

February 12, 1991 LB 88

Mr. Clerk. Raise the call.

CLERK: Mr. President, the next motion I have to the bill is by Senators Kristensen, Abboud, and Ashford. Senator, I have AM0240 in front of me.

SPEAKER BAACK: Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Mr. Speaker. I am tempted to go back and, in the terms of Senator Hefner, plow old ground, but now is not the appropriate time to do that. The amendment that I have here that has been signed by myself, Senator Abboud, and Senator Ashford relates back to our discussion of a week ago Friday with some changes in the joint-several language and some differences that I think we looked at that could help mesh the two amendments. As you recall, my amendment changed their joint-several and struck out their reallocation formulas and this amendment does roughly three things. One is that it clarifies that LB 88 and its joint and several provisions, with the economic, noneconomic, those will still remain in there, will apply to actions to which contributory negligence is a defense. And legally what this means is that it won't apply to strict liability and some of those other areas of law. This is the intent that I had and this clarifies it. It doesn't change anything, I mean it just clarifies it. Second is that there...and if you want to look at what LB 88 looks like today, I think, Senator Hefner, you expressed that you weren't sure what 88 looked like today, look in your bill book on LB 88 and you will see AM0102. AM0102 is what LB 88 is today. We take out the words "objectively verifiable" in the economic damage section. That is down on line 19, where it says "Economic damages shall mean objectively verifiable monetary losses," we take out the words "objectively verifiable" because in Nebraska law you are going to get instruction anyway that says that there must be competent and credible evidence to do so. Thus, I don't think that this changes law any, I think we maybe take out some words that might create some appeals, and if I could do that, I would readily do it. The third item adds, as an economic damage, loss of earning capacity. And earning capacity would be, let's say that if you are a factory worker and you have a specific skill, your hands are injured or damaged, or you lose those hands, you are no longer able to do the job you were trained for, and you would lose your earning capacity; let's say you'd have to take a lower paying job. If you had no hands, you couldn't earn the same wages, and maybe you'd have to do some