

AMENDMENT NO. 603

At the request of Mr. MCCONNELL the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a co-sponsor of amendment No. 603 proposed to H.R. 956, a bill to establish legal standards and procedures for product liability litigation, and for other purposes.

AMENDMENTS SUBMITTED

COMMONSENSE PRODUCT
LIABILITY REFORM ACT

KYL AMENDMENT NO. 611

Mr. KYL proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL, to amendment No. 596, proposed by Mr. GORTON to the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes; as follows:

At the appropriate place, insert the following new section:

SEC. . LIMITATION ON NONECONOMIC DAMAGES.

(a) IN GENERAL.—With respect to any health care liability action, in addition to any award of economic or punitive damages, a claimant may be awarded noneconomic damages, including damages awarded to compensate the claimant for injured feelings such as pain and suffering, emotional distress, and loss of consortium.

(b) LIMITATION.—The amount of noneconomic damages that may be awarded to a claimant under subsection (a) may not exceed \$500,000. Such limitation shall apply regardless of the number of defendants in the action and the number of claim or actions brought with respect to the injury involved.

(c) NO DISCLOSURE TO TRIER OF FACT.—The trier of fact in an action described in subsection (a) may not be informed of the limitation contained in this section.

(d) AWARDS IN EXCESS OF LIMITATION.—An award for noneconomic damages in an action described in subsection (a), in excess of the limitation contained in subsection (b) shall—

(1) be reduced to \$500,000 either prior to entry of judgment or by amendment of the judgment after entry;

(2) be reduced to \$500,000 prior to accounting for any other reduction in damages required under applicable law; and

(3) in the case of separate awards of damages for past and future noneconomic damages, be reduced to \$500,000 with the initial reductions being made in the award of damages for future noneconomic losses.

(e) PRESENT VALUE.—An award for future noneconomic damages shall not be discounted to present value.

DEWINE AMENDMENT NO. 612

Mr. DEWINE proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In section 12(5) of the amendment, add at the end thereof the following new sentence: "Such term does not include an action where the alleged injury on which the action is based resulted from an act of sexual abuse (as defined under applicable State law) committed by a provider, professional, plan or other defendant."

HATCH AMENDMENT NO. 613

Mr. HATCH proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

In section 20(d)(1), strike "with technical assistance" and insert "with grants or other technical assistance".

SIMON (AND WELLSTONE)
AMENDMENT NO. 614

Mr. SIMON (for himself and Mr. WELLSTONE) proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

At the appropriate place insert the following:

SECTION . STATE OPTION.

(a) A provision of this subtitle shall not apply to disputes between citizens of the same State if such State enacts a statute—

(1) citing the authority of this section; and
(2) declaring the election of such State that such provision shall not apply to such disputes.

(b) If a dispute arises between citizens of two States that have elected not to apply a particular provision, ordinary choice of law principles shall apply.

(c) For purposes of this section, a corporation shall be deemed a citizen of its State of incorporation and of its principal place of business.

KENNEDY AMENDMENT NO. 615

Mr. KENNEDY proposed an amendment to amendment No. 603, proposed by Mr. MCCONNELL to amendment No. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

On page 8, line 20, insert after "subsection" the following: "(b) and".

Strike the material from page 9, line 4 through page 10, line 17, and insert in lieu thereof the following "The provisions of this subtitle shall not be construed to preempt any state statute but shall govern any question with respect to which there is no state statute".

DODD AMENDMENT NO. 616

Mr. DEWINE (for Mr. DODD) proposed an amendment to amendment no. 603, proposed by Mr. MCCONNELL to amendment no. 596, proposed by Mr. GORTON to the bill, H.R. 956, supra; as follows:

Strike section 15 of the amendment and insert the following new section:

SEC. 15. UNIFORM STANDARDS FOR AWARD OF PUNITIVE DAMAGES.

(a) GENERAL RULE.—Notwithstanding any other provision of law, punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant in an action that is subject to this Act if the claimant establishes by clear and convincing evidence that the harm that is the subject of the action was the result of conduct that was carried out by the defendant with a conscious, flagrant indifference to the safety of others.

(b) BIFURCATION AND JUDICIAL DETERMINATION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, in an action that is subject to this Act in which punitive damages are sought, the trier of fact shall determine, concurrent with all other issues pre-

sented, whether such damages shall be allowed. If such damages are allowed, a separate proceeding shall be conducted by the court to determine the amount of such damages to be awarded.

(2) ADMISSIBLE EVIDENCE.—

(A) INADMISSIBILITY OF EVIDENCE RELATIVE ONLY TO A CLAIM OF PUNITIVE DAMAGES IN A BIFURCATED PROCEEDING.—Notwithstanding any other provision of law, in any proceeding to determine whether the claimant in an action that is subject to this Act may be awarded compensatory damages and punitive damages, evidence of the defendant's financial condition and other evidence bearing on the amount of punitive damages shall not be admissible unless the evidence is admissible for a purpose other than for determining the amount of punitive damages.

