

Mr. HOLLINGS. We have no objection.

Mr. DOLE. So, Mr. President, the yeas and nays are automatic on the cloture vote. Let me ask for the yeas and nays on the V-E Day resolution.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

UNANIMOUS CONSENT AGREEMENT—NOMINATION OF JOHN M. DEUTCH, TO BE DIRECTOR OF CENTRAL INTELLIGENCE

Mr. DOLE. Finally, Mr. President, as in executive session, I ask unanimous consent that immediately following the cloture vote and the vote on the V-E Day resolution, notwithstanding rule XXII, the Senate go into executive session to consider the nomination of John Deutch, to be Director of the CIA, and that it be considered under the following time agreement: 2 hours equally divided between the chairman and vice chairman of the Intelligence Committee, or their designees; that following the conclusion, or yielding back of time, the nomination be set aside; and that the Senate then return to legislative session, with the vote to occur on the nomination at 10:30 a.m. on Tuesday, May 9, 1995.

I believe this has been cleared on both sides. We will have debate this afternoon and vote tomorrow morning. I know the President very much wants to have this nomination addressed. We are prepared to do that.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. DOLE. Mr. President, let me suggest the absence of a quorum unless someone would like to speak. There are 8 minutes before the cloture vote occurs. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. HEFLIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. HEFLIN. Mr. President, again, I want to emphasize what this vote is about. It is, of course, about product liability, but it is also the role of the Senate in the legislative process.

The House has passed a bill that contains vast differences from what is proposed in the substitute and what is proposed in the substitute to the substitute.

If we do not take advantage of our rules and do not exercise the role that is intended for the Senate to be a deliberative body, and if we vote cloture,

there is no question what will happen is it will go back to the House and I do not think there is much question as to what will happen.

The Speaker of the House will control the conference, and this is going to be a bill regardless of what fixes may have been attempted in the Senate, the version that is going to come out of the conference is going to be the version of the Speaker of the House of Representatives. It comes back here and people say, "Well, you can exercise your rules and you can have extended debate at that time." But we all know what happens on conferences. Their reports come back, people are anxious to get away, and they are arranged at a time to come up where you are in a situation, and we end up, with very rare exceptions, approving conference reports.

So I say to my colleagues, this is a vote not only on product liability but is a vote on the role of the Senate on this bill and other bills that may be coming down in the future.

So I urge my colleagues to vote against cloture. It is very important that they bear in mind the fact that whatever is being proposed here does not mean that that is going to be the final version. The final version, I think, in the judgment of anybody who can see beyond the immediate scene and can see around the corner will be that it will be in conference and it will come out as a Gingrich version of this bill.

I yield the floor.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I simply want to announce to the friends and supporters of this bill that this will not be a meaningful cloture vote. In the haste to draft the Gorton-Rockefeller amendment, a couple of drafting errors were made that can only be removed at this point by unanimous consent. Unanimous consent, as the body knows, was not granted.

Second, because the Gorton-Rockefeller amendment is in the nature of a substitute, had cloture been granted and had the Gorton-Rockefeller amendment been adopted, which it would have been, it would have cut off all other postcloture amendments from the opponents to the bill and that, too, could only have been waived by unanimous consent.

So I say to Members who have worked on this compromise, they can vote for or against cloture at will. I do not expect cloture to be invoked. I cannot under these circumstances vote for cloture myself. The bill by tomorrow morning will be in proper form, both for its own passage and to allow postcloture amendments. Tomorrow morning's cloture vote will be the significant one on this bill and not the vote that is being taken this evening.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. GORTON. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

CLOTURE MOTION

The PRESIDING OFFICER. The hour of 4:20 p.m. having arrived, under the previous order, the clerk will report the motion to invoke cloture.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provision of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on a substitute amendment to H.R. 956, the product liability bill:

Slade Gorton, Dan Coats, Richard G. Lugar, John Ashcroft, Rod Grams, Kay Bailey Hutchison, Judd Gregg, Strom Thurmond, Jay Rockefeller, Trent Lott, Rick Santorum, Larry E. Craig, Bob Smith, Don Nickles, R.F. Bennett, John McCain, Connie Mack.

VOTE ON MOTION TO INVOKE CLOTURE

The PRESIDING OFFICER. By unanimous consent the quorum call has been waived.

