dodge case-- through talking about that. But I do want to revisit this in future turns on the mic, and I've got the time to do it. So thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Mr. President. As I look outside, it seems to be getting a little darker out there. And so, we must be going into late afternoon, and-- as we discuss LB175. And as I'm looking at my computer, I'm following along the University of Nebraska women's basketball team, who is working out, trying to get into the Elite 8 down in Kansas City at this moment. And that is why if you went outside, you saw little Herbie out there and the bull from Omaha, but you did not see Louie the Loper. Louie the Loper is a antelope, and he is now down at the MIAA women's basketball tournament, and UNK is leading Washburn 65 to 58 with 6 minutes left in the fourth quarter. Just an update on sports as we go along today-- a little, a little different. I am still against LB175 and what it does to the tenants. You know, we don't think about the tenants when we're discussing this as a landlord bill. And so it really, really goes against the lower-income tenants. And I think we need to think about that, because as, as we go on as landlords, we have to look about who we are going to rent to. And do we switch everything to higher-end apartments and get rid of our lower-end apartments by bulldozing them down and putting up a nice apartment that will bring in much more money, or do we be kind and rent to those people that we really need in our communities to run our businesses? And I mean by run them, they're the ones that take care of our businesses. They're the ones that clean the floors. They're the ones that wash the windows. They're the ones at

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the teller's office-- or teller's booth at the banks. They're the ones that are waiting our tables for us. They're the ones that do the work for others. Most of them, if they do live in a higher-end apartment, they live 4 or 5 people to an apartment, just so they can afford the rent. Or they could rent a little lower-class place, one that may not have the best looking paint that-- but it is painted, at a reasonable rate. I'd like to yield the rest of my time back to Senator Slama, before I get-- jump back in the queue, and I'll give you another report on the basketball game. Thank you.

**KELLY:** Thank, thank you, Senator Lowe. Senator Slama, you have 2 minutes.

**SLAMA:** Thank you, Mr. President. And thank you very much, Senator Lowe. I, I do think very highly of the University of Nebraska-Kearney. And I am specifically appreciative that they're smart in their budget and that they only have 1 Louie the Loper, and that he is choosing, instead of hobnobbing with senators, to go support the women's basketball team. And I think that's awesome. Another sports shout out, Peru State men's basketball team got to play-- spoiler-- and won their conference tournament, for a berth into the NAIA national tournament this weekend. It was a big upset over Baker. And those guys have worked for years and years to get a berth in the NAIA tourney. It's huge. And moreover-- so Peru State is in Nemaha County.

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. And this weekend, we're also going into the boys state basketball tournament. There are 2. There are 3-- I'm so sorry-- undefeated teams left in boys high school basketball and all classes statewide. 2 out of those 3 are Johnson-Brock and Auburn High School, also in Nemaha County. For those who are unaware, Nemaha County is in District 1. I'm a proud graduate of Auburn High School. And you know what? I guess Nemaha County and District 1 are the basketball capital of the state. And I'm, I'm very proud to represent them and all of District 1. So go, Bulldogs, go, Eagles, and go Bobcats. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Lowe, you're recognized to speak, and this is your third opportunity on the motion.

**LOWE:** Thank you, Lieutenant Governor. And it's getting close. It's now 67 to 60 against Washburn, with 4 minutes left. I would like to yield the rest of my time to Senator Slama, if she would like to have it.



**KELLY:** Thank you, Senator Lowe. Senator Slama, that's 4 minutes, 35 seconds.

**SLAMA:** Thank you very much, Mr. President. And thank you very much, Senator Lowe. I am grateful for this chance to stand up for private property rights. And I am so grateful for the conservatives-- the small government conservatives on the floor who are with me on this fight and are on the floor listening. Something I'm worried about is there's a decent number of people who, I think were kind of sold a bill of goods in the closing for the last amendment, who weren't necessarily on the floor. They were in Exec hearings, but they weren't following along with the issues inherent with the bill. So we're going to take some extra time, so that we can kind of socialize the issues with this bill, the erosion of private property rights. And again, I've got the NP Dodge Holcomb case. And I do have the amicus brief from the AG's Office for this case. So I am going to start reading that. But before I do that, I am going to finish the eviction process from Lancaster County web page, because it is valuable that those who are unfamiliar with the landlord tenant relationship, understand that when things go wrong, the landlord already has to jump through hoops that take weeks, at a minimum, in order to evict a bad actor tenant from their premises. And they have very limited options when it comes to seeking restitution from the destruction of premises. If it gets to the-- especially if it gets to the point in court where they followed through with the eviction proceeding, they've already hired a lawyer. They followed through with all the notices they have to pay through-- for through the Sheriff's Office. So we'll get back to that and finish it, and then I'll get into the amicus brief. So whenever deputies have removed occupants from a premises, they shall supply the occupant with a short period of time to obtain vital personal effects or obtain such effects for the occupant. Deputies will take action to protect the person removed, if necessary, due to age, infirmity, mental or emotional condition, illness or disability as provided by the law. If the premises involved are rental properties, such as a house or an apartment, and the premises have been turned over to the plaintiff, the deputy has no further obligation. If the writ of restitution is for a mobile home owned by the defendant, the mobile home may be levied and set for the Sheriff's auction. Keys, if available, for the mobile home, will remain with the landowner in the event that the emergency entry needs to be made during the time prior to the sale. If the auction sale of mobile homes, a bill of sale issued by the Sheriff only reflects the transfer of the defendant's interest in the property and is not an implied or actual title to the property. All actions

take place in the exit vestibule of the Justice and Law Enforcement Center at 575 South 10th Street, Lincoln, Nebraska, 68508. All services by the Sheriff's Office require a pre-paid deposit before service will be attempted. Deposits for eviction services are-- and this is to note that all of these fees are on top of your court filing fees, any lawyer you have to file-- hire to file this action for you, any damage to your premises--

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. You have to file this notice to quit yourself. It's not a standard form that you have. You have to have a lawyer draft it for you, or you draft it yourself, but it has to be upheld by the court. So we've got a \$25 for notice to quit, summons, or writ of restitution within Lincoln city limits, \$50 notice to quit, summons, or writ of restitution outside Lincoln city limits and within Lancaster County. But wait, if you're in a mobile home levied for a Sheriff's sale, you have to pay \$150 for a writ of restitution on mobile homes levied for Sheriff's sale. So I'm really hoping that anybody following along understands that this process is lengthy for a landlord. It's expensive for a landlord. They're not going into this spuriously, and it's a process that requires a lot of different levels of consideration. So when we're talking about further limiting their rights, that's a problem for me. Thank you, Mr. President.