(B) PROCEEDING WITH RESPECT TO PUNITIVE DAMAGES.—Evidence that is admissible in a separate proceeding conducted under paragraph (1) shall include evidence that bears on the factors listed in paragraph (3).

(3) FACTORS.—Notwithstanding any other provision of law, in determining the amount of punitive damages awarded in an action that is subject to this Act, the court shall consider the following factors:

(A) The likelihood that serious harm would arise from the misconduct of the defendant in question.

(B) The degree of the awareness of the defendant in question of that likelihood.

(C) The profitability of the misconduct to the defendant in question.

(D) The duration of the misconduct and any concealment of the conduct by the defendant in question.

(E) The attitude and conduct of the defendant in question upon the discovery of the misconduct and whether the misconduct has terminated.

(F) The financial condition of the defendant in question.

(G) The total effect of other punishment imposed or likely to be imposed upon the defendant in question as a result of the misconduct, including any awards of punitive or exemplary damages to persons similarly situated to the claimant and the severity of criminal penalties to which the defendant in question has been or is likely to be subjected.

(H) Any other factor that the court determines to be appropriate.

(4) REASONS FOR SETTING AWARD AMOUNT.—

(A) IN GENERAL.—Notwithstanding any other provision of law, with respect to an award of punitive damages in an action that is subject to this Act, in findings of fact and conclusions of law issued by the court, the court shall clearly state the reasons of the court for setting the amount of the award. The statements referred to in the preceding sentence shall demonstrate the consideration of the factors listed in subparagraphs (A) through (G) of paragraph (3). If the court considers a factor under subparagraph (H) of paragraph (3), the court shall state the effect of the consideration of the factor on setting the amount of the award.

(B) REVIEW OF DETERMINATION OF AWARD AMOUNT.—The determination of the amount of the award shall only be reviewed by a court as a factual finding and shall not be set aside by a court unless the court determines that the amount of the award is clearly erroneous.

NOTICES OF HEARINGS

COMMITTEE ON INDIAN AFFAIRS

Mr. MCCAIN. Mr. President, I would like to announce that the Senate Committee on Indian Affairs will be holding

an oversight hearing on Tuesday, May 2, 1995, beginning at 9:30 a.m., in room 485 of the Russell Senate Office Building on the implementation of the tribal self-governance demonstration project authorities by the Indian Health Service.

Those wishing additional information should contact the Committee on Indian Affairs at 224-2251.

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing on Thursday, May 18, 1995, at 9:30 a.m., in room SD-628. The focus of the hearing is the Small Business Administration's 7(a) Business Loan Program.

For further information, please contact Paul Cooksey at 224-5175.

ADDITIONAL STATEMENTS

NOTICE OF DETERMINATION BY THE SELECT COMMITTEE ON ETHICS UNDER RULE 35, PARAGRAPH 4, REGARDING EDUCATIONAL TRAVEL

• Mr. MCCONNELL. Mr. President, it is required by paragraph 4 of rule 35 that I place in the CONGRESSIONAL RECORD notices of Senate employees who participate in programs, the principal objective of which is educational, sponsored by a foreign government or a foreign educational or charitable organization involving travel to a foreign country paid for by that foreign government or organization.

The select committee received notification under rule 35 for William Triplett, a member of the staff of Senator BENNETT, to participate in a program in Abu Dhabi sponsored by the Abu Dhabi Chamber of Commerce from March 9-23, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Triplett in this program.

The select committee received notification under rule 35 for Senator BOND and two members of the staff, Warren Erdman and Brent Franzel, to participate in a program in the Republic of China on Taiwan, sponsored by the Chinese National Association of Industry and Commerce, from April 18-21, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Senator BOND, Mr. Erdman, and Mr. Franzel in this program.

The select committee received notification under rule 35 for William B. Bonvillian, a member of the staff of Senator LIEBERMAN, to participate in a program in Taipei sponsored by the Tamkang University from April 10-16, 1995.

The committee determined that no Federal statute or Senate rule would prohibit participation by Mr. Bonvillian in this program. •

DR. DAVID A. KESSLER'S SPEECH ON TOBACCO

• Mr. SIMON. Mr. President, recently, I had a chance to read a speech by Dr. David A. Kessler, the Commissioner of the Food and Drug Administration, to the Columbia University Law School.

I have been very favorably impressed by Dr. Kessler's commitment and doggedness over the years. My colleagues will recall that he was an appointee of President George Bush, and when Bill Clinton became President, I urged him to retain David Kessler, and I am pleased that he has done so.

