

if we would repeal the guest statute which had applied a gross negligence standard as far as tort action is concerned and implement a bill that provides for a willful or malicious failure standard which really is probably considerably more difficult to establish than gross negligence and I guess Senator Chambers has some information or told me about a particular case in Omaha and I believe I am not familiar with this case other than what Senator Chambers related to me about some children playing in a park with some flammable materials there near the fourth of July and a firecracker igniting some drums of this flammable material located in a park where you expect children to be, the children being burned severely and then the City of Omaha losing of course in a negligence case. And I guess I am one individual who think that the city should be more intelligent than to put flammable materials in parks but under this particular bill you would have to show that the city willfully or maliciously placed those drums there and that is what resulted in the injury and that of course is impossible to prove. So what you are really doing here is you are establishing total immunity as far as the political subdivision is concerned and because it is almost impossible to prove this malicious standard that is set out in this particular bill. So I think it would be wise for us to quickly indefinitely postpone LB 476, the doctrine of sovereign immunity as Senator DeCamp indicated earlier should be dead in the State of Nebraska and I hope that we can kill this bill quickly and move on with more substantive issues.

SENATOR CLARK: Senator Hoagland.

SENATOR HOAGLAND: Mr. President and colleagues, I would like to echo the sentiments expressed by my colleagues in support of Senator DeCamp's motion. Now if any of you have any hesitance about what to do, why pull out your statute books right now and take a look at Section 37-1002 which is on page 663 of Volume 3 because that will give you an idea, unlike this bill, unlike the green copy's, do exactly what we are doing. Now let me read some provisions out of 37-1002 to give you an idea as to the law that would apply to swimming pools in Omaha and a lot of other public facilities if this particular provision attaches and let me just read a little bit out of this so you will fully understand what we are doing. Now that section states, "An owner of land owes no duty of care to keep the premises safe from injury or use by others for recreational purposes or to give any warning of a dangerous condition, use, structure or activity on such premises to persons entering for such purposes." Now do we really want that to be the law? I mean do we really want the City of Omaha not to have an obligation to owe a duty of care to keep their premises safe from injury.