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Assembly Commerce & Labor Committee

Testimony supporting AB 89 revising NRS 118A.180.2(c)

Mr. Chairman and Committee members:

My name is Marshall Schultz. I am founder and president of Residents Information Center, Inc. (RIC), a 501(c)(3) organization. We sponsor Nevada Renters Hotline, to which many state and local government offices refer callers, including the Governor's office and the AG's office. We are the only office collating data on rental problems from all around the state.

We get no money from government or from funding organizations. Our revenue comes entirely from people who call or email the Hotline for information. Less than 5% of those donate a small amount of money. Revenues average about \$1,000 per year. It's not much, but enough for us to render a unique service to Nevadans, which we have been doing since 1995. We are proud that our program was created in the best tradition of American entrepreneurial self help and self reliance. We think even the most devout conservative and those who advocate less government must respect that approach to solving society's problems.

The Hotline provides free information to all involved in residential rentals. We do not give legal advice, only practical guidance. Most calls are from tenants asking about their rights. Standard practice is to tell callers how to get a copy of the statute, to read it carefully, and to tell landlord of problems in writing. If we can determine that the landlord owns and personally manages no more than four units, we feel obliged to warn the tenant that his landlord is probably exempt from most of the statute. Tenants are flabbergasted by that news. They ask questions like, "How can that be?" or "Are you serious?" or "So there is no justice, after all?"

- ◆ Chapter 118A was added to NRS in 1977, the 60th Session of Nevada's Legislative. Very little of the statute has been revised in the ensuing 26 years.
- ◆ The exemption is out of date and unfair to tenants who rightly expect fairness in the laws, if not in the rental agreement.
- ◆ Our members (20% of whom are small landlords) unanimously agree that the small landlord exemption in 118A.180.2(C) should be eliminated.
- ◆ The most egregious problems born of the small landlord exemption are: Unconscionability (sec 230); Refunds of security deposits (sec. 242); Habitability issues (sec. 290); Landlord's

access (sec. 330); and Retaliation (sec. 510). These five sections provide the major part of tenant protections. Small landlords are exempt from all.

- ◆ Tenants are without remedy against unconscionable landlords except in a few jurisdictions where city or county code enforcement agencies can be called to address the problems. Even then, a landlord can evict a tenant with no concern about retaliation, keep the security deposit and rent the same dwelling unit to another unsuspecting tenant. The cycle continues. Roofs leak, furnaces don't work, hot water is not available, floors give way, wiring is unsafe, septic tanks overflow. Tenants have no legal recourse but to move out for the sake of family health. The landlord then rents to a new tenant.
- ◆ A tenant who moves out or is evicted does not necessarily get his deposit refunded if the landlord is exempt. Low income tenants may not be able to move at all because the landlord is not required by law to refund the deposit. Without the refund many tenants cannot make a deposit on another rental unit. What are these people supposed to do if forced to move for safety reasons, or evicted, and the landlord refuses to refund the deposit? No remedy. There is no remedy and no recourse.
- ◆ Landlords and their agents have been known to unlawfully invade tenant's rented premises without any warning. Under 118A.330 tenants would be protected but small landlords are exempt from sec. 330, again leaving the tenant without legal remedy or recourse. What ever happened to the ancient right of quiet enjoyment of one's home?
- ◆ In essence, the rental agreement is like any other business transaction: each party gives something of value to the other party. It's really not different from buying a loaf of bread, except that the bread purchase is a one time transaction each time, whereas a rental is an ongoing relationship. AB 89 merely provides equal protection under the law to both parties to the rental agreement. As it now stands, NRS 118A.180(2)(c) doesn't allow that. It discriminates unfairly in favor of certain landlords, and Nevada families suffer.
- ◆ All legitimate businesses should treat their customers fairly. Shouldn't both parties in the rental contract enjoy equal fairness under the law?
- ◆ Tenants need and deserve a fair return for their rent money.

The attached page briefly describes five Hotline cases wherein the tenant was harmed by the injustice of 118A.180.2(c).

Thank you.

Marshall L. Schultz

Five cases selected from Hotline phone call files: five months from Sept., 2002 through Jan., 2003.

Case #1 09/17/02

Tenant complained in writing to landlord about plumbing problems in rented house. Rent \$950, security \$900. LL refused to repair. Other complaints also ignored. Tenant quit premises, LL did not refund deposit or provide an "itemized written accounting" as required under section 242. Small landlords exemption.

Case #2 11/20/02

Dwelling unit was an unfinished basement apartment (probably illegal) in a private home. Rental agreement was verbal, yet tenant was told that her \$250.00 security deposit was non-refundable. This could be a violation of NRS 118A.200.2(f), except paragraph 3 of that section says nothing about security deposits under verbal contracts, and small landlords are exempt from section 242 which specifies how security deposits are to be refunded.

The tenant complained that the apartment ceiling leaked [290.1(h)] and lacked heat [290.1(d)]. Heat is an "essential system" which all landlords of whatever size are required to provide [section 380], but section 290 is totally exempt.

Tenant was evicted for complaining. Eviction likely violated section 510 (retaliatory conduct prohibited), but again, small landlords are exempt from that section.

Case #3 12/13/02

The unit is a mobile home (on private land owned by the landlord) rented as a dwelling in Spring Creek near Elko. Tenant family consists of husband, wife and 5 children. Family in the dwelling only 1 week as of 12/13/02. Rent is \$625.00 / month; a \$600.00 security deposit had not been paid at the time of the call.

Habitability (Sec 290): Windows not sealed against weather, no door seals or door locks. Ceiling stains indicate ceiling leaks. "Essential systems" of hot water and heat lacking. Essential systems required of all landlords, but leaky roofs, windows and doors sealed against inclement weather are section 290 habitability considerations from which small landlords are exempt.

We told tenant to call Elko County for code enforcement, and to call justice court daily to stay informed of law suit filed by landlord. Also told tenant to get a copy of 118A and to put everything in writing hereafter. Finally told her she should consult a lawyer (she can't afford to do that), and to move out ASAP, writing to LL explaining why.

The Hotline learned later that Elko does not have a code enforcement staff, only building construction staff.

Case #4 12/23/02

A single family house, rent \$800, security \$800. Owner sold the house and new owner demanded additional \$800 security.

118A.244 requires original owner to notify tenant of name and address of successor in interest and that he has transferred the security deposit to successor OR refund the deposit to the tenant.

Under section 180 small landlords are exempt from section .244. No remedy.

Case #5 01/13/03

Dwelling unit a mobile home near Elko, family with 2 children aged 4 and 15. Rent \$500 per month, security deposit \$500. Written rental agreement but landlord did not supply a copy as promised.

Extensive section 290 habitability problems: Electric switches spark when turned on, most outlets spark when an appliance is plugged in; arcing often heard inside walls but not visible. Master bedroom has no lights at all and no outlets; lights and outlets in both bathrooms not functional; garbage disposal, dishwasher and laundry equipment not functioning.

Under section 380 landlord is supposed to provide electric service as an "essential system," and might be deemed to have complied simply because electric service was supplied to the dwelling, despite the fact that appliance did not function and the wiring was both faulty and dangerous. The section states tenant has specified options if landlord failure to provide these essential services causes the premises to become unfit for habitation. Tenants have a potential legal remedy, but less than 1% of tenants know the statute exists, how to get a copy, or how to make use of it.

We told tenant to call Elko County code enforcement, but no such agency exists in Elko as we later learned.