

May 4, 1989

LB 769

SENATOR WESELY: Thank you. Mr. Speaker, members, if Senator Lindsay would yield to some questions, I would appreciate it.

SPEAKER BARRETT: Senator Lindsay.

SENATOR WESELY: Senator Lindsay, I am trying to bring back in my memory the issue that you are asking to strike from our statutes, and that is Section 28-347, and I would like to first off acknowledge that I completely forgot about this section, and until I have reviewed now the record, I had not remembered the whole issue coming up before. But now that I have reviewed it, I do recall quite a battle over it and the feeling at the time that it was an unconstitutional law, and it was declared that by the courts eventually. The question I have, though, is, and with your legal background, I don't have it and so I am not sure exactly what our opportunities are here, but, personally, if you are going to have notification, I like the provisions of this section more than I like the provisions of the bill that is being proposed. And what I am wondering is, even though this section has been declared null and void by the courts, is it impossible now to amend or to work with this section? Does it have to be repealed? Why did you or Senator Labedz or whoever is initiating this legislation not start it at this piece of legislative statute that we already have in place? Can you talk about that a little bit because I am not sure what our options are?

SENATOR LINDSAY: Yeah, the reason this bill was used is it was modeled after a Minnesota law that was found to be constitutional by the Eighth Circuit. Too, I think we are again better off modeling it after a constitutional law as opposed to one that has already been declared unconstitutional.

SENATOR WESELY: Yeah, but let me interrupt at that point.

SENATOR LINDSAY: Sure.

SENATOR WESELY: If the question is constitutionality, and answer this for me, is not the proposal under the bill now before us more restrictive than the statute you would like to repeal, and if that is the case, then it is more than likely that this less restrictive statute would now be declared constitutional in light of the changing views on this issue, wouldn't that be correct?