

putting the current law of assumption of risk into the statute. Assumption of risk is a curious concept that has to do with an individual voluntarily exposing him or herself to a particular risk of harm and the law has been in Nebraska, though I will tell you it is changing quite a bit, but the law has been in Nebraska that a defendant would not be liable to a plaintiff if a person does voluntarily assume a risk or place him or herself in a dangerous position, a specific dangerous position that he or she perceives. I have no problem with Senator Schellpeper's amendment as long as we adopt the Will amendment to it which simply clarifies that current law goes in there and that we're not changing current assumption of risk statutes. So I appreciate Senator Schellpeper bringing this up but as long as we adopt the Will...if we adopt the Schellpeper amendment as is, it's a little bit confusing as to what law we apply and we, obviously, don't want to do that. So let's stick with current law, that's Senator Schellpeper's intent, and pass the Will amendment.

PRESIDENT MOUL: Thank you, Senator Ashford. I will now recognize Senator Moore.

SENATOR MOORE: Well, Madam President, and members, if Senator Ashford or Senator Will, I'm not sure who to address this time, I'm being confused. I'm looking at the handout that Senator Schellpeper had about Nebraska jury instructions and the specific language that was apparently lifted directly from those instructions is the language of the amendment. Now you tell me why that's not current law?

SENATOR ASHFORD: Okay, because that isn't exactly what it says.

SENATOR MOORE: Current process, not law.

SENATOR ASHFORD: That's not exactly what it says. If you read the jury instruction and if you read the comment under the jury instruction, you've got to make absolutely sure that assumption of risk is an affirmative defense. Okay, it's an affirmative defense and that's got to be made clear so that you're not creating something...it's an affirmative defense under the compara...under the negligence law and that's clear from the instruction. And then, secondarily, you've got to make sure that they...if you read the instruction under (b), burden of proof, the idea, if you read the whole thing, (b) and (c), the idea there is that the individual has to be aware of that danger