call Medicare's 24-hour toll-free information line at 1–800–MEDICARE to get the answers to any questions they may have about their benefits.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX.

Record votes on postponed questions will be taken later today.

□ 1030

MULTIDISTRICT LITIGATION RESTORATION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 1768) to amend title 28, United States Code, to allow a judge to whom a case is transferred to retain jurisdiction over certain multidistrict litigation cases for trial, and for other purposes, as amended.

The Clerk read as follows:

H.R. 1768

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Multidistrict Litigation Restoration Act of 2004''.

SEC. 2. MULTIDISTRICT LITIGATION.

Section 1407 of title 28, United States Code, is amended—

(1) in the third sentence of subsection (a), by inserting ''or ordered transferred to the transferee or other district under subsection (i)'' after ''terminated''; and

(2) by adding at the end the following new subsection:

''(i)(1) Subject to paragraph (2) and except as provided in subsection (j), any action transferred under this section by the panel may be transferred for trial purposes, by the judge or judges of the transferee district to whom the action was assigned, to the transferee or other district in the interest of justice and for the convenience of the parties and witnesses.

''(2) Any action transferred for trial purposes under paragraph (1) shall be remanded by the panel for the determination of compensatory damages to the district court from which it was transferred, unless the court to which the action has been transferred for trial purposes also finds, for the convenience of the parties and witnesses and in the interests of justice, that the action should be retained for the determination of compensatory damages.''.

SEC. 3. TECHNICAL AMENDMENT TO MULTIPARTY, MULTIFORM TRIAL JURISDICTION ACT OF 2002.

Section 1407 of title 28, United States Code, as amended by section 2 of this Act, is further amended by adding at the end the following:

''(j)(1) In actions transferred under this section when jurisdiction is or could have been based, in whole or in part, on section 1369 of this title, the transferee district court may, notwithstanding any other provision of this section, retain actions so transferred for the determination of liability and punitive damages. An action retained for the determination of liability shall be remanded to the district court from which the action was transferred, or to the State court from which the action was removed, for the determination of damages, other than punitive damages, unless the court finds, for the convenience of parties and witnesses and in the interest of justice, that the action should be retained for the determination of damages.

''(2) Any remand under paragraph (1) shall not be effective until 60 days after the transferee court has issued an order determining liability and has certified its intention to remand some or all of the transferred actions for the determination of damages. An appeal with respect to the liability determination and the choice of law determination of the transferee court may be taken during that 60-day period to the court of appeals with appellate jurisdiction over the transferee court. In the event a party files such an appeal, the remand shall not be effective until the appeal has been finally disposed of. Once the remand has become effective, the liability determination and the choice of law determination shall not be subject to further review by appeal or otherwise.

''(3) An appeal with respect to determination of punitive damages by the transferee court may be taken, during the 60-day period beginning on the date the order making the determination is issued, to the court of appeals with jurisdiction over the transferee court.

''(4) Any decision under this subsection concerning remand for the determination of damages shall not be reviewable by appeal or otherwise.

''(5) Nothing in this subsection shall restrict the authority of the transferee court to transfer or dismiss an action on the ground of inconvenient forum.''.

SEC. 4. EFFECTIVE DATE.

(a) SECTION 2.—The amendments made by section 2 shall apply to any civil action pending on or brought on or after the date of the enactment of this Act.

(b) SECTION 3.—The amendment made by section 3 shall be effective as if enacted in section 11020(b) of the Multiparty, Multiforum Trial Jurisdiction Act of 2002 (Public Law 107–273; 116 Stat. 1826 et seq.).

