

Pressler	Snowe	Thurmond
Santorum	Stevens	
Smith	Thomas	

## NAYS—49

Baucus	Feinstein	Murray
Biden	Ford	Nunn
Bingaman	Glenn	Packwood
Boxer	Gorton	Pryor
Bradley	Graham	Reid
Breaux	Heflin	Robb
Bryan	Hollings	Rockefeller
Bumpers	Inouye	Roth
Byrd	Johnston	Sarbanes
Cochran	Kerry	Shelby
Cohen	Kohl	Simon
Conrad	Lautenberg	Simon
D'Amato	Leahy	Simpson
Daschle	Levin	Specter
Dodd	Mikulski	Thompson
Dorgan	Moseley-Braun	Wellstone
Feingold	Moynihan	

## NOT VOTING—8

Akaka	Harkin	Pell
Bennett	Kennedy	Warner
Campbell	Kerrey	

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	Ford	Mack
Ashcroft	Frist	McCain
Baucus	Glenn	McConnell
Biden	Gorton	Mikulski
Bingaman	Graham	Moseley-Braun
Bond	Gramm	Moynihan
Boxer	Grassley	Murkowski
Bradley	Gregg	Murray
Breaux	Harkin	Nickles
Brown	Hatch	Nunn
Bryan	Hatfield	Packwood
Bumpers	Heflin	Pressler
Burns	Helms	Pryor
Byrd	Hollings	Reid
Chafee	Hutchison	Robb
Coats	Inhofe	Rockefeller
Cochran	Inouye	Roth
Cohen	Jeffords	Santorum
Conrad	Johnston	Sarbanes
Coverdell	Kassebaum	Shelby
Craig	Kempthorne	Simon
D'Amato	Kerrey	Smith
Daschle	Kerry	Simpson
DeWine	Kohl	Stevens
Dodd	Kyl	Thomas
Dole	Lautenberg	Thompson
Domenici	Leahy	Thurmond
Dorgan	Levin	Wellstone
Exon	Lieberman	
Faircloth	Lott	
Feingold	Lugar	
Feinstein		

## NOT VOTING—6

Akaka	Campbell	Pell
Bennett	Kennedy	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.