His talk to the Columbia University Law School was about tobacco and specifically about young people and tobacco. He describes nicotine addiction as "a pediatric disease."

What tobacco companies are clearly trying to do, and unfortunately doing successfully, is to make smoking attractive to young people.

My wife and I recently took a vacation, at our own expense. I hasten to add, to Portugal and Spain, and the percentage of young people who smoke in those two countries, as well as in the rest of the world, unquestionably is higher than it is in the United States. But more young people are smoking in the United States, and according to Dr. Kessler, 7 out of 10 who smoke, report that they regret having started.

He does not mention in his remarks something I have read elsewhere, and that is someone who is a cigarette smoker is much more likely to get involved in hard drugs.

An area where I have some concerns is his comment on advertising.

I believe the Federal Government has to move very cautiously when it comes to first amendment matters.

It does seem to me, however, that it is only realistic and fair to ask the advertisers to warn more effectively about the dangers of cigarettes.

We require this of the manufacturer of other products.

The speech by Dr. Kessler is something we should be taking extremely seriously, and I ask that the speech be printed in the RECORD.

The speech follows:

REMARKS BY DAVID A. KESSLER, M.D.

It is easy to think of smoking as an adult problem. It is adults who die from tobacco related diseases. We see adults light up in a restaurant or bar. We see a colleague step outside for a cigarette break.

But this is a dangerously short-sighted view.

It is as if we entered the theater in the third act—after the plot has been set in motion, after the stage has been set. For while the epidemic of disease and death from smoking is played out in adulthood, it begins in childhood. If there is one fact that I need to stress today, it is that a person who hasn't started smoking by age 19 is unlikely to ever become a smoker. Nicotine addiction begins when most tobacco users are teenagers, so let's call this what it really is: a pediatric disease.

Each and every day another three thousand teenagers become smokers. Young people are the tobacco industry's primary source of new customers in this country, replacing adults who have either quit or died.

An internal document of a Canadian tobacco company, an affiliate of a tobacco company in the United States, states the case starkly:

"If the last ten years have taught us anything, it is that the [tobacco] industry is dominated by the companies who respond most effectively to the needs of the younger smokers."

If we could affect the smoking habits of just one generation, we could radically reduce the incidence of smoking-related death and disease, and a second unaddicted generation could see nicotine addiction go the way of smallpox and polio.

The tobacco industry has argued that the decision to smoke and continue to smoke is a free choice made by an adult. But ask a smoker when he or she began to smoke. Chances are you will hear the tale of a child.

It's the age-old story, kids sneaking away to experiment with tobacco, trying to smoke without coughing, without getting dizzy, and staring at themselves in a mirror just to see how smooth and sophisticated they can look.

The child learns the ritual. It is a ritual born partly out of a childish curiosity, partly out of a youthful need to rebel, partly out of a need to feel accepted, and wholly without regard for danger. It is a ritual that often, tragically, lasts a lifetime. And it is a ritual that can cut short that lifetime.

Many of us picture youngsters simply experimenting with cigarettes. They try smoking like they try out the latest fad—and often drop it just as quickly. But when you recognize that many young people progress steadily from experimentation to regular use, with addiction taking hold within a few years, the image is far different, far more disconcerting. Between one-third and one-half of adolescents who try smoking even a few cigarettes soon become regular smokers.

What is perhaps most striking is that young people who start smoking soon regret it. Seven out of 10 who smoke report that they regret ever having started. But like adults, they have enormous difficulty quitting. Certainly some succeed, but three out of four young smokers have tried to quit at least once and failed.

Consider the experience of one 16-year-old girl, recently quoted in a national magazine. She started to smoke when she was eight because her older brother smoked. Today, she says: "Now, I'm stuck. I can't quit... It's so incredibly bad to nic-fit, it's not even funny. When your body craves the nicotine, it's just: 'I need a cigarette.'"

In her own terms she has summarized the scientific findings of the 1988 Surgeon General's report. That report concluded: "Cigarettes and other forms of tobacco are addicting" and "Nicotine is the drug in tobacco that causes addiction."

Let there be no doubt that nicotine is an addictive substance. Many studies have documented the presence of the key addiction criteria relied on by major medical organizations. These criteria include: highly-controlled or compulsive use, even despite a desire, or repeated attempts to quit; psychoactive effects on the brain; and drug-motivated behavior caused by the "reinforcing" effects of the psychoactive substance. Quitting episodes followed by relapse and withdrawal symptoms that can motivate further use are some additional criteria of an addictive substance.

Are young people simply unaware of the dangers associated with smoking and nicotine addiction? No, not really. They just do not believe that these dangers apply to them.

For healthy young people, death and illness are just distant rumors. And until they experience the grip of nicotine addiction for themselves, they vastly underestimate its