AMENDMENT NO. 603

At the request of Mr. MCCONNELL the name of the Senator from North Carolina [Mr. FAIRCLOTH] was added as a cosponsor 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 presented, 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