

SENATOR LANDIS: Mr. Speaker, members of the Legislature, I support the Beutler amendment. It offers the defense a chance to examine, a chance to object and raise the specter that there is some misleading evidence that should not go forward, that there should be the opportunity to examine the real evidence and have that placed before the court. Why is this provision, the existing provision in LB 126 a problem? First, it moves us away from the best evidence rule. The best evidence rule says: As a policy when you have varying qualities of evidence to prove a fact you need not accept the inferior forms of evidence, you always try to get the best evidence and the best evidence is the physical testimony, the physical evidence of the theft. Secondly, a very strange thing is going to occur in this bill if we are telling judges to accept photographic evidence. What do you do about grand larceny where it is not shoplifting? Take a look at your definition section. This is where you alter tags. You put it in your possession, you put it under your coat, you are still inside the building. What happens when you steal the goods, you're a block down the street, they handcuff you and it is grand larceny? Does this rule apply? No, it doesn't. We've got a special evidentiary rule in LB 126 that applies if you get caught inside the store but need not apply in the event you are out on the street halfway down the block. The difficulty with LB 126 is that it tries to write evidence rules based on which crime you are charged with. John read a section of law that is a very good one and in there it said, let the judge decide. Let the judge decide if there is prejudice. Let the judge decide if it is good evidence. Let the judge decide if a photograph is a reasonable representation of the evidence. That is the way the law is now John tells us. We don't need a provision in 126 which can be used to bludgeon uncooperative county attorneys in using photographic evidence they may not wish to use or indicating to the court that somehow the Legislature mandates the use of photographic evidence. I don't think we will want to get into that business. I think we want to leave the business of the rules of evidence for a court to administer and not to create crime by crime, varying evidentiary standards and rules to apply. The rules of evidence as to what is hearsay, what is the best evidence rule, what is admissible and what is inadmissible should apply to each and every crime across the board. We shouldn't be juggling the rules based on which of the hundreds of crimes in our statutes you happen to be charged with. Senator Beutler's language is fair, it is reasonable and ultimately I have done research on this question too and there is little need for this provision. The prosecutor in this town says, I'm surprised you are considering it. I don't think we need it in state laws. As a matter of fact I think it kind of looks funny there. Secondly, there are a variety of kinds of cases.