

March 13, 1979

LB 316

PRESIDENT: The Chair recognizes Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I told you there were problems with this section which was amended the other day by those who had worked together reading the Attorney General's opinion. What I am going to ask that you do this morning, I have a statement prepared here, the original of which will go to the Governor, has gone to the Governor, and I would like to go ahead and be able to read it through without having to stop and then in close, complete it, so those who are on the other side, do you object to me finishing this statement? It won't take much more than ten minutes but it may take about three minutes longer. This discussion of LB 316 is based upon the amended version of Request 2661. Section 6 (page 7) amends section 28-333. A classification is created by employing the language, "minor under the age of 18", but fails to define "minor". The Attorney General's office seemed to opine that a definition may be lifted properly from section 38-101 and incorporated without reference, into this criminal statute. According to section 38-101, a minor is an unmarried person under the age of 19. Though LB 316 substitutes age 18 for age 19, therefore rejecting part of the definition contained in section 38-101, the Attorney General feels the definition found in section 38-101, nevertheless, applies to the word "minor" in LB 316. Though marital status is a part of the definition in section 38-101, LB 316's modification of the designated age therein, indicates that age is more significant than marital status in establishing the classification found in section 6. Section 6 makes a given surgical procedure a crime as soon as performed by a physician regardless of the surrounding circumstances (e.g., deceit by the minor) if no statement of consultation is obtained from a young female who is unmarried and under the age of 18. A physician who without notice, knowledge or intent merely performs a recognized surgical procedure, may be made subject to a criminal penalty by the deceptive conduct of someone whom the physician has no reason to suspect of deception. Such a statutory scheme chills the employment by a physician of his or her medical judgment, knowledge and skill. Since section 6 underscores age as a major criterion for establishing which class of persons must consult with a parent or guardian before obtaining an abortion, may it apply only to unmarried females under the age of 18, without raising a constitutional question of equal protection? If the state has declared the policy that those under 18 constitute a class who must consult, all