The SPEAKER pro tempore (Mr. LAHOOD). Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 1768, the bill, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this legislation addresses two important issues in the world of complex multidistrict litigation. First, the bill reverses the effect of the 1998 Supreme Court decision in the so-called ''Lexecon'' case. For 30 years prior to the Lexecon decision, a Federal judicial entity, the Multidistrict Litigation Panel, selected the one U.S. district court that was best suited to handle pretrial matters in complex multidistrict cases filed in State and Federal district courts around the country. The district courts selected, called the ''transferee'' court, would then invoke a separate general venue statute to retain all the cases for trial matters. This situation promoted judicial administrative efficiency, then produced results that were more uniformly fair to the litigants.

In the 1998 Lexecon decision, the Supreme Court ruled that the statute empowering the MDLP to operate did not authorize a transferee court to retain cases after the pretrial matters were concluded. The bill amends the Federal multidistrict litigation statute by explicitly allowing a transferee court to retain jurisdiction over referred cases for trial, for the purposes of determining liability and punitive damages, or to refer them to other districts as it sees fit. It simply responds to the Court's admonition that Congress amend the statute to allow the MDLP and the affected transferee courts to act as they had done without incident for 30 years prior to Lexecon.

Second, the passage of H.R. 1768 ensures that a special ''disaster'' litigation statute enacted last term will operate as Congress intended. Among other prescribed conditions, this new law creates original jurisdiction for U.S. district courts to adjudicate cases in which the accident has led to 75 deaths. This provision, now codified as a part of the Department of Justice authorization act from the 107th Congress, contemplates that the Lexecon problem is solved.

In other words, the new disaster litigation law only creates original jurisdiction for a U.S. district court to accept these cases and qualify as a transferee court under the multidistrict litigation statute. But the transferee court still cannot retain consolidated cases for the determination of liability and punitive damages which effectively guts the statute. In this sense, the Lexecon fix set forth in H.R. 1768, its freestanding merits aside, also functions as a technical correction to the recently enacted disaster litigation statute.

In sum, this legislation speaks to process, fairness, and judicial efficiency. It will not interfere with jury verdicts or compensation rates for litigators.

I urge my colleagues to join me in a bipartisan effort to support this bill.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Let me first of all, Mr. Speaker, say that there is good news for those victims who had been victimized by catastrophic injuries and catastrophic accidents such as airplane crashes, terrorist actions, and others because we have been able to provide for an opportunity for those cases to remain in their jurisdiction of the incident or the jurisdiction that is accommodating to those plaintiffs; and I applaud that relief that was given by the exclusion

from this language to require cases to be moved at random, if you will, out of the State court system.

So I rise in support of H.R. 1768, and I ask my colleagues to support it. The House of Representatives has approved legislation containing the provisions of H.R. 1768 in each of the past two Congresses. In the 107th Congress, the House passed such legislation by unanimous consent and in the 106th Congress, the House passed by voice vote on suspension. Thus I believe it is fair to say that the House has several times found this legislation to be unobjectionable and noncontroversial.

As to its substance, H.R. 1768 has a very narrow purpose and effect. It is to overturn the 1998 decision of the Supreme Court in Lexecon v. Milberg, Weiss. The Lexecon decision held that a multidistrict litigation transferred to a Federal court for pretrial proceedings cannot be retained by that court for trial purposes. In so holding, the Lexecon decision upsets decades of practice by the Multidistrict Litigation Panel and Federal district courts. The Lexecon decision also increases the cost and complexity of such multidistrict litigation by requiring courts other than the transferee court, which has overseen discovery and other pretrial proceedings, to conduct the trial. Again, major burdens on our petitioners or plaintiffs.

H.R. 1768 overturns the Lexecon decision. Its enactment will once again allow a transferee court to retain the trial on liability issues and when appropriate on punitive damages, and it protects those jurisdictional cases that can rightly belong in the State courts that happen to be class actions. H.R. 1768 is carefully crafted to overturn the Lexecon decision without expanding the power previously exercised by transferee courts. It creates a presumption for trial that compensatory damages will be remanded to the transferor court. This presumption is important because it ensures that plaintiffs will not be unduly burdened in pursuit of their claims.

