

TRANSCRIPT PREPARED BY THE CLERK OF THE LEGISLATURE
Transcriber's Office
FLOOR DEBATE

March 12, 2003

LB 294

cannot sue you for the wrongful death of my child. We know this is true because it has happened time and time again here in Nebraska. And the families who have attempted to bring wrongful death lawsuits, due to the killing of their unborn children, have litigated their cases all the way up to our State Supreme Court, and the court has held that, unless and until the Nebraska Legislature acts, such lawsuits are not permissible in our state. I never had the pleasure of meeting former Senator Connie Day. I've been told that she was a pro-choice senator, yet, she carried legislation more than once that would have addressed this problem. My predecessor in the Legislature, pro-life Senator LaVon Crosby, carried legislation to address this problem as well and, unfortunately, her efforts were also blocked. Now today, finally, after ten years or more of efforts, we have a bill on the floor that fills this serious void in our statutes. The constitutionality of wrongful death laws including unborn children have been challenged and upheld. In the U.S. Supreme Court decision Webster v. Reproductive Health Services, the court acknowledged the authority of the state to provide, and I quote, protections to unborn children in tort and probate law. Let me repeat that, because that's central to what this bill is about. The U.S. Supreme Court has held that states do have the authority to provide protections to unborn children in tort and probate law. In another case, Planned Parenthood v. Casey, the U.S. Supreme Court said, and I quote, the state has an interest in protecting the life of the unborn. The Nebraska State Supreme Court has also weighed in on this in the 1951 case of Drabbels v. Skelly Oil Company. In that case, the court held that a wrongful death action on behalf of an unborn child may not be maintained unless and until the right to bring it is afforded by legislative enactment. A Nebraska Attorney General Opinion of last year confirmed yet again that the expansion of the state's wrongful death statute to include the unborn remains the Legislature's prerogative. I bring this bill to you today because it represents an opportunity to protect the unborn in precisely those limited circumstances where our highest courts have found we may protect them. Is this pro-life legislation? Of course it is, but it is pro-life legislation outside of the context of abortion. The bill takes us precisely where the U.S. Supreme Court and our own State Supreme Court have held we may go. It takes us where 38