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Committee on Judiciary Finance and Civil Law

Dear Committee Members:

I am writing to encourage you strongly to adopt HF 835's the proposed improvements and changes to housing law statutes (including two additional changes), in particular those regarding eviction and expungement.

After retiring from 3M's Office of General Counsel, through Volunteer Lawyers Network I have been representing unhoused clients around Minnesota who seek to have their eviction records expunged. I have seen first-hand the unintended impacts of the current statutes that result in eviction records remaining public for years. These eviction records block families from being accepted for rental housing, and result in families staying unhoused for years. In many cases the adults' employment ends or is placed at great risk. And the attendant physical and mental distress is exceedingly damaging to everyone in the family.

I have had clients who *won* eviction cases with landlords, but did not understand that the eviction records remained in public view, would follow them, and would result in most of their future rental applications being rejected. I have had clients with severe physical limitations who had been unable to navigate the many steps required to petition the courts to expunge their records. And I have had many clients who – had they had representation – would have been able to assert effective defenses to landlords' unwarranted attempts to evict them – and to request in the moment the expungement of the records of eviction cases they had won. I also have had many rentworthy clients – fully able to pay their rent – crippled by eviction records where their only misstep had been not escrowing their rent when the landlords would not fix critical infrastructure to enable the premises to be habitable in the first place.

Let me share a couple of examples:

F.A. – had a long history of rental reliability with several landlords. She then rented an apartment with her sister and paid rent on time and took excellent care of the property. After 16 months, the landlord had granted her request to remove her from the lease when she moved out. Nonetheless, the landlord later included her name in its eviction case against her sister when her sister defaulted on the rent. Not only was F.A. not legally served, but she had no idea that she had an eviction record until she tried to find rental property for herself and her two young daughters. Her rental applications were repeatedly rejected and she was forced to shelter in two small rooms in a house from someone. Her teenage daughter had to take a public bus for two hours each day – often in the dark in winter – to ride across town to remain at her supportive school. Had F.A. had counsel the case likely would have been dismissed and expunged promptly, and her family would not have been rendered unhoused for months.

P.V. – paid her rent in cash for years to her landlord. When he became ill, the landlord's son demanded and kept the rent money and claimed she had not paid it. He brought a motion to evict, did not properly serve her, and wrongfully told her that the court was going to kick her out the next day. Rather than go to court, she scrambled to try to extract some of her belongings. The court issued a writ and she left earlier than she would have had to, leaving most of her possessions in the apartment, which the landlord seized. Had she had counsel, she might have been able to demonstrate her long and sustained, timely rental payments, objected to the lack of proper service, obtained time to remove her items even if she had lost the case, and possibly negotiated immediate expungement of the records. Upon her moving out, no one would rent to P.V. because of her eviction record and she wound up sleeping alternatively on her son's and her daughter's couches on different sides of town, moving every few days. She could not retain her employment because of her lack of reliable transportation. Her daughter and her pre-school children were then evicted for having P.V. stay with her. Both the mother and daughter might not have been forced out of their homes had each had counsel, able to raise defenses.

A.B. – is a single mom who lived with two other friends. She reliably paid her share of the rent and had a strong rental history. When one of her friends did not pay her share, the landlord brought an action against all. The tenants settled with the landlord at court, timely paid the agreed upon amount, and continued to rent from the landlord. Nonetheless the eviction remained on her record and later, she and her young son were repeatedly rejected for new apartments despite her unblemished record of paying rent. In short, her eviction record was not an accurate reflection of her rentworthiness. As a result she had to beg for months to stay temporarily on the couches of friends' homes and her very young son took a public bus across town to stay in his support school. It was years before she learned she might request volunteer legal counsel and that it was possible to have her records expunged. Had A.B. had legal counsel from the beginning she could have included in the settlement agreement with the original landlord a requirement that the record be expunged upon the payment of the settlement amount.

