

PROCEEDING CONCERNING COMPENSATORY DAMAGES.—If any party requests a separate proceeding under paragraph (1), in a proceeding to determine whether the claimant may be awarded compensatory damages, any evidence, argument, or contention that is relevant only to the claim of punitive damages, as determined by applicable State law, shall be inadmissible.

(b) SPECIAL RULE FOR CERTAIN PERSONS AND ENTITIES.—

(1) IN GENERAL.—In any action described in subsection (a) against a person or entity described in paragraph (2), an award of punitive damages shall not exceed the lesser of—

(A) 2 times the amount of compensatory damages awarded; or

(B) \$250,000.

(2) PERSONS AND ENTITIES DESCRIBED.—

(A) IN GENERAL.—A person or entity described in this paragraph is—

(i) an individual whose net worth does not exceed \$500,000; or

(ii) an owner of an unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has—

(I) annual revenues of less than or equal to \$5,000,000; and

(II) fewer than 25 full-time employees.

TITLE II—BIOMATERIALS ACCESS ASSURANCE

SEC. 201. SHORT TITLE.

This title may be cited as the "Biomaterials Access Assurance Act of 1998".

AMENDMENT No. 3097

On page 14, beginning with line 20, strike through line 25, and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by any applicable Federal State law.

GRAMM AMENDMENTS NOS. 3098–3101

(Ordered to lie on the table.)

Mr. GRAMM submitted four amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT No. 3098

In section 105(b), strike "and except as otherwise provided in section 112".

AMENDMENT No. 3099

In section 105(b) add at the end: "Nothing in this Section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability."

AMENDMENT No. 3100

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of sophisticated user or bulk seller issues relating to employer responsibility for purposes of determining liability.

AMENDMENT No. 3101

Section 105(b) is amended to read as follows:

(b) WORKPLACE INJURY.—Notwithstanding subsection (a) the damages for which a defendant is otherwise liable under State law shall not be reduced by the percentage of responsibility for the claimant's harm attributable to misuse or alteration of the product by the claimant's employer who is immune from suit by the claimant pursuant to the State law applicable to workplace injuries. Nothing in this section shall preclude consideration of misuse or alteration of the product by the claimant's employer or any co-employee who is immune from suit pursuant to state law applicable to workplace injuries for purposes of determining liability.

HARKIN AMENDMENTS NOS. 3102–3103

(Ordered to lie on the table.)

Mr. HARKIN submitted amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT No. 3102

Amend section 102(a)(2) by adding at the end the following:

(E) ACTIONS INVOLVING MINORS.—A civil action brought for harm caused by a product that includes harm involving permanent disability, disfigurement, or death, caused by that product to an individual under the age of 18 shall not be subject to the provisions of this title governing product liability actions, but shall be subject to any applicable Federal or State law.

AMENDMENT No. 3103

Strike subsections (a) and (b) of section 107 and insert the following:

(a) USEFUL SAFE LIFE DEFINED.—

(1) IN GENERAL.—For purposes of this subsection, the term "useful safe life" means, with respect to a product, the period beginning at the time of delivery of the product and ending on the date on which the product would not likely perform in a safe manner.

(2) FACTORS FOR CONSIDERATION.—In making a determination of what constitutes the useful safe life of a product, the court may consider evidence that is probative in determining whether the useful safe life of the product had expired, including—

(A) the amount of wear and tear on the product;

(B) the effect of deterioration from natural causes, climate, and other conditions under which the product was used or stored;

(C) the normal practices of the user, similar users, and the defendant with respect to—

(i) the circumstances and frequency of the use of the product;

(ii) the purposes of the use of the product; and

(iii) any repair, renewal, or replacement made with respect to the product;

(D) any representation, instruction, or warning made by the defendant concerning—

(i) the proper maintenance, storage, or use of the product; or

(ii) the expected useful safe life of the product; and

(E) any modification or alteration to the product made by a user or a third party.

