

original bill would say is simply take that question off the table completely. Statutes would not address useful safe life of the product under the original form of LB 137 which would simply repeal the statute of repose. What the Will-Avery amendment that is currently under consideration would say is we presume, we make a statutory presumption that the useful safe life of a product does not extend beyond ten years. In effect we maintain the presumption that is made in current statute. Then we go on to say, but if a plaintiff can demonstrate by preponderance of the evidence that the...and the plaintiff again is the injured party, if the injured party can demonstrate by preponderance of the evidence that a product actually does have a useful safe life that extends beyond ten years, then the plaintiff does not automatically recover. The plaintiff simply gets an at bat. Gets to get up to the plate and make his case as to whether that product actually did cause the injury through some flaw in the manufacturer design or the instructions from the manufacturer when the product was sold. In addition what it does have, and I'd urge you to turn to page 2, anyone who is following the debate, it lists a number of factors to be taken into account when a product's useful safe life is determined. If I'm a plaintiff, if I've been injured by a product and I'm going up and saying, hey, I know that the product that hurt me was twelve years old but I think it's useful safe life is beyond the ten years that is presumed in statute, then the things that the court takes into account at that point are the amount of wear and tear to which the product has been subjected. So the manufacturer of the product at that point could come in and say, hey, this product was under abnormal circumstances, it was used a lot more than most products are, it had worn out. That was the cause of the injury. At that point, that's a defense that the manufacturer can use. Second one is the effect of deterioration from natural causes, climate and other conditions under which the product was used or stored. Perhaps you have a product that is being operated in a temperature that is far above or below the normal circumstances under which the product would be operated. That would be another defense the manufacturer could come in and say, hey, normally my product might last twelve years, but in fact under the adverse temperature climate conditions that it has operated under, it couldn't. These would all be things that, and you know the list goes on down to...

PRESIDENT MOUL: One minute.