

February 12, 1991 1:08 PM

SENATOR HEFNER: Okay, thank you. I have another question for Senator Kristensen. Okay, and this amendment, AM0240, on line 8, after "earnings" insert "earning capacity". Okay, could you tell me the difference between earnings and earning capacity?

SENATOR KRISTENSEN: Yes, and the reason that earning capacity is in there is to clarify loss of earnings. If you will look on page...and I have got to refer to AM0102 because that is what I have in front of me, at the very bottom of the page here, it starts to define what economic damages really are, and it goes over onto the second page, look at line 2, it says loss of employment, and then it says loss of business or employment opportunities, those generally could be for the laborer or that could be for self-employed persons. They could still have other employment. Loss of earning capacity is that capacity to earn given where you are at today. For example, I used my example the hands. Remember the example I used the hands, that if you had someone who was, let's say, a specialist who mixed and dealt with chemicals or something and had an ability, or a surgeon, for example, if they lost their hands, they could no longer perform that profession. They'd lose their right to that profession. They maybe could take on a job of teaching where they didn't have to use their hands, and if they could get the same money, they wouldn't have any loss of earning capacity. But if you couldn't do the job that you had, you lose that earning capacity, that ability to earn if you'd keep on at that present capacity or that present position.

SENATOR HEFNER: Okay, one more question. In the number two section you say, "On page 2, line 19, after the period, insert 'The jury shall be instructed on the effects of the allocation of negligence.'" Do you want to explain that just a little more to me.

SENATOR KRISTENSEN: As I said when I opened on the amendment, the jury should be instructed as to what the effect of their findings are going to be. For example, if there is a 50-50 finding, right now what is the effect of that? And the jury should be understood and know that if they make a 50-50 finding with a plaintiff and a defendant, the plaintiff gets zero. Okay, that is the purpose. I think the courts are going to tell you you have got to do that anyway. Otherwise, you are misleading the jury. The jury has figured, well, I am just