

February 26, 1979

LB 316

that is reported in the process of obtaining an abortion will not have a remedy. It will mean that wrongs will exist and a remedy will not exist to rectify those wrongs. So I would strongly oppose the Nichol amendment. Keep in mind all we are doing is creating a cause of action, open up the court house door and I would strongly urge that all of you oppose it. Thank you.

SPEAKER MARVEL: Senator Landis and then Senator Beutler and then Senator Murphy. Senator Landis.

SENATOR LANDIS: Mr. Speaker, members of the Legislature, as has been pointed out by Senator Nichol, I do have a bill in on the right of privacy, LB 394. I want to speak to you briefly about the two approaches that can be used in creating the right of privacy. We can either attempt to codify, as LB 394 attempts to do, the existing theories of the right of privacy recovery, the exceptions, the exemptions, the defenses, the privileges and the like, or we can recognize the common law of right. Now what that means is that courts will apply the case law that has been generated in other states under the general theories of recovery that have been enunciated in principles dating back to 1890. Today's discussion centers on the difference between those two approaches and which is the superior approach. Although I carry with you and to you a bill that attempts to codify the right of privacy, I have to acknowledge that I believe the recognition in principle is the better way to go, and why is that? The reason I favor the recognition of the common law of right as has been enunciated in the amendments to LB 316 is that this allows the case law to develop by the courts. There the merits of the case will determine the outcome. The theories of recovery will be enunciated not on the basis of political power but on the basis of merit. I am finding, for example, in my negotiations to try to get 395 out of committee and out of the clutches of the lobbyists that what I had intended to pass has to, in fact, pass muster with the lobbying forces out in the rotunda. I have been asked to create an absolute privilege for the credit unions, for example, that no matter what they do, no matter what they say and no matter what they put into their documents and dossiers, they will not be liable. That is what is being asked of me before I can get my bill out of committee and before I can get their acceptance. You see the codified approach allows for political power to determine the substantive rights of citizens and that is the fault with the approach in 395. Now I think there is merit in that approach. I think we have to get a right