

103D CONGRESS
1ST SESSION

H. R. 1910

To establish uniform product liability standards.

IN THE HOUSE OF REPRESENTATIVES

APRIL 28, 1993

Mr. ROWLAND (for himself, Mr. HASTERT, Mr. DINGELL, Mr. FISH, Mr. CARR, Mr. MOORHEAD, Mr. MURTHA, Mr. MICHEL, Mr. SHARP, Mr. GINGRICH, Mr. ROGERS, Mr. SWIFT, Mr. McMILLAN, Mr. SLATTERY, Mr. STEARNS, Mr. MAZZOLI, Mr. HYDE, Mr. MOLLOHAN, Mr. PAXON, Mr. GLICKMAN, Mr. FRANK of Massachusetts, Mr. BLILEY, Mr. DURBIN, Mr. STENHOLM, Mr. UPTON, Mr. HEFNER, Mr. SISISKY, Mr. HUNTER, Mr. LEHMAN, Mr. GALLO, Mr. JACOBS, Mr. SUNDQUIST, Mr. MCKEON, Mr. PORTER, Mr. SOLOMON, and Mrs. MEYERS of Kansas) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Energy and Commerce

SEPTEMBER 7, 1993

Additional sponsors: Mr. MONTGOMERY, Mr. KOLBE, Mr. GREENWOOD, Ms. KAPTUR, Mr. MCCURDY, Mr. LINDER, Mr. McNULTY, Mr. MACHTLEY, Mr. HOLDEN, Mr. BURTON of Indiana, Mrs. JOHNSON of Connecticut, Mr. BOEHLERT, Mr. HUTTO, Mr. GALLEGLY, Mr. MCHUGH, Mr. KLUG, Mr. EVERETT, Mr. WALSH, Mr. SHAYS, Mr. BEREUTER, Mr. SAXTON, Mr. HEFLEY, Mr. PENNY, Mr. HALL of Ohio, Mr. FRANKS of Connecticut, Mr. CRANE, Mr. FAWELL, Mr. ARCHER, Mr. HOEKSTRA, Mr. NEAL of Massachusetts, Mr. BARTON of Texas, Mr. OXLEY, Mr. EWING, Mr. BALLENGER, Mr. MCCRERY, Mr. STUMP, Mr. PETRI, Mr. KYL, Mr. GILLMOR, Mr. DOOLEY, Mr. BARLOW, Mr. BARCIA of Michigan, Mrs. ROUKEMA, Mr. PETERSON of Florida, Mr. GOODLING, Mr. PETERSON of Minnesota, Mr. GUNDERSON, Mr. DOOLITTLE, Mr. CAMP, Mr. BOEHNER, Mr. MILLER of Florida, Mr. TRAFICANT, Mr. HOUGHTON, Mr. HOKE, Mr. MCCOLLUM, Mr. INHOFE, Mr. ROHRABACHER, Mr. SPENCE, Mrs. VUCANOVICH, Mr. COLLINS of Georgia, Mr. LEWIS of Florida, Mr. MEEHAN, Mr. PORTMAN, Mr. EMERSON, Mrs. FOWLER, Mr. PARKER, Mr. ZIMMER, and Mr. BISHOP

A BILL

To establish uniform product liability standards.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fairness in Product
5 Liability Act of 1993”.

6 **SEC. 2. PREEMPTION.**

7 (a) GENERAL RULE.—This Act governs any product
8 liability action brought in any State or Federal court
9 against a manufacturer or product seller, on any theory,
10 for harm caused by a product. A civil action brought
11 against a manufacturer or product seller for commercial
12 loss shall be governed only by applicable commercial or
13 contract law.

14 (b) STATE LAW.—This Act supersedes State law only
15 to the extent that State law applies to an issue covered
16 by this Act. Any issue that is not covered by this Act shall
17 be governed by otherwise applicable State or Federal law.

18 (c) CONSTRUCTION.—Nothing in this Act shall be
19 construed to—

20 (1) waive or affect any defense of sovereign im-
21 munity asserted by any State under any law,

22 (2) supersede or affect any Federal law, except
23 the Federal Employees Compensation Act and the

1 Longshoremen's and Harborworker's Compensation
2 Act,

3 (3) waive or affect any defense of sovereign im-
4 munity asserted by the United States,

5 (4) preempt State choice-of-law rules with re-
6 spect to claims brought by a foreign nation or a citi-
7 zen of a foreign nation,

8 (5) affect the right of any court to transfer
9 venue or to apply the law of a foreign nation or to
10 dismiss a claim of a foreign nation or of a citizen
11 of a foreign nation on the ground of inconvenient
12 forum, or

13 (6) supersede any statute or common law which
14 creates a cause of action for civil damages or civil
15 penalties, cleanup costs, injunctions, restitution, cost
16 recovery, punitive damages, or any other form of re-
17 lief for contamination or pollution of the environ-
18 ment or the threat of such contamination or pollu-
19 tion.