The question is: Is it the sense of the Senate that debate on amendment No. 690 to H.R. 956, the product liability bill, shall be brought to a close?

The yeas and nays have been required.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA], the Senator from Iowa [Mr. HARKIN], the Senator from Massachusetts [Mr. KENNEDY], and the Senator from Nebraska [Mr. KERREY] are necessarily absent.

I further announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL] would vote "yea."

I further announce that, if present and voting, the Senator from Hawaii [Mr. AKAKA] would vote "nay."

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The yeas and nays resulted—yeas 43, nays 49, as follows:

[Rollcall Vote No. 153 Leg.]

YEAS—43

Abraham	Exon	Jeffords
Ashcroft	Faircloth	Kassebaum
Bond	Frist	Kempthorne
Brown	Gramm	Kyl
Burns	Grams	Lieberman
Chafee	Grassley	Lott
Coats	Gregg	Lugar
Coverdell	Hatch	Mack
Craig	Hatfield	McCain
DeWine	Helms	McConnell
Dole	Hutchison	Murkowski
Domenici	Inhofe	Nickles

Pressler
Santorum
Smith

Snowe
Stevens
Thomas

Thurmond

NAYS—49

Baucus
Biden
Bingaman
Boxer
Bradley
Breaux
Bryan
Bumpers
Byrd
Cochran
Cohen
Conrad
D'Amato
Daschle
Dodd
Dorgan
Feingold

Feinstein
Ford
Glenn
Gorton
Graham
Heflin
Hollings
Inouye
Johnston
Kerry
Kohl
Lautenberg
Leahy
Levin
Mikulski
Moseley-Braun
Moynihan

Murray
Nunn
Packwood
Pryor
Reid
Robb
Rockefeller
Roth
Sarbanes
Shelby
Simon
Simpson
Specter
Thompson
Wellstone

NOT VOTING—8

Akaka
Bennett
Campbell

Harkin
Kennedy
Kerrey
Pell
Warner

So the motion was rejected.

The PRESIDING OFFICER. On this vote, the yeas are 43, and the nays are 49. Three-fifths of the Senators duly chosen and sworn not having voted in the affirmative, the motion is rejected.

Mr. HOLLINGS. Mr. President, I move to reconsider the vote.

Mr. FORD. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

Mr. GORTON. Mr. President, I said just before this vote, for technical reasons, given the nature of the amendment, with our 3 o'clock deadline and the haste to file the Rockefeller-Gorton substitute, certain drafting errors were made which could not be cured without unanimous consent. Unanimous consent was not granted. Therefore, Senator ROCKEFELLER and I both voted no on cloture this time around and regard this last vote as essentially meaningless.

Between now and the adjournment of the Senate today, we will introduce a revised second-degree amendment with the majority leader that will reflect our precise views and the agreement that has been made with the consent of, I think, a very substantial majority of the Members, as to the final form of this bill.

Tomorrow we will vote on cloture once again. If we have not been allowed by unanimous consent to adopt that second-degree amendment, the sponsors are confident in making a guarantee it will pass immediately after cloture is invoked.

Mr. President, inquiry: Do we have an order to go on to another subject at this point?

EXPRESSING THE SENSE OF THE SENATE ON THE 50TH ANNIVERSARY OF V-E DAY

The PRESIDING OFFICER. The clerk will report Senate Resolution 115.

The legislative clerk read as follows:

A resolution (S. Res. 115) expressing the sense of the Senate that America's World War II veterans and their families are deserving of this Nation's respect and appreciation on the 50th anniversary of V-E Day.

The Senate resumed consideration of the resolution.

The PRESIDING OFFICER. The question is on agreeing to the resolution. The yeas and nays have been ordered.

The clerk will call the roll.

The bill clerk called the roll.

Mr. LOTT. I announce that the Senator from Utah [Mr. BENNETT], the Senator from Colorado [Mr. CAMPBELL], and the Senator from Virginia [Mr. WARNER] are necessarily absent.

Mr. FORD. I announce that the Senator from Hawaii [Mr. AKAKA] and the Senator from Massachusetts [Mr. KENNEDY] are necessarily absent.

I further announce that the Senator from Rhode Island [Mr. PELL] is absent on official business.

I further announce that, if present and voting, the Senator from Rhode Island [Mr. PELL], the Senator from Hawaii [Mr. AKAKA], and the Senator from Massachusetts [Mr. KENNEDY] would each vote "aye."