I also note that H.R. 1768 as reported by the Committee on the Judiciary is substantially different than the introduced version. These differences represent a significant improvement.

Explaining those relevant differences requires a brief recount of recent history. As part of the DOJ reauthorization legislation enacted in 2002, Congress created minimal diversity jurisdiction in Federal court for certain actions involving large-scale, single accidents. Among other things that legislation, which had been a part of the predecessor to H.R. 1768, created Federal diversity jurisdiction for such accidents only where at least 75 people had been killed or injured. The agreement between House and Senate conferees to set the bar at 75 people represented a significant departure from the House-passed legislation which had only required a 25-person threshold. Again, a negative impact on plaintiffs.

As introduced, H.R. 1768 would have, among other things, upset this agreement by instituting a 25-person threshold. Upsetting this agreement would have also upset many members of the Committee on the Judiciary, as well as those Senators who had insisted on a 75-people threshold as the price for supporting enactment of a single accident provision and also, might I say, providing equity in the courts of justice and allowing those individuals to have access to the courts of their choice. Thus, during the Committee on the Judiciary markup, the chairman wisely decided to offer an amendment that leaves the current 75-person threshold in place. By doing so, he has rendered the bill unobjectionable.

This bill's narrow breadth should be contrasted with broader and more troubling legislation to expand Federal court jurisdiction, such as supposed class action reform. Support for H.R. 1768 in no way implies support for any of the various class action bills. Unlike H.R. 1768, the class action bills represent a radical rewrite of class action rules, would ban most forms of State class actions, would burden the Federal courts and unreasonably limit plaintiffs' access to the courts, and require in-depth, thorough analysis and long, long study of that matter.

In sum, because the bills are so vastly different in scope and effect, support for H.R. 1768 should in no way be read as support for class action legislation. I ask my colleagues to support this bill, H.R. 1768.

Mr. Speaker, I rise in support of this legislation only insofar as it does not preclude classes of individuals from bringing most actions into State Court to obtain relief in the form of a class action. On January 21, 2004, my colleagues and I of the Judiciary Committee marked this bill up, and I supported it with caveat. The Multidistrict Litigation Restoration act of 2003 was introduced on April 11, 2003. This bill was introduced, largely, in order to improve the ability of federal courts to handle complex multidistrict litigation arising from a common set of facts.

H.R. 1768 contains two operative sections. Section 2 allows a transferee court in multidistrict litigation to retain jurisdiction over all of the consolidated cases with the presumption that compensatory damages will be remanded to the transferor court. Section 2 seeks to overturn the decision of the United States Supreme Court in Lexecon v. Milberg Weiss Bershad Hynes & Lerach, interpreting 28 U.S.C. Section 1407, the federal multidistrict litigation statute. In Lexecon, the Supreme Court held that a transferee court (a district court assigned to hear pretrial matters by a multidistrict litigation panel in multidistrict litigation cases) must remand all cases back for trial to the districts in which they were originally filed, regardless of the views of the parties.

Section 3 amends the Multiparty, Multiforum Trial Jurisdiction Act (MMTJA) of 2002 (Section 11020 of H.R. 2215, the Department of Justice appropriations authorization), which expanded federal court jurisdiction by requiring only minimal diversity (as opposed to complete diversity) for mass torts arising from a single incident, and established new federal procedures in these narrowly defined cases for the selection of venue, service of process and issuance of subpoenas. Section 3 would provide for the consolidation of these mass tort cases into a single district, and would reduce from 75 to 25 the number of individuals that must have suffered injury in such cases.

In the past, I have voted for legislation containing substance nearly identical to the bill we have before us today, and I will continue to support it so long as its provisions maintain a narrowly-tailored expansion of federal jurisdiction to hear consolidated cases with carefully placed caveats to allow for remand to the district of original jurisdiction. One of the most important concerns with this type of legislation is the answer to the questions of whether it will truly serve the interest of justice and whether it will not preclude parties from receiving a fair opportunity to present their case and have it considered.