**KELLY:** Thank you Senator. Senator Clements, you're recognized to speak.

**CLEMENTS:** Thank you, Mr. President. As a banker, I'm concerned about being able to look up the credit records of people-- of loan applicants. And I am concerned about expunging a late payment or nonpayment record from a person's credit history. And I would like to ask, would Senator Slama yield to a question?

**KELLY:** Senator Slama, would you yield to a question?

**SLAMA:** Yes.

**CLEMENTS:** Thank you, Senator Slama. I was talking about bank credit reports that we gather when we have a loan application, and if a nonpayment by a-- a landlord, I'm sure, can file a credit report, as far as nonpayment if they experience that. But if this bill would pass, would that report go on file? Do you, do you know?

**SLAMA:** So I think that's an interesting gray area, Senator Clements, in that if the person was evicted for nonpayment of rent-- no, that's actually a fascinating question. Because if you look at the language of LB175, everything is sealed. So if the tenant is evicted for nonpayment of rent, no one's able to access those records, so long as you don't get to the follow-through of the final writ of restitution. So if we're talking about a tenant who was evicted for nonpayment of rent, had to go all the way through the process, and the court has ruled against them, ruled for a writ of restitution. So we've already gotten through the several weeks, it was past the court date, past the 10 days for the writ of restitution, and they get their stuff before the Sheriff's Office shows up, no, I actually think those records would be sealed and the banks would be unable to locate those records.

**CLEMENTS:** And then the, the landlord would be prevented from putting an eviction record on the credit report, I assume.

**SLAMA:** Yeah. As I understand it, that's, that's all sealed.

**CLEMENTS:** Right. Well, that's a concern to me. In banking, we, we do look at people's history in other places, where they have had credit or payments. And I would not-- I don't support this bill for that reason. And I would yield the rest of my time to Senator Slama.

**KELLY:** Thank you, Senator Clements. Senator Slama, you have 2 minutes and 15 seconds.

**SLAMA:** Thank you, Mr. President. And I would like to dig into the AG's Opinion. Well, it's an amicus brief on NP Dodge v. Holcomb. And this was under the last administration. It was AG Peterson that filed this. But just starting with all of these briefs, you have a very well written table of contents. Some attorney at the AG's Office puts a ton of effort into this. It's like a law school final project for a lot of these guys. So, we get to page 7 before we get to the start of the brief itself, and it starts off with summary of argument. The county court did not err in denying Holcomb's request for a jury trial in this landlord tenant possessory action brought under the Uniform Residential Landlord and Tenant Act, URLTA. The right to a jury trial, protected by Article I, Section 6 of the Nebraska Constitution, does not attach to landlord tenant possessory actions under URLTA because they are summary in process, equitable in nature, and substantively--

**KELLY:** One minute.

**SLAMA:** --distinct from-- thank you, Mr. President-- from 1875 ejectment and FED actions in Nebraska. So let me repeat that, because I think it's a key paragraph that, as we were talking about LB1115, and how that worked and the issue inherent in whether or not you get a jury trial in the landlord tenant relationship in the state of Nebraska, we have this amicus brief of the right to a jury trial protected by Article I, Section 6 of the Nebraska Constitution does not attach to landlord tenant possessory actions under the URLTA because they are summary in process, equitable in nature, and substantively distinct, distinct from 1875 ejectment and FED actions in Nebraska. So we've got this amicus brief that I didn't anticipate getting into today, that very clearly outlines why LB1115 didn't have any constitutional issues with it whatsoever. We'll explore that more on my next turn on the mic.

**KELLY:** That's your time.

**SLAMA:** Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Dorn, you're recognized to speak.

**DORN:** Thank you, Lieutenant Governor. I-- just listening to Senator Slama here. Would she-- Senator Slama yield to a question?

**KELLY:** Senator Slama, would you yield to a question?

**SLAMA:** Of course, Senator Dorn.

**DORN:** Thank you, thank you for getting into that amicus brief. As, as I sit here today. I know there's other things going on-- lobby and everything else. So I, I may not have caught all of this today, but I talked to you a little bit about Senator-- I think Senator Wayne and others have expressed concerns about that we will be back because of a supreme-- Nebraska Supreme Court ruling. And this, I assume, is an amicus brief that's-- pertains to that. Explain that a little bit. Why now, if we pass the amendment, we won't have the-- in the bill, it won't be there anyway. But if I heard you right, it does not pertain anyway.

**SLAMA:** Yes. According to this amicus brief, like first paragraph, first page of the substance of this amicus brief, is this isn't a problem. So as we're looking at NP Dodge and Holcomb and going, oh, all these big scary things will happen under LB1115. And I'd love if some of the people on the other side of interpreting this would get in

and help me understand how this is such an urgent constitutional problem. Again, I would love it because I'm just not seeing as I'm digging into this case.

**DORN:** Right. Well, and that-- listening this morning and I thought there was some good discussion this morning. That was part of the conversation that we were going to go down that path, the state of Nebraska. You're going to be involved in this because we don't meet, I call it the federal Constitution, that says your right and your-- you have a right to a trial and stuff. So this, though, kind of says that, oh, the state of Nebraska, now it probably doesn't pertain to this.

**SLAMA:** Yeah. So what we're looking at is an amicus brief that says, not relevant. And the thing that was being pointed to is a big, scary, nasty thing as to, we have to pass LB1115 or everything is going to get compromised, we'll be in special session, all hell will break loose, is a concurring opinion on this case. It's one justice's opinion. It's his opining that, you know, in--

**DORN:** Yeah.

**SLAMA:** --this possibility, there's a chance that maybe, perhaps, this might happen.

**DORN:** OK. Then that gets to my last question. Today-- as we stand here today, has there been anything I call it, in front of our Nebraska Supreme Court? Is there any challenge in there or with our Attorney General, is there anything under I call it that avenue of a legal perspective that has-- has there been something filed that says, yes, we're going to have this, this ruling by the Nebraska Supreme Court, or is-- or that hasn't gone down that path?

**SLAMA:** I'm standing willing to be corrected on this if somebody wants to hop in, but not to my knowledge. And I'd be really concerned if there had been something filed on point that we're just going, meh. We don't need that language anymore anyways.

**DORN:** Yeah. OK. Good. Thank you, thank you, Senator Slama. I see Senator Dungan here. Would Senator Dungan yield to a question?