20 For purposes of paragraph (6), the term "environment"
21 has the meaning given to such term in section 101(8) of
22 the Comprehensive Environmental Response, Compensa-
23 tion, and Liability Act of 1980 (42 U.S.C. 9601(8)).

24 (d) VACCINE INJURY.—

1 (1) To the extent that title XXI of the Public
2 Health Service Act establishes a Federal rule of law
3 applicable to a civil action brought for a vaccine-re-
4 lated injury or death—

5 (A) this Act does not affect the application
6 of the rule of law to such an action, and

7 (B) any rule of law prescribed by this Act
8 in conflict with a rule of law of such title XXI
9 shall not apply to such an action.

10 (2) If there is an aspect of a civil action
11 brought for a vaccine-related injury or death to
12 which a Federal rule of law under title XXI of the
13 Public Health Service Act does not apply, then this
14 Act or otherwise applicable law (as determined
15 under this section) will apply to such aspect of such
16 action.

17 **SEC. 3. STANDARD OF PRODUCT SELLER LIABILITY.**

18 (a) GENERAL RULE.—Except as provided in sub-
19 section (b), in a product liability action, a product seller
20 shall be liable to a claimant for harm only if the claimant
21 establishes that—

22 (1)(A) the product which allegedly caused the
23 harm complained of was sold by the product seller,

24 (B) the product seller failed to exercise reasonable
25 care with respect to the product, and (C) such fail-

1 ure to exercise reasonable care was a proximate
2 cause of the claimant's harm,

3 (2)(A) the product seller made an express war-
4 ranty applicable to the product which allegedly
5 caused the harm complained of, independent of any
6 express warranty made by the manufacturer as to
7 the same product, (B) the product failed to conform
8 to the warranty, (C) the failure of the product to
9 conform to the warranty caused the claimants harm,
10 or

11 (3) the product seller engaged in international
12 wrongdoing as determined under applicable State
13 law and such intentional wrongdoing was a proxi-
14 mate cause of the harm complained of by the claim-
15 ant.

16 For purposes of paragraph (1)(B), a product seller shall
17 not be considered to have failed to exercise reasonable care
18 with respect to a product based upon an alleged failure
19 to inspect a product where there was no reasonable oppor-
20 tunity to inspect the product in a manner which would,
21 in the exercise of reasonable care, have revealed the aspect
22 of the product which allegedly caused the claimant's harm.

23 (b) SPECIAL RULE.—In a product liability action, a
24 product seller shall be liable for harm to the claimant

1 caused by such product as if the product seller were the
2 manufacturer of such product if—

3 (1) the manufacturer is not subject to service of
4 process under the laws of the State in which the
5 claimant brings the action, or

6 (2) the court determines that the claimant
7 would be unable to enforce a judgment against the
8 manufacturer.

9 **SEC. 4. ALCOHOL AND DRUG DEFENSE.**

10 (a) GENERAL RULE.—In any product liability action,
11 it shall be a complete defense to such action that—

12 (1) the claimant was intoxicated or was under
13 the influence of intoxicating alcohol or any drug, and

14 (2) the claimant as a result of such intoxication
15 or the influence of the alcohol or drug was more
16 than 50 percent responsible for causing the accident
17 or event which resulted in such claimant's harm.

18 (b) CONSTRUCTION.—For purposes of subsection

19 (a)—

20 (1) the determination of whether a person was
21 intoxicated or was under the influence of intoxicat-
22 ing alcohol or any drug shall be made pursuant to
23 applicable State law, and

24 (2) the term “drug” means any controlled sub-
25 stance as defined in the Controlled Substances Act

1 (21 U.S.C. 802(6)) that has been taken by the
2 claimant other than in accordance with the terms of
3 a lawfully issued prescription.

4 **SEC. 5. MISUSE OR ALTERATION.**

5 (a) GENERAL RULE.—Except as provided in sub-
6 section (c), in a product liability action, the damages for
7 which a manufacturer or product seller is otherwise liable
8 under State law shall be reduced by the percentage of re-
9 sponsibility for the claimant’s harm attributable to misuse
10 or alteration of a product by any person if the manufac-
11 turer or product seller established by a preponderance of
12 the evidence that such percentage of the claimant’s harm
13 was proximately caused by—

14 (1) a use or alteration of a product in violation
15 of, or contrary to, the manufacturer’s or product
16 seller’s express warnings or instructions if the
17 warnings or instructions are adequate as determined
18 pursuant to applicable State law, or

19 (2) a use or alteration of a product involving a
20 risk of harm which was known or should have been
21 known by the ordinary person who uses or consumes
22 the product with the knowledge common to the class
23 of persons who used or would be reasonably antici-
24 pated to use the product.