(b) EXEMPTION; PRESUMPTION.—

(1) EXEMPTION FROM LIABILITY.—Except as provided in subsection (c), and subject to paragraph (2), in any product liability action concerning a product that is a durable good alleged to have caused harm (other than toxic harm), the defendant shall not be subject to liability to a claimant for damages resulting from harm caused by the durable good if the defendant proves by a preponderance of the evidence that the harm was caused after the expiration of the useful safe life of the product.

(2) LIABILITY OF DEFENDANT.—A defendant may be subject to liability for damages resulting from harm caused by a durable good after the expiration of the useful safe life of the product if—

(A) the defendant expressly warranted that the product could be utilized safely for a period longer than the useful safe life of the product; or

(B) the defendant intentionally misrepresented facts concerning the product, or fraudulently concealed information concerning the product, and that conduct was a substantial cause of the damages.

(3) PRESUMPTION REGARDING USEFUL SAFE LIFE.—If harm resulting in damages was caused by a durable good after the 18-year period beginning on the date of delivery of the product to the initial purchaser or lessee, there shall be a rebuttable presumption that the harm occurred after the expiration of the useful safe life of the product. The presumption may be rebutted by a preponderance of the evidence.

SESSIONS AMENDMENTS NOS. 3104–3105

(Ordered to lie on the table.)

Mr. SESSIONS submitted two amendments intended to be proposed by him to the bill, S. 648, supra; as follows:

AMENDMENT No. 3104

Strike section 2.

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

Strike sections 104 through 106.

Redesignate section 107 as section 104.

Strike section 108.

Redesignate sections 109 through 112 as sections 105 through 108, respectively.

AMENDMENT No. 3105

Strike section 102(b) and insert the following:

(b) RELATIONSHIP TO STATE LAW.—Nothing in this Act shall be construed to preempt or supersede any Federal or State law to the extent that such law would further limit the award of punitive damages in civil actions. Any matter that is not specifically covered by this title shall be governed by applicable Federal or State law.

NOTICES OF HEARINGS

COMMITTEE ON SMALL BUSINESS

Mr. BOND. Mr. President, I wish to announce that the Committee on Small Business will hold a hearing entitled "Home Health Care: Can Small Agencies Survive New Regulations?" The hearing will be held on Wednesday, July 15, 1998, beginning at 10:00 a.m. in room 428A of the Russell Senate Office Building. For further information, please contact Suey Howe at 224-5175.

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. MURKOWSKI. Mr. President, I would like to announce for the public that a hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on July 28, 1998 at 9:30 p.m. in room SD-366 of the Dirksen Senate Office Building in Washington, DC.

The purpose of this hearing is to receive testimony on the March 31, 1998, Government Accounting Office report on the Forest Service: Review of the Alaska Region's Operating Costs.

Those who wish to submit written statements should write to the Committee on Energy and Natural Resources, U.S. Senate, Washington, DC 20510. For further information, please call Amie Brown or Mark Rey at (202) 224-6170.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 8, 1998, at 9:30 am on High Definition Television (HDTV).

The PRESIDING OFFICER. Without objection, it is ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, July 8, 1998, at 2:00 pm on S. 2105—Government Paperwork Elimination Act.

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

COMMITTEE ON INDIAN AFFAIRS

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Senate Committee on Indian Affairs be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 9:30 a.m. to conduct a hearing on S. 1419, Miccosukee Land, S. 391, Cheyenne River Sioux Compensation, S. 1905, Mississippi Sioux Judgment Funds and H.R. 700, Agua Caliente. The hearing will be held in room 485 of the Russell Senate Office Building.

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

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on The Judiciary be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 9:00 a.m. in room 226 of the Senate Dirksen Office Building to hold a hearing on S.J. Res. 40, Joint Resolution Proposing an amendment to the Constitution of the United States authorizing Congress to prohibit the physical desecration of the flag of the United States.

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

COMMITTEE ON THE JUDICIARY

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Committee on The Judiciary be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 1:00 p.m.

in Room 226 of the Senate Dirksen Office Building to hold a hearing on S. 1529, The Hate Crimes Prevention Act of 1998.