S.A.: rented from a landlord who refused to fix plumbing that flooded his unit, ruined his personal belongs, and forced him to move out. Fully able to pay, but not appreciating that he had to pay the money to the court in escrow, he withheld rent to try to force the landlord to make repairs and make the unit habitable. The landlord successful had him evicted and due to the eviction record – he and his children were homeless for years. Even when S.A. had a slim lead on a unit he could rent, he did not have the money to pay the "penalty" often imposed by landlords on those with an eviction record – to prepay the first, and last months' rent, along with a very high security deposit. Had he had legal representation at the time or had automatic expungement after a reason time been enacted statutorily, his family would not have been living on friends couches of months and years at a time.

Minnesota Statutes provide extensive protections for landlords, but need to be amended to prevent the dire and unintended consequences of rendering homeless those who are rentworthy, have had defenses, have won and/or who would have won or settled cases had they had access to legal assistance. Even for those who were legitimately evicted for inability to pay the rent, the deep damage to families and to communities arising from the indefinite public access to eviction records far outstrips the public's short-term need to know of one's past rental difficulties. There must be balance and consideration of the impact on families and communities. In addition, those with eviction actions commenced against them should have access to legal services to understand their rights and options.

Please support HF 835's proposed changes to the statutes, as well as my small, additional suggested changes. In particular:

- Grant immediate, mandatory and automatic expungement (without the tenant having initiate another court process) to eviction cases where:
 - no hearing is ever held;
 - the matter is dismissed for any reason;
 - the tenant prevails the case;
 - the tenant had vacated the property before the court eviction order was entered;
 - the tenant was not provided proper, legal notice;
 - where the settlement is fulfilled; or
 - the parties agree to expungement.
- Grant automatic expungement (without the tenant having to initiate another court process) within two years of the issuing of a writ.
- Provide authority and discretion to the court to expunge records at any time where there is undue hardship on the renter, balancing the public's short-term right to information about historic rental issues with the current impact on the renter.
- Provide all tenants in eviction cases access to a lawyer to advise them of their rights and defenses.
- Prohibiting public access to an eviction action prior to the entering of an eviction writ in favor of the landlord.

Please see, following below, my enclosed, proposed edits (in red) to the Minnesota Statutes in addition to those in HF 835. Do not hesitate to contact me if you have any questions. Thank you for your consideration.

Sincerely,



Nancy G. Etzwiler (651-367-4813)

HF 835 edits: **in blue**

Etzwiler edits in addition or in place of those of HF 835: **in red**

HF 835

as introduced - 92nd Legislature (2021 - 2022) Posted on 03/04/2021 04:50pm

A bill for an act

relating to housing; creating specific notice requirements for evictions due to nonpayment of rent; expanding eligibility for discretionary and mandatory expungements for eviction case court files; prohibiting rental discrimination based on a tenant's receipt of public housing assistance; limiting public access to pending eviction case court actions; amending Minnesota Statutes 2020, sections 363A.09, subdivisions 1, 2, by adding a subdivision; 484.014, subdivisions 2, 3; 504B.135; 504B.321.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2020, section 363A.09, subdivision 1, is amended to read:

Subdivision 1. **Real property interest; action by owner, lessee, and others.** It is an unfair discriminatory practice for an owner, lessee, sublessee, assignee, or managing agent of, or other person having the right to sell, rent or lease any real property, or any agent of any of these:

(1) to refuse to sell, rent, or lease or otherwise deny to or withhold from any person or group of persons any real property because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, [participation in or requirements of a public assistance program](#), disability, sexual orientation, or familial status; or

(2) to discriminate against any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, [participation in or requirements of a public assistance program](#), disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of any real property or in the furnishing of facilities or services in connection therewith, except that nothing in this clause shall be construed to prohibit the adoption of reasonable rules intended to protect the safety of minors in their use of the real property or any facilities or services furnished in connection therewith; or

(3) in any transaction involving real property, to print, circulate or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental or lease of real property, or make any record or inquiry in connection with the prospective purchase, rental, or lease of real property which expresses, directly or indirectly, any limitation, specification, or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, [participation in or requirements of a public assistance program](#), disability, sexual orientation, or familial status, or any intent to make any such limitation, specification, or discrimination except that

nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this section prohibiting discrimination because of familial status do not apply to the dwelling unit.

