

February 13, 1991 LB 88, 262

individual knows about.

SENATOR SCHELLPEPER: Okay, I think that's going to be okay.

PRESIDENT MOUL: Okay. Senator Moore.

SENATOR MOORE: Yes, Madam President and members, since Senator Will took out his unreasonable language, I'll support the amendment.

PRESIDENT MOUL: Okay. Does anyone else wish to speak on the amendment to the amendment? Senator Kristensen.

SENATOR KRISTENSEN: Thank you, Madam President. I didn't realize my light got wiped off, and I would like to speak to this. Just to explain to people what I believe we're doing with assumption of risk. Assumption of risk has always been in tort law. I did have assumption of risk in LB 262, so it is something that we have had. We have had a public hearing on it, we've debated its merits. What had originally happened, the words "unreasonably", and I don't know if Senator Will did this knowingly or unknowingly, but unreasonably did appear in the jury instructions for product liability cases. Yesterday, the amendment that Senator Ashford, Abboud, myself did, we talked about cases where contributory negligence was a defense, and thus we took out some of those cases, this was one of those. So the jury instruction really didn't apply. I think it's much better. I believe it does mirror what the current jury instruction is. And the reason I want to stay to the current jury instruction is Senator Ashford made some remarks about the annotations, which are the other court cases that explain this, you can keep those now. So you keep assumption of the risk and that you have this whole body of law to explain what it means. So it's real important that we don't start tinkering with what does that word "unreasonably" mean, because that might, that might well invoke a different standard, that can invoke more court cases. It makes a whole lot more sense that, if you're going to do it, keep it to the...as close as you can to the original jury instruction. It is an affirmative defense, so by identifying it as so, that doesn't make any difference. And the court, when they look at this, are going to say, well, here statutorily is what the Legislature wants to do. Now, what we need to do is when the Supreme Court is going to read the transcript of what we're doing this morning, they're going to look at what our intents were. And I, and Senator Will, I would