**KELLY:** Senator Dungan, would you yield to a question?

**DUNGAN:** Yes.

**DORN:** OK. I don't know if you just heard that last question I asked Senator Slama. Has there been any-- have we already I call it entered the legal aspect of it and gone down that path, whereby Nebraska, Nebraska Supreme Court, you now need to give us guidance on this?

**DUNGAN:** Yes. So what's interesting about the case that we keep referencing, which is that Holcomb case, is the ultimate decision they reached, was that-- the, the majority of the court said that it was moot, meaning--

**DORN:** OK.

**DUNGAN:** --we can't even reach an opinion about the other issues that were brought up. Now, in the original case, the issue of whether or not this is unconstitutional, that our current statute is un-- was raised. But the court said we don't even--

**KELLY:** One minute.

**DUNGAN:** --have to get to that. Thank you, Mr. President. We don't have to get to that because we're going to address it on another issue, and we found it moot. That's why this concurring opinion exists. The concurring opinion says, listen, I concur. I agree the issue before us today was moot, but if we were to have reached an opinion, here's perhaps what we would have said. And then it goes into a little bit more detail, actually outlining the amicus brief that was just discussed and pushing back on the amicus brief, saying, here is what was said in the amicus brief, but here's why we disagree with that. And that's Justice Papik and a couple of others that join in. So in addition to that, my understanding is there are currently cases on point that are working their way through the system. I don't have the names of those cases which ultimately will be appealed up. And by the time those go from county court to district court and then to the Court of Appeals, or potentially being taken to the Supreme Court, then they'll reach a decision assuming it's not moot.

**DORN:** Thank you. Thank you much. Thank you, Senator Slama. Thank you, Senator Dungan.

**KELLY:** Thank you, Senator Dorn and Dungan and Slama. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. I actually punched in right before Senator Dorn asked me that question. So I was going to explain essentially what I just explained. I know it's getting a little bit

late here. It is getting a little bit darker, but I, I wanted to just touch on that issue exactly. So, the amicus brief that I believe was filed that Senator Slama was talking about-- I was trying to listen back in the other room-- was filed by the Attorney General. And it did talk about those summary proceedings, and it did say that's why it shouldn't apply. Earlier today, I kind of went into some detail about why the Supreme Court, at least in this concurring opinion, pushed back on it. And I think I talked a little bit about it, but it might bear some repeating, given that he says in here, NP Dodge and the Attorney General took the position that an action for possession under 76-1446 qualifies as both a summary and special proceeding under these authorities. Although the exact definitions they offered for these categories were not completely clear to me, the Supreme Court says, they seem to argue that an action for possession under the statute is a special proceeding because it's codified in Chapter 76 of the Nebraska Revised Statutes rather than Chapter 25, and because it's governed by its own distinct rules of procedure, as opposed to the ordinary rules of civil procedure. He then goes on to say, this argument, however, has some flaws. As an initial matter, the statement NP Dodge and the Attorney General rely on, from Moores, is the case that we're talking about there, is dicta. The issue in Moores was whether the jury trial guarantee applies to a quo warranto proceeding. Furthermore, other dicta, meaning other language in this case, in Moores is contrary to the argument of NP Dodge and the Attorney General. Moores quoted the other language from the same Arkansas Supreme Court opinion that stated, quote, so far as our research has extended, the right of trial by jury at common law only extended to criminal prosecutions and in actions where a freehold or goods and chattels were in dispute. The term goods and chattels includes personal property, choses in action, and chattels real. Chattels real meant interest in land which devolve, after the matter of personal estate, as leaseholds. Black Laws Dictionary, or more simply a leasehold estate. It goes on to say, in any event, it's difficult for me to conclude that the language in Moores at issue would allow the Legislature to remove an action from constitutional jury trial protections by, for example, codifying an action somewhere other than Chapter 25 or requiring that the action be completed in an expedited manner. Our court has never understood Moores to allow as such. And if we were to adopt that argument, I do not know what would prevent the Legislature from enacting a statute codified somewhere other than Chapter 25, or with some expedited procedures, that makes actions otherwise be obviously subject to the constitutional jury trial guarantee. So essentially, the arguments that were raised that the

Supreme Court pushes back on and says, I understand where you're getting that from, but the language in the case that you're quoting that from is directly contradicted by the same case. Neither one of which, by the way, for legal folks who are watching, are the holdings of those case. It's dicta, which means it's, kind of, things that are off on the sides of the actual opinion. And in fact, the legal analysis is separate and apart from that dicta, about whether or not it should be a jury trial. So I am not a historian on a lot of these issues, but I do think that a number of other people have done the research about this. And the fact that, yet again, our Supreme Court seems to be implying this could be a problem, I think means that it potentially will be a problem. However, that has been taken out of the bill, and I understand that that is a problem. I wish we could address it. I wish we could add it back in, but when we asked our colleagues and friends whether we should do that or not, the votes weren't there. So this is not simply because we don't think it's important. It's because the rest of the Legislature didn't think this was an important enough issue to bring up today.

**KELLY:** One minute.

**DUNGAN:** So hopefully, we can address it in the future. I certainly don't want a special session. We keep talking about special sessions and I know we keep hearing about that, but I do have concerns that if a case were to reach the Supreme Court, ultimately this would be their opinion. So colleagues, again, I rise just to kind of go into a little bit more history there. Maybe Senator Slama also needed a little bit of a break. So I'm happy to talk for a few minutes about that. I have an Exec Session to go into. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Mr. Clerk.

**CLERK:** Mr. President, the Revenue Committee will be holding an Executive Session under the south balcony now. Revenue Committee, under the south balcony now.

**KELLY:** Senator Dover, you're recognized to speak.

**DOVER:** Yeah. I just wanted to stand up and basically-- we have a property management company. It was licensed in '83. We've been managing properties since then. And one of my main concerns as I listened to the debate is, let's say that-- I, I, I understand there's a number of attorneys who help pro bono, and that's really good that they represent tenants. But my concern is this, is let's say that



somebody, it could be, didn't pay rent, did damages or whatever. So basically they, they, they go to court, and then the attorney who's representing the tenant says, hey, let's do this. I understand that they owe you 6 months of rent. And I understand there's \$2 or \$3,000 worth of damage. How about we do this? How about we give you \$1,000, you let the tenant stay there for another week, and then agree to let the action-- not to follow through with the eviction? And most landlords are going to say, if I can get \$1,000, I'm not going to get anything otherwise or whatever, are going to take that option. Then the problem is, is with this, with this one-time option, is then they're going to be able to seal that. And so, when we have-- say that, that tenant then goes to another rental property and we do a background check on them, it's not going to show up. And so, my main concern is I, I believe that there should be full disclosure. I believe that there's accountability, and I believe that there shouldn't be a way that someone should be able to have that, that action that was taken to be, to be erased. And in most cases, I'll tell you, we've been managing a lot of property for a lot of years, someone is not going to take someone to court unless they absolutely have to. And I can't speak to Lincoln and Omaha, but I certainly can speak to the Norfolk area. And no one is going to go to court for no reason. And I yield the rest of my time.

