

March 11, 1982

LB 547

CLERK: Mr. President, I have a motion on the desk. Senator Chambers would move to return LB 547 to Select File for a specific amendment. The amendment reads as follows: (Read the Chambers amendment as found on page 1117 of the Legislative Journal.)

SENATOR CLARK: Senator Chambers.

SENATOR CHAMBERS: Mr. Chairman and members of the Legislature, I will read the language that I would like to see stricken. "With intent to deceive", this is dealing with false advertisements relative to food. Now the existing law says that it has the word "knowingly" and they want to add "with the intent to deceive" which means that you can lawfully know...I mean, you can know that an advertisement is false but argue that you disseminate it as false advertising without an intent to deceive. And I suppose that the idea is that you would have to prove actual intent which could be very difficult because all the person who disseminated the advertisement would have to say is that, I didn't intend to deceive, yes, I knew it was false. To me, if it is known by the one disseminating the advertisement that it is false, there can only be an intent to deceive. I don't see why you would disseminate something knowing that it is false if your purpose is not to mislead those who read the advertisement. So that is the purpose of my amendment. And for those of you who may not have located it yet, it is on page 13, lines 19 and 20, and the words would be, "with intent to deceive". So it would leave the law as it stands and the current law says this: "It shall be unlawful for any person engaged in the sale, merchandising or distribution of food to knowingly cause the dissemination of a false advertisement regarding a food." Remember, you have to knowingly cause the dissemination, and I think that should be sufficient for an unlawful act to have occurred especially when we are dealing with food. This is something which is consumed not only by grown people who might be able to read and make a judgment but by children, even infants. So I think it is not a good thing to add this element of a specific intent when I think knowledge can carry the notion of intent. Because criminal statutes are construed narrowly, if you have the word "knowingly" and the word "intent", the court will say that something in addition to mere knowledge is required. And I don't think anything in addition to that knowledge should be required. So that is why I am asking you to return the bill to strike that particular portion that I have mentioned to you.

SENATOR CLARK: Senator Schmit.

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