

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

February 22, 2005 LB 570

is part of the sales agreement. Under the proposed revised Article 1, not only must the local merchant observe reasonable commercial standards of fair dealing; so would I, the nonmerchant buyer, even though I may have no reason to know what constitutes reasonable commercial standards of fair dealing in the sale and servicing of lawn mowers. If reasonable commercial standards of fair dealing in the performance of a contract for the sale and servicing of a lawn mower require that I inspect the mower after each use, and if I go on vacation for two weeks while my neighbor uses the mower to cut my lawn but fails to inspect the mower after two mowings, when I return and start it up and it is not working as warranted, am I breaching my duty of good faith by insisting that the local merchant make good on its warranty? The proposed revised Article 1's reasonable person with knowledge of the trade standard suggests I am in breach. If I am in breach, my breach will not give the merchant independent grounds to recover from me, but it may well give the merchant a defense against liability for breach of warranty. The specific use of reasonable commercial standards is done throughout the code, article by article. This argument says you're importing it, as to the default position, for people and conditions that may not be aware of what those standards are. That's their argument.

SENATOR BEUTLER: Let me...I'm not sure if I understood everything you were saying. But you were saying that the default definition is better for unsophisticated people?

SENATOR LANDIS: It is worse...I think their argument is that it's worse; that it would take the unsophisticated person and assume that they understood reasonable commercial standards and were observing them.

SENATOR BEUTLER: Oh, I'm sorry. This is...

SENATOR LANDIS: While that might...

SENATOR BEUTLER: ...the commissioner's position? Whose position was that? I didn't hear the first part.

SENATOR LANDIS: The position is those who want the existing