

January 8, 1982

LB 347

SENATOR NICHOL: I don't know that it was brought out in hearing and if it was, I was not...I do not recall it, but is the word "reckless" the wrong word to use here, Senator Chambers, in a legal sense?

SENATOR CHAMBERS: In a criminal statute I think that it is.

SENATOR NICHOL: Well, this is a criminal statute, is it not?

SENATOR CHAMBERS: Yes, it is.

SENATOR NICHOL: As a layman, Senator Chambers, it seems to me that "reckless" seems to be the wrong word in here.

SENATOR CHAMBERS: Yes, it is. So what the law says right now is intentionally or maliciously.

SENATOR NICHOL: Okay, so really what you are....and if your amendment should pass, then the statute the way it is written or the way it would revert to would be that we would leave "maliciously" in the statute and remove "recklessly" so that the county attorneys would have a more difficult job to prove malicious intent than if we had the word "reckless" in there. Is that correct?

SENATOR CHAMBERS: No. Senator Nichol, it is not a matter of proof that creates the problem, it is the idea that if somebody does not have the required intent and malice and intent is, they are almost interchangeable words, based on what they actually wind up meaning....

SENATOR NICHOL: You mean....

SENATOR CHAMBERS: You cannot prosecute somebody under the criminal law for an act if it is simply reckless. But if there are other elements in it that would show intent....

SENATOR NICHOL: Well....

SENATOR CHAMBERS:then you can....or malice, then you can punish somebody criminally.

SENATOR NICHOL: Well, but the intentional is already in there and would remain there if your amendment passed, right?

SENATOR CHAMBERS: But they don't say "intentionally and recklessly". They say "intentionally or" so there need be no intent whatsoever. However you define "reckless", remember