Sec. 2. Minnesota Statutes 2020, section 363A.09, subdivision 2, is amended to read:

Subd. 2. **Real property interest; action by brokers, agents, and others.** (a) It is an unfair discriminatory practice for a real estate broker, real estate salesperson, or employee, or agent thereof:

(1) to refuse to sell, rent, or lease or to offer for sale, rental, or lease any real property to any person or group of persons or to negotiate for the sale, rental, or lease of any real property to any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, participation in or requirements of a public assistance program, disability, sexual orientation, or familial status or represent that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or otherwise deny or withhold any real property or any facilities of real property to or from any person or group of persons because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, participation in or requirements of a public assistance program, disability, sexual orientation, or familial status; or

(2) to discriminate against any person because of race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, participation in or requirements of a public assistance program, disability, sexual orientation, or familial status in the terms, conditions or privileges of the sale, rental or lease of real property or in the furnishing of facilities or services in connection therewith; or

(3) to print, circulate, or post or cause to be printed, circulated, or posted any advertisement or sign, or use any form of application for the purchase, rental, or lease of any real property or make any record or inquiry in connection with the prospective purchase, rental or lease of any real property, which expresses directly or indirectly, any limitation, specification or discrimination as to race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, participation in or requirements of a public assistance program, disability, sexual orientation, or familial status or any intent to make any such limitation, specification, or discrimination except that nothing in this clause shall be construed to prohibit the advertisement of a dwelling unit as available to adults-only if the person placing the advertisement reasonably believes that the provisions of this section prohibiting discrimination because of familial status do not apply to the dwelling unit.

(b) It is an unfair discriminatory practice for a landlord to furnish credit, services, or rental accommodations that discriminate against any individual who is a recipient of federal, state, or local public assistance, including medical assistance, or who is a tenant receiving federal, state, or local housing subsidies, including rental assistance or rental supplements, because the individual is such a recipient, or because of any requirement of such public assistance, rental assistance, or housing subsidy program.

Sec. 3. Minnesota Statutes 2020, section 363A.09, is amended by adding a subdivision to read:

Subd. 2a. **Definition; public assistance program.** For the purposes of this section, "public assistance program" means federal, state, or local assistance, including but not limited to rental assistance, rent supplements, and housing choice vouchers.

Sec. 4. Minnesota Statutes 2020, section 484.014, subdivision 2, is amended to read:

Subd. 2. **Discretionary expungement.** The court may order expungement of an eviction case court file ~~only upon motion of a defendant and decision by the court, if the court finds that the plaintiff's case is sufficiently without basis in fact or law, which may include lack of jurisdiction over the case, that~~ if the court makes the following findings: (1) the eviction case court file is no longer a reasonable predictor of future tenant behavior; and (2) the expungement is clearly in the interests of justice and those interests are not outweighed by the public's interest in knowing about the record.

Sec. 5. Minnesota Statutes 2020, section 484.014, subdivision 3, is amended to read:

Subd. 3. **Mandatory expungement.** The court shall order expungement of an eviction case:

(1) commenced solely on the grounds provided in section 504B.285, subdivision 1, clause (1), if the court finds that the defendant occupied real property that was subject to contract for deed cancellation or mortgage foreclosure and:

(1) (i) the time for contract cancellation or foreclosure redemption has expired and the defendant vacated the property prior to commencement of the eviction action; or

(2) (ii) the defendant was a tenant during the contract cancellation or foreclosure redemption period and did not receive a notice under section 504B.285, subdivision 1a, 1b, or 1c, to vacate on a date prior to commencement of the eviction case;

(2) if the defendant prevailed on the merits;

(3) if the court dismissed the plaintiff's complaint for any reason or no hearing was

held;

(4) if the parties to the action have agreed to an expungement;

(5) if the court finds an eviction was ordered at least two years prior to the date the expungement was filed; or

(6) upon motion of a defendant, if the case is settled and the defendant fulfills the terms of the settlement.

Sec. 6. Minnesota Statutes 2020, section 504B.135, is amended to read:

504B.135 TERMINATING TENANCY AT WILL.

