

March 11, 1980

LB 877

a provision of the bill that I think is one that you should give consideration to, and it is a provision that has made me wonder whether I want to support the bill. I don't yet know exactly how I am going to vote on the measure. But if you turn to page 12 in the bill book and look at subsection...or section 10, you will see simply where this measure sets out what the remedy is for somebody who fails to comply with the act. What you will discover is that the draftsmen of the legislation have said simply that an insurance company or an agent who does not comply with the act shall be subjected to the penalty set in section 44-1529, Reissue Revised Statutes, and that section deals with the Deceptive Trade Practices Act for insurance companies. What bothers me about the reference to that particular provision is the effect that provision has on individuals who have been harmed, who have been legitimately harmed by the insurance company or the insurance agent that has (a) failed to sell them the kind of insurance that is required by the statute, or (b) oversold the insurance because it's failed to ask whether or not they already have coverage for this area. This bill provides no individual right of action to someone who has been damaged. Thus, under this legislation an older person who is entitled to expect to receive when they purchase a medigap policy, they are entitled to expect to receive certain kinds of coverages. Now, if, in fact, some of those coverages are not there, because the insurance company is hoodwinking the public, then they just get burned. They end up with a medical cost that they can't pay, that they expected the insurance carrier to pay, and there is no one to look to. There is no individual cause of action set out in the bill. The most they can do is complain to the Director of Insurance who can determine that the practice was an unfair and deceptive trade practice who can then impose penalties on the insurance company, and that is that. But they are not made whole. They are not made whole. And I look upon that as a very serious weakness in the legislation. Now if the legislation does not give the older person who has been harmed any cause of action...now, I would like to direct a question to Senator DeCamp on this point, and the question simply is this. Senator DeCamp, as the bill was being put together, I know you being an intelligent person did give some consideration to allowing a private cause of action for that person who has been harmed. Are there specific reasons why you decided not to do so?

SENATOR DeCAMP: Senator Johnson, I would say that more hours were spent on this particular issue, this particular