The PRESIDING OFFICER. Are there any other Senators in the Chamber who desire to vote?

The result was announced—yeas 94, nays 0, as follows:

[Rollcall Vote No. 154 Leg.]

YEAS—94

Abraham
Ashcroft
Baucus
Biden
Bingaman
Bond
Boxer
Bradley
Breaux
Brown
Bryan
Bumpers
Burns
Byrd
Chafee
Coats
Cochran
Cohen
Conrad
Coverdell
Craig
D'Amato
Daschle
DeWine
Dodd
Dole
Domenici
Dorgan
Exon
Faircloth
Feingold
Feinstein

Ford
Frist
Glenn
Gorton
Graham
Gramm
Grassley
Gregg
Harkin
Hatch
Hatfield
Heflin
Helms
Hollings
Hutchison
Inhofe
Inouye
Jeffords
Johnston
Kassebaum
Kempthorne
Kerrey
Kerry
Kohl
Kyl
Lautenberg
Leahy
Levin
Lieberman
Lott
Lugar

Mack
McCain
McConnell
Mikulski
Moseley-Braun
Moynihan
Murkowski
Murray
Nickles
Nunn
Packwood
Pressler
Pryor
Reid
Robb
Rockefeller
Roth
Santorum
Sarbanes
Shelby
Simon
Simpson
Smith
Snowe
Specter
Stevens
Thomas
Thompson
Thurmond
Wellstone

NOT VOTING—6

Akaka
Bennett

Campbell
Kennedy

Pell
Warner

So, the resolution (S. Res. 115), with its preamble, was agreed to; as follows:

S. RES. 115

Whereas on May 7, 1945, in Reims, France, the German High command signed the document of surrender, surrendering all air, land and sea forces unconditionally to the Allies;

Whereas President Harry S. Truman proclaimed May 8, 1945, to be V-E Day;

Whereas May 8, 1995, is the fiftieth Anniversary of that proclamation;

Whereas, the courage and sacrifice of the American fighting men and women who served with distinction to save the world from tyranny and aggression should always be remembered: Now, therefore, be it

Resolved, That the United States Senate joins with a grateful Nation in expressing our respect and appreciation to the men and women who served in World War II, and their families. Further, we remember and pay tribute to those Americans who made the ultimate sacrifice and gave their life for their country.

Mr. GORTON. Mr. President, I move to reconsider the vote.

Mr. ROCKEFELLER. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

COMMONSENSE PRODUCT LIABILITY AND LEGAL REFORM ACT

The Senate continued with the consideration of the bill.

Mr. GORTON addressed the Chair.

The PRESIDING OFFICER. The Senator from Washington.

AMENDMENT NO. 709, AS MODIFIED

Mr. GORTON. Mr. President, I send a modification of my earlier amendment to the desk on behalf of myself, Senator ROCKEFELLER, and Senator DOLE.

The PRESIDING OFFICER. The Senator has a right to modify the amendment, and the amendment is so modified.

The amendment, as modified, is as follows:

Strike out all after the first word and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Product Liability Fairness Act of 1995".

TITLE I—PRODUCT LIABILITY

SEC. 101. DEFINITIONS.

For purposes of this Act, the following definitions shall apply:

(1) ACTUAL MALICE.—The term "actual malice" means specific intent to cause serious physical injury, illness, disease, or damage to property, or death.

(2) CLAIMANT.—The term "claimant" means any person who brings a product liability action and any person on whose behalf such an action is brought. If an action is brought through or on behalf of—

(A) an estate, the term includes the decedent; or

(B) a minor or incompetent, the term includes the legal guardian of the minor or incompetent.

(3) CLAIMANT'S BENEFITS.—The term "claimant's benefits" means the amount paid to an employee as workers' compensation benefits.

(4) CLEAR AND CONVINCING EVIDENCE.—

(A) IN GENERAL.—Subject to subparagraph (A), the term "clear and convincing evidence" is that measure of degree of proof that will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established.

(B) DEGREE OF PROOF.—The degree of proof required to satisfy the standard of clear and convincing evidence shall be—

(i) greater than the degree of proof required to meet the standard of preponderance of the evidence; and

(ii) less than the degree of proof required to meet the standard of proof beyond a reasonable doubt.