**KELLY:** Seeing no one else in the queue, Senator Slama, you're recognized to close on your motion to reconsider.

**SLAMA:** Thank you, Mr. President. And Senator Dover's experience is really, really, really valuable here. And I hope, like the few people remaining on the floor are listening, because this is not a process that landlords go into lightly. I, I don't know how else I can outline this. There's not people spuriously filing claims in court. Like, you have to file a notice to quit. You have to file a summons of forcible entry. You have to go to court, have your court hearing date, get through that, have the court do a judgment in your favor. And then 10-- within 10 days, have a writ of restitution. If at any time during that process, the landlord and the tenant and probably the tenant's attorneys are able to come to a settlement or an agreement, or the tenant skips town before the sheriff can show up, that gets sealed. Doesn't matter the damage they did to the property, what was going on in the property, what misuse and abuse was happening with that landlord's property, doesn't matter. It's sealed. So I am taking this bill to time. I'm hoping that a, a night of consideration will bring us to a bipartisan compromise. I'm fully in support of a bipartisan compromise that protects private property rights, that gets to this MP

Dodge Holcomb case, that's evidently the thing that we need to continue pointing to as being necessary to pass. Otherwise, we'll have a special session-- but not important enough to where we're going to include it in the bill because for whatever reason, we're just not going to have that fight. So I'm going to keep talking about the MP Dodge Holcomb case, because it's that big, nasty thing that we all pointed at as being the necessary thing for the bill. And I am, I am at a crossroads here, as to whether or not I'm actually going to take this reconsider to a vote. Because we've got the Revenue Committee meeting under the south balcony. I know the Judiciary Committee's in an Executive Session. Oh, Senator DeKay's here. He's giving me a look of hope. He might have fled. Just kidding. Senator DeKay is not on the floor right now. If you're looking for Senator DeKay for the Judiciary Committee Exec-- oh, there's Senator DeBoer. They must be out-- yeah, DeKay's on the floor. And like, there's actually work getting done underneath the balconies. And I'm taking this time to protect private property rights. I don't know, I don't think the Revenue Committee is raising taxes with this Executive Session, so we might just-- I don't know. I'm going to take my, I'm going to take my time on the reconsider motion and then withdraw it. I'm not going to take it to a vote. But here's why we're here. We've got a few more people on the floor, because I think people sniffed out that there might be a vote coming. LB175 is an attack on private property rights in the state of Nebraska. Even with the slimmed-down version, even with the 1 free shot-- you've got 1 free shot across the bow, if you're a tenant, to use and misuse and abuse the property however you'd like. And so long as you vacate the premises before the sheriff arrives to remove you from the premises, that gets sealed. And the next landlord you go to cannot look into it, cannot see the record of that eviction that was sought. And moreover, I do hope Senator Dungan can clarify this, because a concern that was raised with Senator Clements is if this person has eviction proceedings started against them for nonpayment of rent, I don't even think the bank can--.

**KELLY:** One minute.

**SLAMA:** --see that. Thank you, Mr. President. And I, I think that's a problem from a practical standpoint. Because if somebody is evicted for nonpayment of rent-- we're not talking about somebody who's 30 minutes late paying rent. We're talking about someone who's weeks late, and that should be something that the bank should know. So after this, the AM will be adopted. I've got another AM to the Judiciary Committee AM. And we're not going to get to a vote on this reconsider. What I'll do is just talk this through to 5:00 and our adjournment.

Ideally, this won't be on the schedule until next week, and we can have the spirit of George Norris come through and possess us all to a bipartisan compromise that does not erode private property rights. And with that, I withdraw my reconsideration motion, Mr. President.

**KELLY:** Thank you, Senator Slama. Without objection, so ordered. Mr. Clerk.

**CLERK:** Mr. President, Senator Slama would move to amend with FA248.

**KELLY:** Senator Slama, you're recognized to open.

**SLAMA:** Thank you, Mr. President. For those of you excited about a vote, there wasn't one. There won't be one. If you want to head home at 4:20, 4:19, I guess, you can. Like, take that time if you've got it. If you're not in Executive Session right now, go home. Appreciate your private property rights, because right now we're dealing with a bill that erodes them. And here's where we're at. And I'm just going to repeat this because I like it when we keep debate relevant to a bill. Right now, we are discussing a bill that has been amended and slimmed down to say that if you, as a tenant, are right in the process of being evicted-- you've done something so terrible that your landlord has had to go to court to ask you to leave, as in you've asked this tenant to leave. They've said no. You've asked them a little bit more sternly, and they've said, go away. This is my land now. And it's gotten to the point where you've had to hire a lawyer, file a notice to quit, posted that or had the sheriff post it on their door. You've filed a court case saying, look, I'm serious. Now, I'm getting the courts involved and you're going to be evicted. You've had the hearing. The hearing date has passed. You've been evicted from the property. And within 10 days, the sheriff hasn't shown up yet. And you've said, all right, I'm out. I, I hear that you're asking me to leave. This is now weeks later in the process of you either not paying rent, destroying the premises, breaking the law, or doing some combination of those 3. It doesn't matter like, what you're up to. So long as you're out of there before the sheriff shows up to drag you from that property, the bank cannot see that you were evicted for nonpayment of rent. Your future landlord cannot see that eviction court proceedings were filed against you for nonpayment of rent, destruction of the premises, whatever reason that this landlord has had to take you to court, as in file an attorney, file all the necessary notices, pay all the fees to file against you to get you to leave his property. So long as you get out of there before the sheriff drags you out, you get 1 bite at the apple to misuse and abuse