On a related matter, class actions are an important and efficient legal tool for minority consumers to use in order to obtain redress and to deter wrongful conduct—which is critical given the portion of the domestic market that is occupied by minorities.

Class actions lawsuits are the only effective remedy when a large number of people are harmed but sustain small amounts of damages for which individual litigation would be inefficient. Class actions have resulted in refunds to consumers for fraudulent HMO, credit card, and telecommunications billing methods; free medical check-ups for persons exposed to toxic substances; and most importantly, changes to business practices that have in some way cheated or threatened the health of consumers.

The Class Action Fairness Act would move most state court class actions into federal courts, posing a threat to basic civil rights and unfairly blocking the disadvantaged members of society, including women and racial minorities, from obtaining relief from discrimination and unlawful practices. Class action litigation is one of the most important tools that women and other minorities can use to bring about equality. Therefore, I support H.R. 1768 with the understanding that I do not in the same vein support the Class Action Fairness Act.

Mr. Speaker, for the above reasons and with the limitations set forth, I support this legislation.

Mr. SMITH of Texas. Mr. Speaker, this legislation makes it easier for federal judges to retain jurisdiction of a lawsuit when questions regarding the facts are not in dispute, such as the facts in lawsuits stemming from a plane crash.

For example, a plane crash with 100 fatalities from 25 states can result in 25 different plaintiffs. This legislation allows those 25 cases to be transferred to one court, which reduces the burden on our federal courts.

Thirty years ago federal judges were authorized by circuit and district court case law to transfer cases to their own district or another district for trial. This provided them the ability to consolidate cases in their jurisdiction or refer cases to the appropriated jurisdiction as they saw fit.

Unfortunately, in 1998, the Supreme Court reversed that practice in the Lexecon case because of the language in the statute. The opinion said that Congress could resolve the issue. Mr. Speaker, that is why we are here today.

The Lexecon decision has prevented the federal court system from adjudicating complex cases even when all parties to a case have agreed on the wisdom of a transfer. That is not the most efficient and effective way for the management of our federal courts.

Our transferee judges are federal judicial experts. We must provide them with the freedom they need so they can supervise day-to-day pretrial proceedings, which include the underlying facts, laws and the possibility of a settlement.

Mr. Speaker, I urge my colleagues to support this legislation.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield back the balance of my time.

Mr. SENSENBRENNER. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. SENSENBRENNER) that the House suspend the rules and pass the bill, H.R. 1768, as amended.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

Mr. SENSENBRENNER. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this motion will be postponed.

COMMUNITY RECOGNITION ACT OF 2004

Mr. SENSENBRENNER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3095) to amend title 4, United States Code, to make sure the rules of etiquette for flying the flag of the United States do not preclude the flying of flags at half mast when ordered by city and local officials, as amended.

The Clerk read as follows:

H.R. 3095

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Community Recognition Act of 2004''.

SEC. 2. FLAG CODE AMENDMENT.

Section 7(m) of title 4, United States Code, is amended by inserting after the sentence beginning ''In the event of the death of a present or former official of the government of any State'' the following: ''In the event of the death of a present or former official of any city or other locality, the chief elected official of that locality may proclaim that the National flag shall be flown at half staff.''.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentlewoman from Texas (Ms. JACKSON-LEE) each will control 20 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on the bill, H.R. 3095, currently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

Mr. SENSENBRENNER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, H.R. 3095 simply clarifies title 4 of the United States Code to permit the chief elected officer of a city or locality to order the United States flag flown at half mast to honor the death of a present or former official of that locality. Though current law does not expressly prohibit a local official from executing this decision, it does not specifically grant this authority either. In the unfortunate event of a death of a local official, the law's lack of clarity regarding this authority has forced local officials to seek permission from either the President of the United States or the Governor of their respective State, both of whom have explicit authority under current law to order the flag lowered.

