

March 29, 1979

LB 394

of the family. The reporter went out to talk to the mother and daughter. The daughter was there. The mother was not and the article that was run made constant references to the fact that the mother had adopted a policy of stony silence, that she would not speak on the issue, that she remains torn about the loss of her husband, giving the very distinct impression that she was present but refused to speak when in point of fact she simply was not there at the time of the interview. That is the last example, the most recent example and that was about two years ago in which an action was successfully brought under the false light provision and that was in Michigan I believe. Now section 5 lays out the defense of consent either by implication or by expressed written or, I assume, oral communication consenting to the appropriation of the name or consenting to the use of the article or whatever. That is a complete defense to an action of the right of privacy. Section 6 gives direction to our courts as to other defenses and privileges which may be used in the area of the right of privacy. It recognizes completely and absolutely constitutional and federal statutory defenses. For example, any defense relating to the first amendment would apply automatically. It also indicates that defenses and privileges that arise under defamation or in other words, libel and slander will apply. Lastly it indicates that the courts should look to other states for direction in the development of our own defenses and privileges. Now I must speak candidly and say that two words have been left out of section 6 on line 18. It says, all applicable qualified and absolute privileges, and there should be the addition of the words "and defenses". I will on Select File offer an amendment to that purpose. Section 7 indicates that this action is not assignable. In other words you can't make an agreement to let someone else sue on your behalf. Section 9 and 10 are the uniform defamation act that says that if you bring a lawsuit you bring it once. You sue for all of the acts, all of the damages and no matter what the state that the publication was made you bring the action once and once it is decided that is it. Those are the sections of the bill and I want to indicate that Nebraska and Rhode Island are the only two states that do not recognize specifically the right of privacy. If you will remember we had an LB 316, the abortion bill, a statement to the right of privacy was recognized in this state. On Select File, by agreement, that was taken out of LB 316. At that time negotiation was completed between the press, people who are involved in credit information and banks as to this particular LB. The decision was made that LB 394 could be arrived at at a fair compromise and that all opposition to the bill would