somebody's property as much as you want, and the next landlord that you go to can't even ask--cannot even ask about those eviction proceedings that were filed against you. Now you might say, OK, it's 1 time. The, the person missed rent for several weeks. They hit a rough patch. What does it matter? Well, what matters is, is next year, we're all going, this is innocuous enough as a bill. Gosh, we're going to vote for this. And then next year, you get unlimited bites at the apple. So, so long as the sheriff has not dragged you from the rental property, which is what this bill was before it was amended, you get unlimited shots at misusing and abusing somebody's property, and your next landlord has no warning about that. They can't even ask. And then the year after that, we're going to go with the originally introduced language of LB175, that says even if the sheriff had to drag you from that property, so long as 3 years have passed, you can't ask about it. So, yeah. I'm taking a stand for private property rights. We shouldn't be in this position in the first place. Ideally, I would have a card in front of me that says, yes, we have 25 senators that believe in private property rights enough to protect them by killing this bill, but we don't. So now we're going to take this to 5 p.m. We're going to have the committees get some work done. I know Judiciary's had an extensive Executive Session. Revenue Committee is meeting under the balcony. Like, work is getting done behind the scenes. So this is duly positive for the Legislature in 1, that we're taking some time to protect private property rights, and 2, that we're taking some time. I mean, for crying out loud, if we're to personal priority bills like these, that just add more issues for a landlord to deal with if they offer affordable housing, like, we are moving too quickly with this session. We're almost through committee priorities. We're almost through personal priorities. And now we're to these little, little bills, that are just little bites at the apple here and there, of personal property rights, individual liberties. Where we go-- I don't want to filibuster it. I've got stuff to do. You know, I could be hanging out with my baby right now. He's really good company, and he doesn't try to take my rights away. He wakes me up at 3 a.m., he takes my sleep away, but he's not in the Legislature going, yeah, landlords shouldn't be able to ask if a tenant destroyed the last property they, they were at, so long as the sheriff does not drag that person from the premises. So, yeah. I'm going to take 8 hours to stand up for private property rights, form a legislative record. Because next year, I'm not going to be here to take 8 hours on the originally introduced language that says you get unlimited bites of the apple, even if the sheriff has to drag you off the property, so long as it's been 3 years, I'm not going to be here to form a legislative record when,

next year, we're pointing out the NP Dodge case of oh, my God, we have to pass this all encompassing bill, LB1115, to ensure right to a trial by jury, because we're going to be in a special session. Because now suddenly, it's not an issue. It's not an issue that we're going to try to address. Like if we're going to genuinely point out issues-- like, let's not say special session, let's not scream fire in the movie theater unless there's actually a fire. Like, I'm all for a bipartisan solution on the language in the concurring opinion by Justice Papik in NP Dodge v. Holcomb. If we can find some narrow compromise, that's fine. But I'm not going to sacrifice private property rights, tie landlords' hands, and make it this big, scary secret that a tenant destroyed the last property they were at. So I'm going to get back to this brief that the Attorney General filed on the NP Dodge v. Holcomb case, saying that you don't have a right to a jury trial under Article I, Section 6 of the, of the Nebraska Constitution, with these landlord tenant possessor actions. Because even though it's no longer part of the bill, it was tied up as this thing that we just had to do. And I think people came in from their afternoon and they were like, oh my God, yeah. This is a thing that we have to vote for to avoid a special session. Because if you yell special session in a place where you make 12 grand a year and you don't get any extra pay if you go into a special session and you have harvest in September, yeah, that's a problem. I get why people came in from their Executive Sessions and voted for the amendment. And I'm going to keep pounding the fact that not only is LB175 as a baseline bill a problem, I'm also going to get into NP Dodge v. Holcomb, and why LB1115 was just a red herring when it came to a special session being promised. So I understand why we're here today. I'm hoping we've got some senators on the floor right now that believe in private property rights. If you do, if you believe in small government, you'll stand with me in opposing LB175. We took a test vote on this and the votes weren't there. So that's why I'm filibustering it, so that I can protect private property rights, even if nobody else wants to. So thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. We were just going over Statehood Day and how much fun it was. And I would like to thank my wife for putting that on and being executive director. We all had a great time. I am still standing opposed to LB175, and it takes away our freedoms. But I know you're all anticipating my report on the basketball game that's happen-- that was happening. The Lady Lopers were playing down in the M-- MIAA tournament down in Kansas City,

trying to make it into the Elite 8. With 2 minutes left, it got within 2 points of playing Washburn. And then slowly, everything just kind of bounced back and forth for a while. And with a minute left, there was still at 2 points, and it didn't look good for the Lopers. But then they fought back, and they won, 72-65. So the Lop-- Lady Lopers are in the Elite 8. So good for them. They won. The Lady Lopers won. I'm giving Senator Slama a brief, brief break here, so that she could rest and, and get ready for the evening. You know, as, as we look at this bill and, and it's-- as we see now that it's not needed, I think that we ought to just vote this thing down. But I don't believe we have the 25 votes to do that. I, I think it needs to die a slow and miserable death. And that's kind of what we're doing now, is we're going to take this till 5:00. And I'm sorry, but I-- you know, I've, I've already talked about being a landlord and, and about the tenants, and how we try to take care of our tenants. I know Senator Slama has talked about the process it takes to remove somebody. And it's not a pretty process. They've been given multiple chances to redeem themselves. I've-- as I've said, I've let some of my tenants go for a month or 2 because I know they're strapped and I know maybe their employer is strapped and they weren't able to get paid fully, so we work with our tenants. It's what we do out in Kearney. We had a famous landlord out there for-- you know, for a long time. And he passed away 6 years ago. Jerry. Jerry and I were good friends. He was notorious for taking his tenants to court, because he wanted his money and he knew if he let them skid by for a little bit that they weren't going to pay. But he was also a very generous man, and he worked with his tenants. And if, if he knew that they were going to pay, he would let them go for a while. That's what good landlords do. And I believe Nebraska is made up of mostly good people. As the Governor says, all the time, when people come to visit, they say, what is it that makes Nebraska special? It's the people. And that's what we're talking about here. It's the people. The people that want this bill to pass probably are not the best people in the world. They've probably been given multiple chances to pay their rent. They've gone through the-- through many processes, and, and now they're going to courts-- the court where the landlord has to hire an attorney.

**KELLY:** One minute.

**LOWE:** Thank you, Lieutenant Governor-- where the landlord has to hire attorney. So not only are they out their rent, they're out the fee that they pay to an attorney. And so that's even further backwards. And like I said before, most landlords don't own their property wholly. It's the bank that owns them. And it may not even be the, the

local bank anymore, because the local bank has sold that note off. And as Senator Clements brought up to me, that it's, it's not the banker's money that he is loaning out. It's not the bank's money it's loaning out, it's you who have deposits in the bank. That's the money he's loaning out. It's your money that's not being paid back to the bank, so we have to think about that. That's the way freedom works. Thank you, Lieutenant Governor.

