

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

February 23, 2005 LB 7

coherently, cogently, wittily; others, not quite. Then we have situations where an issue comes before us which, on its face, is alluring. As the discussion proceeds, it develops that deeper issues inhere in that matter. That's the kind of issue that I think we're facing here today. Because I'm not going to be able to support the bill, I will support Senator Baker's amendment. If Senator Bourne offers an amendment to remove liability from the state, I will not support that. Somebody has got to be liable. Where are the deep pockets? We are state senators. If we are going to authorize this kind of action and harm befalls the citizens, we should assume the responsibility and perhaps we should declare affirmatively that the state assumes liability, and that takes away any issue of sovereign immunity. It means that a citizen may use any of the procedures that are in place to recover from the state when the person is injured and the state is liable. I might be in favor of letting such a person circumvent the tort claims and every other act; don't even make them go to that board and try to get them to agree that this person should be compensated and perhaps have to come to the Legislature if the amount of damage goes above \$50,000; allow that person to go straight into court and recover lawyers' fees. The Legislature is doing this. The Legislature should adopt the attitude that the buck stops here. Before the state was asked to get involved, it could be a matter to be handled at the local level. If it could be shown that the city was negligent in not enforcing the law against people being out in the roadways, perhaps you could show a liability on the part of the municipality. But now that the state is being asked to act affirmatively, the state should assume the responsibility. We're not dealing with a benign action. We're dealing with one where danger inheres in the activity. There are what have come to be called good Samaritan laws. If a person stops and renders aid, that person is not held to as high a standard of care as somebody else might be. If a doctor could place himself or herself in the status of a good Samaritan, that doctor may be even excused from having to meet the level of care given by a doctor if the statute is so framed. When the state is going to create a situation where harm can come to somebody, rather than a situation where you try to alleviate harm,...

SENATOR CUDABACK: One minute.