1 (b) STATE LAW.—Notwithstanding section 2(b) of
2 this Act, subsection (a) supersedes State law concerning
3 misuse of alteration of a product only to the extent that
4 State law is inconsistent.

5 (c) WORKPLACE INJURY.—Notwithstanding sub-
6 section (a), the damage for which a manufacturer or prod-
7 uct seller is otherwise liable under State law shall not be
8 reduced by the percentage of responsibility for the claim-
9 ant’s harm attributable to misuse or alteration of the
10 product by the claimant’s employer or coemployees who
11 is immune from suit by the claimant pursuant to the State
12 law applicable to workplace injuries.

13 **SEC. 6. PUNITIVE DAMAGES.**

14 (a) GENERAL RULE.—

15 (1) STANDARD FOR AWARD OF DAMAGES.—Ex-
16 cept as provided in paragraph (2) or subsection (d),
17 punitive damages may, to the extent permitted by
18 applicable State law, be awarded against a manufac-
19 turer or product seller in a product liability action
20 if the claimant establishes by clear and convincing
21 evidence that the harm suffered was the result of
22 conduct manifesting a manufacturer’s or product
23 seller’s conscious, flagrant indifference to the safety
24 of those persons who might be harmed by a product.

25 (2) EXCEPTION.—

1 (A) REASONABLE CARE.—A failure to ex-
2 ercise reasonable care in selecting among alter-
3 native product designs, formulations, instruc-
4 tions, or warnings shall not, by itself, constitute
5 conduct that may give rise to punitive damages.

6 (B) AWARD OF OTHER DAMAGES.—Puni-
7 tive damages may not be awarded in a product
8 liability action unless compensatory damages
9 have been awarded in such action. For purposes
10 of this subparagraph, nominal damages do not
11 constitute compensatory damages.

12 (b) SEPARATE PROCEEDING.—At the request of the
13 manufacturer or product seller, the trier of fact shall con-
14 sider in a separate proceeding (1) whether punitive dam-
15 ages are to be awarded and the amount of such award,
16 or (2) the amount of punitive damages following a deter-
17 mination of liability for such damages. If a separate pro-
18 ceeding is requested, evidence relevant only to the claim
19 of punitive damages, as determined by applicable State
20 law, shall be inadmissible in any proceeding to determine
21 whether compensatory damages are to be awarded.

22 (c) CONSIDERATION.—In determining the amount of
23 punitive damages, the trier of fact shall consider all rel-
24 evant evidence, including—

1 (1) the severity of the harm caused by the con-
2 duct of the manufacturer or product seller,

3 (2) the duration of the conduct or any conceal-
4 ment of it by the manufacturer or product seller,

5 (3) the profitability of the conduct to the manu-
6 facturer or product seller,

7 (4) the number of products sold by the manu-
8 facturer or product seller of the kind causing the
9 harm complained of by the claimant,

10 (5) awards of punitive or exemplary damages to
11 persons similarly situated to the claimant,

12 (6) prospective awards of compensatory dam-
13 ages to persons similarly situated to the claimant,

14 (7) any criminal penalties imposed on the man-
15 ufacturer or product seller as a result of the conduct
16 complained of by the claimant,

17 (8) the amount of any civil and administrative
18 fines and penalties assessed against the defendant as
19 a result of the conduct complained of by the claim-
20 ant, and

21 (9) whether the foregoing considerations have
22 been presented in any prior proceeding involving
23 that manufacturer or product seller.

24 (d) DRUGS AND DEVICES.—

1 (1)(A) Punitive damages shall not be awarded
2 against a manufacturer or product seller of a drug
3 (as defined in section 201(g)(1) of the Federal
4 Food, Drug, and Cosmetic Act (21 U.S.C.
5 321(g)(1)) or medical device (as defined in section
6 201(h) of the Federal Food, Drug, and Cosmetic
7 Act (21 U.S.C. (h)) which caused the claimant's
8 harm where—

9 (i) such drug or device was subject to pre-
10 market approval by the Food and Drug Admin-
11 istration with respect to the safety of the for-
12 mulation or performance of the aspect of such
13 drug or device which caused the claimant's
14 harm or the adequacy of the packaging or label-
15 ing of such drug or device, and such drug was
16 approved by the Food and Drug Administra-
17 tion; or

18 (ii) the drug is generally recognized as safe
19 and effective pursuant to conditions established
20 by the Food and Drug Administration and ap-
21 plicable regulations, including packaging and la-
22 beling regulations.