**KELLY:** Thank you, Senator Lowe. Senator Dungan, you're recognized to speak.

**DUNGAN:** Thank you, Mr. President. So I just wanted to get on the mic, and, I think, just answer a couple of questions that have been brought up. So I think Senator Slama, in talking about the process and the procedure of how this all goes down, made some comment with regard to the fact that if a tenant were to set this for a contested hearing or currently sets it for a contested hearing and then doesn't show up, the action can't move forward. That's actually incorrect. And I have talked to multiple people who do this for a living. And my understanding is our current statute actually says-- it, it-- there's provisions for this. In the event that a tenant sets this for a contested hearing and then does not show up, the matter will proceed as though it would in any other circumstance and, and be heard on the merits. In fact, I think in some places, it's actually just a default judgment and it's over, so it's actually quicker. And so, the eviction can ultimately be executed and the writ can be executed if the person doesn't show up, so the eviction goes forward. So if a tenant wants to set something for a contested hearing and then bails on it, it's actually easier and quicker for the eviction to be done. It doesn't just not happen, because the people who wrote those statutes understood that that was a possibility and they ensured that that would be covered. That's actually one of the small tweaks that we originally had worked with on LB1115, when that was still being discussed, to ensure that if a jury trial was requested and then a tenant did not show up at that jury trial, that the jury would be dismissed and the matter would proceed either with that default judgment or as it would in all other circumstances, as though the, the person were there. So we have addressed that problem, and it's not an issue that I'm concerned about. So I, I just wanted to make sure it's clear to anybody listening at home or any of the fellow senators who are paying attention to concerns, that, in our current landlord tenant statute, if a tenant does not show up to a contested hearing, it doesn't just disappear or go away, the landlord actually just wins. So that's very clear. Second of all, I, I just want to comment briefly, I

think, on the, the unintentional, potentially problematic comment that was made earlier, that the people who want this bill to pass are probably not very good people. I find that very problematic. I think that, first of all, there's a number of people in this body who I think want it to pass, and so just assume that's not who we're talking about. But in addition to that, the people that oftentimes are, are dealing with evictions are usually pretty down on their luck. I've seen these people. I've interacted with these people. I know these people. We're not talking about bad people. We're talking about people who have circumstances, sometimes beyond their control, that has put them in a situation where I'm pretty sure none of us would ever want to find ourselves. And are there bad actors? Sure. But I don't know how many times I can repeat on the mic today that 99% of landlords are good actors and 99% of tenants are good actors. And you have the 1% bad actors on the outside that become the anecdotal evidence for why there's so many problems. And the individuals who struggle to pay rent are not inherently bad people. We're talking about people in marginalized parts of society. We're talking about people who maybe are dealing with any number of mental health issues or substance use disorder issues, things that everybody in this body agrees we should be working on. So I just want to make very clear on the record, here in the Nebraska Legislature, that not everybody who wants this bill to pass is probably not a very good person. With that, I would continue to encourage my colleagues to support LB175, with the very, very, very pared down language that we've put together. Again, that is the language that we could get through here today. I wish more of my colleagues were concerned about some of the issues we brought up earlier. But unfortunately, this is just where we find ourselves. I still think with this language in the AM, LB175 will have a significant and real impact on those who need some help. But it is a compromise. And I, I appreciate the fact that others have been talking and, and raising concerns with me. And I'm still happy to have conversations between now and Select, about additional modifications that would be made--

**KELLY:** One minute.

**DUNGAN:** --or could be made. Thank you, Mr. President. I think that I've made it very clear I'm willing to compromise and work with people, and I appreciate those that have been willing to do the same with me. Thank you, Mr. President.

**KELLY:** Thank you, Senator Dungan. Senator Slama, you're recognized to speak.



**SLAMA:** Thank you, Mr. President. Good afternoon, again, colleagues. Let me have my light so we don't waste turns on the mic here. So, real quick retort to Senator Dungan. Of course, if you're in a situation where you're not paying rent, God knows what's going on. So any comments made by anybody on the floor isn't intended to attack any tenant that's not paying rent is automatically not being a good person. But here's the thing. Know there's been a lot of vilification of landlords here, too. And I hope if you've gotten nothing else out of today's discussion, that if we're going to court to get a tenant off your property-- I'm, I'm going to be very careful with my wording here. But if your landlord has come to you, said you need to leave, you've said no, and they've found it fit to pay the court fees, pay the notice fees, hire a lawyer, odds are you're not a spectacular tenant. And there is a broad range of possibilities here. It might be somebody who is genuinely just down on their luck and it's a terrible situation, and you've got a landlord that is exploiting someone who's in a terrible situation, to somebody could be destroying your premises, you've given them extensions on rent. You see that they're destroying your property. You're asking them to leave. They're not leaving. And now, you have to go to court for the first time in your life, to file an eviction action against somebody who is actively destroying your property. And the only thing you can do about it is go to court to try to get rid of them. Now, Senator Dungan did point out something that I think is very valuable for us to talk about. In the, in the proceedings, if the tenant fails to show for court, which I do think is an issue inherent in our landlord tenant laws, it doesn't provide a lot of flexibility for somebody who is a tenant if they cannot get off of work. We ran into this problem quite a bit, especially in the aftermath of COVIDm, when evictions started picking up again. People couldn't get a shift off of work, so they were unable to attend their hearing. They had a default judgment filed against them. However, what I'm talking about is being a loophole in this law that Senator Dungan doesn't want to talk about, is if this person refuses to vacate when being asked to nicely, or refuses to vacate when being asked again, not so nicely, refuses to vacate after being given notice of a court hearing against them, shows up to the court hearing makes a case as to why they shouldn't be evicted, has a judgment filed against them anyways, and then has the chance to vacate the premises before that writ of restitution-- which is the ruling you get in order to evict a person through the court. So long as that person heads out and goes on their merry way before the Sheriff's Office shows up within 10 days to remove them for you, that's their 1 bite at the apple, of the next landlord cannot ask about that

eviction, cannot ask about that eviction proceeding, cannot ask about what happened there. So yes, if that person doesn't show up and there's a default judgment, yes, that goes onto the record. However--

**KELLY:** One minute.

**SLAMA:** Thank you, Mr. President. If that tenant is really dragging things out, and so long as they're out of there before the sheriff drags them out-- so they show up to court, they do everything, the court still rules against them. And we're within that 10-day window of the sheriff can remove them for you, so long as they leave, that falls under the exception of LB175. So when we're saying that this is a narrow bill, that this has been negotiated in good faith, it hasn't been. And I'm not feeling the spirit of compromise when the compromise amendment was negotiated with the actors in the lobby and not the senators on the floor. So when it comes to process and procedure, yes. That is going to encourage me to take 8 hours, not only to protect private property rights, but to protect the process of the Legislature and dealing with senators themselves. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. You're next in the queue, and this is your final time before your close.

