

hope that you would address this for your intent at some point in time. Your intent is to codify what the current jury instructions do, you would like to keep the principle that Nebraska has evolved of the assumption of the risk. Assumption of the risk, given on any different fact situation, will play out differently, because they may apply in one fact situation different to another. But it's the principle that if you recognize a danger, and you still voluntarily enter into that action knowing that there is a specific danger, you're not going to get to recover. It's like you deserve to get the injury because you knew what could happen to you and you voluntarily entered into doing those things. That's the basis of assumption of the risk, you assumed the dangers and the risks that you got into, and thus you're going to do that. Now, some mention has been made of the tobacco industry. Quite frankly, the tobacco industry, as I know it, hasn't lost any of their smoking cases in states that have assumption of risk, or in states that don't have it. Now I think that they probably use that. If that's the turning point for me, I don't think that's the purpose for having good policy or good law. Assumption of the risk, at least in this point I think, should be our legislative intent, that we codify the present jury instructions, since we're shifting to a system of comparative fault. If we don't, I believe the courts could eliminate the assumption of the risk. Courts have done that in other, in other states that have gone to comparative fault, or that have comparative fault. Now, is that wrong? No, not necessarily, because comparative fault still, you look at the fault of the plaintiff, the person suing against those that they are suing, the defendants. And so, if they assume the risk, that plaintiff's contributory negligence goes way up. So is it going to make a difference in who wins and who loses lawsuits? In many, many cases probably not, because I think the judge would be hard-pressed to not let that case go to the jury, and would just let the jury decide their contributory negligence. But, with that, I think I agree with Senator Moore, that this does mirror what the present language is, it gives us a body of law to follow, it makes some good sense. And, with that, even though I told them I would not run this amendment, because I thought joint and several was more important and I wanted to...

PRESIDENT MOUL: One minute.

SENATOR KRISTENSEN: ...narrow what I thought was the discussion today, I will vote for this as well. Thank you.