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February 13, 2001 LB 46, 133

PRESIDENT MAURSTAD: The bill is advanced. Mr. Clerk.

CLERK: Mr. President, LB 46, by Senator Landis. (Read title.) The bill was introduced on January 4, referred to the Judiciary Committee, advanced to General File. I have no amendments to the bill at this time, Mr. President.

PRESIDENT MAURSTAD: Thank you, Mr. Clerk. Senator Landis, you're recognized to open on LB 46.

SENATOR LANDIS: Good morning, Mr. Lieutenant Governor. Members of the Legislature, LB 46 stems from an article I read in a journal about settlement escrows, by Robert Gertner and Jeffrey Miller. Gertner and Miller posited the situation of which parties waited until the very last minute, on the courthouse steps, to settle a case. They'd spent all of their money for discovery purposes, like depositions and interrogatories, passing papers, dilatory motions, billable hours, and at the last possible moment they found a settlement, a settlement that, had they arrived at it months before, would have saved a great deal of time, effort, energy and money. And Gertner and Miller said, why is it that people don't settle cases earlier? And one reason is people are looking for the last possible amount of advantage that they can get. They want the other side to blink; they've been hiding their bottom line for as long as they possibly can, but when they're on the courthouse steps it's time to be realistic, and so they exchange realistic offers with each other to avoid going to trial after having spent a rather great deal of money getting ready to go to trial. Gertner and Miller, in this article, said, look, you might be able to get these parties to tell their bottom lines, not to each other, but to a third party. If they told those...that secret, confidential information to a third party, that third party could see if there was an overlap, if the plaintiff would accept a number that the defendant would offer, or if the plaintiff would accept a number that was even lower than what a defendant would offer, so that there was an overlap between the two parties. Then the article said, look, if you had two parties who overlapped, somebody who would come down far enough that it overlapped with how far somebody would come up in a settlement, you could then pick the midpoint between those two bottom lines and both