**SLAMA:** Fabulous. OK. So I'm going to take this chance to get into the amicus brief on the NP Dodge Holcomb case, because I'm sure that the attorney at the AG's Office who wrote it out really is proud of their work. And the AG's Office just really does great work. This was filed under AG Peterson. We now have AG Hilgers. I think if you ever have the chance, you should go visit with some of the attorneys in the AG's Office. They are some of the hardest working people for some of the lowest pay you can get as an attorney in the state of Nebraska, while doing some really, really good work. But, summary of argument. The county court did not error in denying Holcomb's request for a jury trial in this landlord tenant possessory action brought under the Uniform Residential Landlord and Tenant Act, URLTA. The right to a jury trial, protected by Article I, Section 6 of the Nebraska Constitution, does not attach to landlord tenant possessory reactions under URLTA, because they are summary in process, equitable in nature, and subs-- substantively distinct from 1875 ejection and FED actions in Nebraska. Nebraska courts have never directly addressed whether special or summary proceedings fall within the constitutional right to a jury trial. But many other states' supreme courts have, and they widely accept that the right to a jury trial does not attach to special or summary proceedings. This court should follow suit. Once

the court officially adopts that rule, it should conclude that landlord tenant possessory actions in Chapter 76 of the Nebraska Revised Statutes are special summary proceedings. Such proceedings generally reside outside of Chapter 25, and these landlord tenant possessory proceedings meet that characteristics, since they are found in Chapter 76 and not governed by the ordinary rules of civil procedure. Additionally, landlord tenant actions are summary in nature. They are designed to be resolved within days or weeks, not years, like a typical civil action. The constitutional right to a jury trial applies only to legal, not equitable, actions. That inquiry is determined by looking at a suit's main object, as disclosed by the aver-- averments of the pleadings and the relief sought. That's from *Eihusen v. Eihusen*, 272 Nebraska 462, 467, 723 (2006). Here, the main object of the proceeding was to obtain an order directing Holcomb to leave the premises. Such an order is akin to an injunction or a command for specific performance. Standard forms of equitable relief. Though Holcomb tries to place landlord tenant possession actions in the same camp as common law ejectment, and FED, those actions are distinguishable from this one. Common law ejectment is a slow, complex procedure, much different from the expedited process under the URLTA. And historical FED actions were criminal proceedings involving violence or force. Possession actions under URLTA are not criminal in nature and need not involve violence or force by any party. Even if Holcomb is correct, that Article I, Section 6 of the State Constitution, quote, preserves the right to a jury trial as it existed under statutes enforced when the Nebraska Constitution was adopted in 1875, the landlord tenant possessory proceeding brought here does not exist in 1875. It was not created until 1974, when the Legislature enacted the URLTA to--

**KELLY:** One minute.

**SLAMA:** --modernize-- thank you, Mr. President-- landlord tenant law. Holcomb tries to parallel the present action with Nebraska's ejectment and FED actions as they existed in 1875, but the comparison is unavailing. Ejectment was broad, covering any action for the recovery of real property, but this URLTA suit is much narrower, applying only to landlord tenant relationships arising from rental agreements for real property. So I'm going to leave it there. I'll continue reading this up until we get out of here for the day. I think John Cavanaugh is going to hop in. We've got maybe 1 more person in the queue, and then I'll have my close, and make sure everything is filed to take care of things tomorrow. But that should really take us to the close of things today. But, yeah. You know what? I'll take 8 hours to

protect private property rights in this state. Thank you, Mr. President.

**KELLY:** Thank you, Senator Slama. Senator Lowe, you're recognized to speak.

**LOWE:** Thank you, Lieutenant Governor. As we're speaking on landlord tenant rights, I want to explain kind of what happens when you have somebody come into your house that you have, and you really don't know what they're going to do, and, and they actually do something that you have to evict them. And as you go in and inspect the house-- I, I like to replace the furnace filters because it gives me an excuse to go in and, and inspect to see how the house is going along. And luckily, I've only had to do 1 of these in the last 35 years, and it was early in my career. But our family, we don't hire a management company. We are the management company. And my 2 brothers and sister, we take care of our own places. My brother-- my youngest brother and my sister have both moved to Colorado and live out there. So it's my brother and I that handle our rental property. And I've been down here for 8 years, so he's been stuck. So I think I owe him some time here, in about 6 months, to go back and help him out. But when you have a person that is in your dwelling and you've put an eviction on him, he knows he's got time. He knows he's got time to live there. And he's going to have this on his record, so he really doesn't care what he does to your place. If he has a pet, he no longer lets the pet out when the pet needs to go outside. If he wants to throw a party, he can do that. And, and he doesn't care what people do inside the-- the furnaces or, or off on the side of a wall, or anything like that. They'll knock holes in your wall because your only recourse is, is the deposit. And he knows he's already lost that because he's been-- being evicted. They'll also tear up the carpet and break other things. So once he's been evicted-- once this tenant has been evicted and now, you got the right to go in there because they're no longer there, first thing you do is tear out the carpet, then the linoleum. Then you start on the walls. You may have to replace all the, the plasterboard on the walls. You work with the ceiling. There may be holes in the ceiling. The lights may have been pulled out. This is not a cheap thing. It's very expensive for an eviction. That's why you want to work with your tenants ahead of time. You don't want them to go to eviction. You want to work with them. You want to make sure that they have a good job. I have found my tenants jobs-- better paying jobs, just so they can stay in a, in a place. That's what good landlords do. Because by finding the occupant a better position, they will be better occupants. They'll have more pride in themselves. We need to do this occasionally, but

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it's a whole lot better than having to go in and revamp a whole house-- heating system, refrigerators, and stoves. I had a tenant leave on the stove one time, intentionally. This was the same one that I evicted. He left the stove on--

**KELLY:** One minute.

**LOWE:** Thank you-- for 4 days straight. Because he wasn't going to pay the electric bill anymore, either. It ruined to the stove. So you, you, you look and you say, well, you know, the tenants. We, we have to look out for the tenants. We do look out for the tenants. And it is the, the ones that don't want to cooperate, that's what this bill is trying to effect. By allowing them to go back into another dwelling after they've destroyed one. Good tenants, we don't worry about. People that are back a month, maybe even 2, we're not too worried about. We are worried about the ones that are willing to destroy our property. And like I said, it may not be our, our property. The bank still has the loan on it.

