

SPEAKER BAACK: Thank you, Senator Will. Senator Coordsen.

SENATOR COORDSEN: Thank you, Mr. Speaker, members of the body, I understand the reluctance of the body to pay a great deal of attention to this particular issue, but I would share with you that Senator Will's amendment is a major policy choice that is to be made by this Legislature this morning. I would like to share with you a little bit of a history of cumulative trauma in Nebraska, how it's being addressed by statute and how it's been addressed by case law. In 1963, the Legislature changed the definition of the word "accident" from event to an injury, thus recognizing the concept of cumulative or repetitive trauma injuries. The Nebraska Supreme Court interpreted this change in 1969 and noted that it was no longer necessary to find a single traumatic event as the cause of an injury. The next step occurred in 1980 where a...it's my belief that it was one of the earlier cases of carpal tunnel syndrome in Crosby v. American Stores and it was compensated under workers compensation because the person had been required in the course of employment to use her hands and arms to repeatedly dislodge pallets and form enclosed boxes in the old American Stores company. Although there was no instant injury, as you might compensate in a cut, dismemberment or a broken arm, the court found that in this particular case and in ensuing cases that the time that the person could no longer perform the responsibilities of their employment qualified that injury at that point in time as being an event or an injury that happened. The court provides a three-part test that they use to determine whether an "accident" with quotation marks qualifies for compensation under the workers' compensation court statutes, the workers' compensation statutes. One, the injury must be unexpected or unforeseen. Two, the injury must be sudden and violent and, three, the accident must produce, at the time, objective symptoms of injury. They have since went on and defined basically, number one, the unexpected or unforeseen has been held to be an element satisfied if the cause was of an accidental nature or the effect was unexpected or unforeseen in that working a VDT terminal and developing carpal tunnel, doing any of the other things, it was unforeseen or unexpected that problems would develop through that particular occupation. The injury must occur suddenly and violently is the second part of the three-part test. This element is not the same as instantaneously and with force. It defines a major difference between a fall from a forklift and a back injury caused by continually lifting 55-gallon drums of