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

SELECT COMMITTEE ON INTELLIGENCE

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Select Committee on Intelligence be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 10:00 a.m. to hold a closed hearing on Intelligence Matters and at 2:30 p.m. to hold an open confirmation hearing on the nomination of L. Britt Snider to be Inspector General of CIA.

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

SUBCOMMITTEE ON INTERNATIONAL ECONOMIC POLICY, EXPORT, AND TRADE PROMOTION

Mr. JEFFORDS. Mr. President, I ask unanimous consent that the Subcommittee on International Economic Policy, Export and Trade Promotion be authorized to meet during the session of the Senate on Wednesday, July 8, 1998 at 10:00 am to hold a hearing.

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

SUBCOMMITTEE ON INTERNATIONAL SECURITY, PROLIFERATION, AND FEDERAL SERVICES

Mr. JEFFORDS. Mr. President, I ask unanimous consent on behalf of the Governmental Affairs Subcommittee on International Security, Proliferation, and Federal Services to meet on Wednesday, July 8, 1998 at 2:00 p.m. for a hearing on The Adequacy of Commerce Department Satellite Export Controls.

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

ADDITIONAL STATEMENTS

TOBACCO SETTLEMENT LEGISLATION

• Mr. ABRAHAM. Mr. President, I rise today to comment on Senate action last month on S. 1415, the comprehensive tobacco settlement legislation, and to explain the votes I cast on various amendments, motions to invoke cloture, and other procedural matters relating to this legislation.

At the outset, I would like to thank the floor manager of the legislation, Senator MCCAIN, for his absolutely outstanding work on the tobacco settlement legislation. As Chairman of the Senate Commerce Committee, the distinguished Senator from Arizona took on the difficult task of bringing our Committee together to report out comprehensive tobacco settlement legislation.

Mr. President, I believe that passing a tobacco bill would be good, but only if it is the right bill. In my judgment, if we are to pass such a bill, it should follow a number of important principles. First, it should increase funding for research on tobacco-related illnesses. Second, it should provide funds

for smoking cessation programs, anti-tobacco education programs, and counter-advertising. Third, it should include programs to combat drug abuse among our kids, a crisis that demands just as much attention as youth smoking. Fourth, it should not place unfair burdens on our small businesses. And finally, it should accomplish these goals without imposing a huge net tax increase on the American people.

Last summer, the tobacco industry started this process when it entered into a settlement with the Attorneys General of several States, a settlement which required congressional action. I voted to report out this legislation from the Commerce Committee, with the hope that it could be modified in ways to achieve the above-stated goals through more amendments to the legislation, through consideration in the House, and through an eventual conference. While many improvements were added to the legislation—such as the addition of the Coverdell-Craig-Abraham “Drug Free Neighborhoods Act” and the Gramm amendment to reduce the marriage penalty tax—more were clearly needed to achieve the goals set forth above.

My vote for cloture was designed to move the process ahead in the hope that we could pass a bill and that it would meet the standards set forth above. It did not signal my intent to vote for final passage of any legislation that remained following the amendment process. Had cloture succeeded, it was my intention to work with others in offering amendments to modify the bill to achieve my aforesaid goals.

Following the failure to invoke cloture, it became clear that we were not going to be able to move the bill forward in the way I would have liked. In light of this, and my belief as a member of the Budget Committee that we should keep the budget balanced, I voted with Senator STEVENS on his budget point of order. Senator STEVENS raised a point of order that the tobacco legislation was inconsistent with the budget agreement reached last year between the Congress and the President. I voted against the motion to waive that point of order, which sent the legislation back to the Commerce Committee where, perhaps, we can devise a more acceptable bill.

Mr. President, let me just comment briefly on some of the major amendments that were voted on during the course of the floor consideration of this bill.

I joined Senators CRAIG and COVERDELL in offering the “Drug Free Neighborhoods Act” as an amendment to the tobacco legislation. We are falling very far behind in the war on drugs, and teenage drug use has particularly become much worse in recent years. In the last six years, for instance, the percentage of high school seniors admitting that they had used an illicit drug has risen by more than half. Sadly, nearly 20 percent of our eighth graders