As we all recognize, an individual's death often cannot be anticipated, and when a community is faced with such a loss, the President or Governor may not be able to be give immediate consideration to the request to lower the flag. Recognizing this problem, I believe that it is important that we vest our local officials with this authority rather than run the risk of missing an opportunity to honor and recognize the service of the deceased local official.

I would note that similar legislation was passed by the House in the 107th Congress by a vote of 420 to nothing, but unfortunately no action was ever taken by the other body.

I urge my colleagues to once again support this legislation.

Mr. Speaker, I reserve the balance of my time.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield myself such time as I may consume.

Let me, first of all, thank the chairman and say that we have an expression of recognition bill that all of us can support and is protected by the first amendment, and that is H.R. 3095, the Community Recognition Act, in which the question is not one of free speech but of recognition.

Mr. Speaker, I rise in support of H.R. 3095, the Community Recognition Act of 2003. This legislation is identical to H.R. 1022, which passed the House by a vote of 420 to zero. I am aware of no opposition to this bill. The chairman has clearly explained the bill, and I urge my colleagues enthusiastically to support H.R. 3095.

Mr. Speaker, I rise in support of this legislation, H.R. 3095, the Community Recognition Act. In January of this year, my colleagues and I of the Committee on the Judiciary held a markup hearing to consider this bill, and I supported it at that time. This legislation is identical to H.R. 1022, which was reported by the Judiciary Committee in the 107th Congress by voice vote with no debate and which passed the House by a vote of 420–0. However, it did not receive consideration by the Senate.

H.R. 3095 would amend the ''Flag Code'' to allow local officials to order the flag of the United States in that jurisdiction flown at half-staff in the event of the death of a present or former official of that locality. Current law specifies instances in which the flag should be flown at half-staff, who is authorized to order it, the manner in which it should be displayed, and how long it should be so flown in honor of different individuals. It grants this authority to the President and to the governors to order that the flag be flown at half-staff, but does not mention local officials. This bill would include local officials.

Current law, including the Flag Code, does not prohibit anyone flying the flag at half-staff for any reason at any time. Moreover, the Constitution allows anyone to do anything they wish with a flag, including burn it as an act of protest. Let us not forget about the case of Texas v. Johnson in 1989 where during the 1984 Republican National Convention in Dallas, Texas, Gregory Johnson accepted a United States flag taken from a flagpole outside the convention center, doused the flag with kerosene, and set the flag on fire. Arrested by police officers on the scene, Johnson was prosecuted and convicted under a Texas law which prohibited desecration of the Texas and United States flags. The law defined desecration as ''physical mistreatment of such objects in a way which the [accused] knows will offend one or more persons likely to observe or discover the act.'' Several witnesses testified that they had been seriously offended by the flag burning.

The use of the American flag in this instance does not present strong challenges to rights under the First Amendment. Instead, it would make clear that local officials also have the authority to order the flag flown at half-staff under certain circumstances.

The flag of the United States serves as a symbol of the nation. In the case of West Virginia v. Barnett, 1943, the Court struck down a West Virginia law requiring a salute to the flag, commenting: ''Those who begin coercive limitation of dissent soon find themselves exterminating dissenters.'' The Court went on to say, ''There is no mysticism in the American concept of the State or of the nature or origin of its authority. We set up government by consent of the governed, and the Bill of Rights denies those in power any legal opportunity to coerce the consent. Authority here is to be controlled by public opinion, not public opinion by authority. . . .''

In Texas, the Government Code, Section 3100.072 sets forth the Governor's authority regarding the flag and limitations on governmental subdivisions or agencies. However, some states and jurisdictions do not have similar state legislation in place to grant this authority. Therefore, H.R. 3095 will add much needed uniformity to the United States Code.

Mr. Speaker, I support this legislation for the above reasons.

Ms. JACKSON-LEE of Texas. Mr. Speaker, I yield back the balance of my time.