**KELLY:** That's your time.

**LOWE:** Thank you.

**KELLY:** Thank you, Senator Lowe. Senator John Cavanaugh, you're recognized to speak.

**J. CAVANAUGH:** Thank you, Mr. President, and colleagues. We're almost to the end of the day, but I couldn't resist. I was listening to the, the conversation. And this is one of the reasons we have these conversations, is because Senator Slama has made some interesting points. And I was going to ask her to yield to a question, if Senator Slama wants to yield to a question, or be back at her desk and I'll, I'll drone on for a minute. But--

**KELLY:** Senator Sl--

**J. CAVANAUGH:** Oh, I, I-- just a second, Mr. Lieutenant Governor. I had a point to make before I ask her to yield. I was giving her CliffsNotes. So-- but one of the reasons we have the conversation is Senator Slama has raised some points that I thought were interesting, that I do think-- I was curious what the answer is. So, I appreciate her work on this bill today, and this conversation. And I think we do need to answer this question, so would Senator Slama yield to a question?

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**KELLY:** Senator Slama, would you yield to a question?

**SLAMA:** Yes, sir.

**J. CAVANAUGH:** So, Senator Slama, you've been talking-- I think it's on sect-- well, it's on the amended version, 2908, page 3 [SIC]. And I think we're talking about-- you-- well, just-- you were making the point that if someone vacates the premises after somebody-- the landlord goes through eviction, gets a writ, and the person vacates before the writ is delivered, you were saying something to that, that effect, meaning a loophole in it. Could you clarify on that for--

**SLAMA:** Yeah. No, so what I'm saying is under sub (c) of that section, is if you go through the proceedings, the court rules that there will be a writ of restitution executed against you. Where I think we're going into the back and forth is what executed means. So I'm interpreting executed as the sheriff is executing the writ of restitution by forcibly evicting that person from the premises. We're dragging you off. Where I think you might be taking execute a different-- I, I don't want to speak for you, but I think you might interpret execute a different way. And I think that's, that's good to debate. That's very good to build the legislative record on. And before we do go for the day, I do need to apologize for the presiding officer. I've tried to be like, very polite during this whole thing, but I have given him just a ton of stupid extra work. So I apologize on the front end. But yes, Senator Cavanaugh.

**J. CAVANAUGH:** I, I appreciate that. Yes. And you're, and you're right. We are having a bit of a difference of opinion about, you know, the one word of what executed means. And actually, I corrected-- page 2, line 11, Section (c). And so I appreciate your clarification on that. And I would wonder if Senator Dungan would yield to a question.

**KELLY:** Senator Dungan, would you yield to a question?

**DUNGAN:** Yes.

**J. CAVANAUGH:** And, and thank you, Senator Slama. I didn't say that before. But Senator Dungan, you-- I assume you just heard the conversation between myself and Senator Slama?

**DUNGAN:** I-- yes, I did.

**J. CAVANAUGH:** And you know where we're at on the executed? Under Section (c), on page 2, line 11, it says, following the eviction proceeding, a writ of restitution is never executed.

**DUNGAN:** Correct. Yep.

**J. CAVANAUGH:** So what, what would be your interpretation of what would be executed?

**DUNGAN:** So, under Nebraska Revised Statute 76-1446, which is the part that actually specifically talks about the writ of restitution, which is what we're talking about here, it specifically says that at the request of the plaintiff or his or her attorney, the court shall issue a writ of restitution, directing the constable or sheriff to restore possession of the premises to the plaintiff on a specified date, not more than 10 days after the issuance of the writ of restitution. So the execution of that writ, which generally, I think, colloquially, would be the completion or performance of that writ, would be to restore that premises to the possession of the, of the landlord. So I don't think it has anything to do with whether or not the tenant is present or the tenant is served with anything. If the tenant's abandoned that property, that writ is properly executed, so long as the constable or sheriff restores that property to the landlord. And I think that that's a plain reading of that. And I think Black's Law Dictionary also talks about the word execute, meaning to perform or complete a duty. So if the point of the writ is to restore that property to the landlord, it has been executed, upon which time that landlord then has access to that property again.

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

**KELLY:** One minute.

**J. CAVANAUGH:** Thank you, Mr. President. Thank you, Senator Dungan. And thank you, Senator Slama. So, colleagues, this is a great example of an opportunity where we discuss a bill. And we do, in, in the process of discussing it, we come to a point where there is a difference of opinion about what the bill would actually do if it goes into effect. Because Senator Slama is pointing out a concern that if we do, against her wishes, adopt this and make it law, it will have a, a bad effect. And Senator Dungan is saying, if you interpret it this way, it will have-- it will not have that bad effect. So it's really important to have these conversations in this kind of constructive way, and to drill down on those things. I appreciate the definition from Senator

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Dungan and the conversation from Senator Slama. And we'll probably pick this up tomorrow, and we-- maybe we'll be able to drill down on that to parse this a little bit more, which is a fun thing for some of us lawyers, who like to parse 1 word for hours at a time. So thank you, Senators. And thank you, Mr. President.

**KELLY:** Thank you, Senator Cavanaugh. Mr. Clerk.

**CLERK:** Mr. President, your Committee on Enrollment and Review reports LB1288, LB1118, LB1143, LB877, and LB998 to Select File, some having E&R amendments. Additionally, your Committee on Enrollment and Review reports LB771A as correctly engrossed and placed on Final Reading. Your Committee on Revenue, chaired by Senator Linehan, reports LB1032 to General File. Amendments to be printed: Senator Dorn to LB1108, Senator Hunt to LB62. Motions to be printed, Senator Slama to LB175. New LR, from Senator Dover, LR 318. That will be laid over. Appointments to the Legislative Oversight Review Special Committee, as appointed by the Executive Board. Additionally, name adds: Senator DeKay to LB896, Senator McDonnell to LB903 and LB1221. Senator Erdman, name withdrawn from LB1061, and Senator Wayne, name withdrawn from LB1370. Finally, Mr. President, a priority motion. Senator Bosn would move to adjourn the body until Thursday, March 7, 2024, at 9:00 a.m.

**KELLY:** Members, you've heard the motion to adjourn. All those in favor, say aye. Those opposed, nay. We are adjourned.