(a) A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

~~(b) If a tenant neglects or refuses to pay rent due on a tenancy at will, the landlord may terminate the tenancy by giving the tenant 14 days notice to quit in writing.~~

Sec. 7. Minnesota Statutes 2020, section 504B.321, is amended to read:

504B.321 COMPLAINT AND SUMMONS.

Subdivision 1. Procedure.

(a) To bring an eviction action, the person complaining shall file a complaint with the court, stating the full name and date of birth of the person against whom the complaint is made, unless it is not known, describing the premises of which possession is claimed, stating the facts which authorize the recovery of possession, and asking for recovery thereof.

(b) The lack of the full name and date of birth of the person against whom the complaint is made does not deprive the court of jurisdiction or make the complaint invalid.

(c) The court shall issue a summons, commanding the person against whom the complaint is made to appear before the court on a day and at a place stated in the summons.

(d) The appearance shall be not less than seven nor more than 14 days from the day of issuing the summons, except as provided by subdivision 2.

(e) A copy of the complaint shall be attached to the summons, which shall state that the copy is attached and that the original has been filed.

(f) If applicable, the person filing a complaint must attach a copy of the written notice described in subdivision 1a. The court shall dismiss an action without prejudice for failure to provide a notice as described in subdivision 1a and grant an expungement of the eviction case court file.

Subd. 1a. Written notice.

(a) Before bringing an eviction action alleging nonpayment of rent, a landlord must provide written notice to the residential tenant specifying the basis for a future eviction action.

(b) For an allegation of nonpayment of rent or other unpaid financial obligations in violation of the lease, the landlord must include the following in a written notice:

(1) the total amount due;

(2) a specific accounting of the amount of the total due that is comprised of unpaid rents, late fees, or other charges under the lease; and

(3) the name and address of the person authorized to receive rent and fees on behalf of the landlord.

(c) A notice provided under this section must:

(1) provide a disclaimer that a low-income tenant may be eligible for financial assistance from the county;

(2) provide a description on how to access legal and financial assistance through the "Law Help" website at www.lawhelpmn.org and "Minnesota 211" through its website www.211unitedway.org or by calling 211; and

(3) state that the landlord may bring an eviction action following expiration of the 14-day notice period if the tenant fails to pay the total amount due, or vacates.

(d) The landlord or an agent of the landlord must deliver the notice personally or by first class mail to the residential tenant at the address of the leased premises.

(e) If the tenant fails to correct the rent delinquency within 14 days of the delivery or mailing of the notice, or fails to vacate, the landlord may bring an eviction action under subdivision 1 based on the nonpayment of rent.

(f) Receipt of a notice under this section is an emergency situation under section 256D.06, subdivision 2, and Minnesota Rules, chapter 9500. For purposes of chapter 256J and Minnesota Rules, chapter 9500, a county agency verifies an emergency situation by receiving and reviewing a notice under this section. If a residential tenant applies for financial assistance from the county, the landlord must cooperate with the application process by:

(1) supplying all information and documentation requested by the tenant or the county;
and

(2) accepting or placing into escrow partial rent payments where necessary to establish a tenant's eligibility for assistance.

Subd. 2. Expedited procedure.

(a) In an eviction action brought under section 504B.171 or on the basis that the tenant is causing a nuisance or other illegal behavior that seriously endangers the safety of other residents, their property, or the landlord's property, the person filing the complaint shall file an affidavit stating specific facts and instances in support of why an expedited hearing is required.

(b) The complaint and affidavit shall be reviewed by a referee or judge and scheduled for an expedited hearing only if sufficient supporting facts are stated and they meet the requirements of this paragraph.

(c) The appearance in an expedited hearing shall be not less than five days nor more than seven days from the date the summons is issued. The summons, in an expedited hearing, shall be served upon the tenant within 24 hours of issuance unless the court orders otherwise for good cause shown.

(d) If the court determines that the person seeking an expedited hearing did so without sufficient basis under the requirements of this subdivision, the court shall impose a civil penalty of up to \$500 for abuse of the expedited hearing process.

Subd. 3. Nonpublic record.

An eviction action is not accessible to the public until the court enters a final judgment.