

equitable flaw, meaning fraud, duress, undue influence; all of the normal defenses of a contract would exist and you couldn't use the arbitration mechanism to get around those flaws. Arbitration wouldn't be available to be enforced by a court if those defenses occurred in the contract. Now that may make you think that we don't have arbitration in this state and we do. We have arbitration because our courts permit us to enforce arbitration where the two parties know what the dispute is and agree to arbitrate it. What our Supreme Court does not allow us to do, which other states can do, and which I want us to move to, is to sign a contract that says, if we have disputes about this contract, we will arbitrate it. If both parties sign that contract and they then get into a dispute, they then go to arbitration and the arbitration decision will be enforceable in a court. How does that differ from today? It differs from today in this way. Under Nebraska law currently you can arbitrate an existing dispute but you can't arbitrate a future dispute, and this would allow you to write a contract in which you agreed to arbitrate future disputes. Let me tell you about the opposition to the bill. The opposition came from the State Bar Association, and the trial attorneys, and it was not against arbitration, per se, it was against the language that I had chosen in the amendment, along with Senator Ashford and Senator Hohenstein, who are cointroducers. The language is broad and general. It's a general grant of authority, and the only two qualifications are that the contract has to be voluntary and that's it unavailable where the contract has a legal or equitable defect. In fact, they would like to see other kinds of walls, defenses, limitations, language of exception, if you will. I have resisted that generally because this is a constitutional provision but I have agreed to sit down over the summer with Senator Lindsay, with the trial bar, with the State Bar Association, and see if there are some principled distinctions that would make sense to put in the Constitution. For one, that comes off the top of my head, I would agree that something that said generally tort issues...

PRESIDENT MOUL: One minute.

SENATOR LANDIS: ...should not be used, arbitration should not be used for tort issues in any future sense. I have got to say, I think that's a conceptual framework I could live with. My guess is that Senator Hohenstein, Senator Ashford, the other cosponsors could look at those kinds of distinctions and I am prepared to enter into that discussion, but I need to know