23 (B) Subparagraphs (A) shall not apply in any
24 case in which the defendant, before or after pre-
25 market approval of a drug or device—

1 (i) intentionally and wrongfully withheld
2 from or misrepresented to the Food and Drug
3 Administration information concerning such
4 drug or device required to be submitted under
5 the Federal Food, Drug, and Cosmetic Act (21
6 U.S.C. 301 et seq.) or section 351 of the Public
7 Health Service Act (42 U.S.C. 262) that is ma-
8 terial and relevant to the harm suffered by the
9 claimant, or

10 (ii) made an illegal payment to an official
11 or employee of the Food and Drug Administra-
12 tion for the purpose of securing or maintaining
13 approval of such drug or device.

14 (2) PACKAGING.—In a product liability action
15 for harm which is alleged to relate to the adequacy
16 of the packaging (or labeling relating to such pack-
17 aging) of a drug which is required to have tamper-
18 resistant packaging under regulations of the Sec-
19 retary of Health and Human Services (including la-
20 beling regulations related to such packaging), the
21 manufacturer of the drug shall not be held liable for
22 punitive damages unless the drug is found by the
23 court by clear and convincing evidence to be sub-
24 stantially out of compliance with such regulations.

1 **SEC. 7. SEVERAL LIABILITY FOR NONECONOMIC DAMAGES.**

2 (a) GENERAL RULE.—If a manufacturer or product
3 seller is found liable in a product liability action, the liabil-
4 ity of each defendant in the lawsuit shall be several only
5 and shall not be joint for noneconomic damages. Each de-
6 fendant shall be liable only for the amount of noneconomic
7 damages allocated to such defendant in direct proportion
8 to such defendant’s percentage of responsibility as deter-
9 mined under subsection (b) of this section. A separate
10 judgment shall be rendered against such defendant for
11 that amount.

12 (b) TRIER OF FACT.—For purposes of this section,
13 the trier of fact shall determine the proportion of respon-
14 sibility of each party for the claimant’s harm.

15 (c) NONECONOMIC DAMAGES.—As used in this sec-
16 tion, the term “noneconomic damages” means subjective,
17 nonmonetary losses including pain, suffering, inconven-
18 ience, mental suffering, emotional distress, loss of society
19 and companionship, loss of consortium, injury to reputa-
20 tion and humiliation, but does not include objectively veri-
21 fiable monetary losses including medical expenses, loss of
22 earnings, burial costs, loss of use of property, costs of re-
23 pair or replacement, costs of obtaining substitute domestic
24 services, rehabilitation and training expenses, loss of em-
25 ployment, or loss of business or employment opportunities.

1 **SEC. 8. TIME LIMITATIONS ON LIABILITY.**

2 (a) STATUTE OF LIMITATIONS.—A product liability
3 action shall be brought within 2 years after the time the
4 individual who would be the claimant in such action dis-
5 covered, or in the exercise of reasonable diligence should
6 have discovered, the harm and its cause, except that any
7 such action of a person under legal disability may be filed
8 within 2 years after the disability ceases. If the commence-
9 ment of such an action is stayed or enjoined, the running
10 of the statute of limitations under this section shall be
11 suspended for the period of the stay or injunction.

12 (b) STATUTE OF REPOSE FOR CAPITAL GOODS.—A
13 product liability action for harm caused by a product
14 which is a capital good shall be barred unless the com-
15 plaint is served and filed within 25 years of the date of
16 delivery of the product to its first purchaser or lessee who
17 was not engaged in the business of selling or leasing the
18 product or of using the product as a component in the
19 manufacture of another product. This subsection shall
20 apply only if—

21 (1) the court determines that the claimant has
22 received or would be eligible to receive compensation
23 under any State or Federal worker's compensation
24 law for harm caused by the product, and

25 (2) the harm caused by the product did not in-
26 clude chronic illness.

1 **SEC. 9. WORKERS' COMPENSATION OFFSET.**

2 (a) GENERAL RULE.—

3 (1) SUBROGATION.—If a product liability action
4 has been brought pursuant to this Act for harm
5 caused to an employee by a product, the employer of
6 such employee or the workers' compensation insurer
7 of such employer shall have a right of subrogation
8 against the manufacturer of such product or the
9 product seller to recover the sum of the amount of
10 workers' compensation benefits to which such em-
11 ployee is or would be entitled as determined by the
12 appropriate workers' compensation authority. To as-
13 sert such a right of subrogation, an employer or
14 workers' compensation insurer of an employer shall
15 provide written notice that it is asserting a right of
16 subrogation to the court in which such product li-
17 ability action has been brought. The employer or
18 workers' compensation insurer of such employer
19 shall not be required to be a necessary and proper
20 party to such product liability action.

21 (2) RIGHT OF SUBROGATION AGAINST A PAY-
22 MENT.—In any product liability action brought by
23 an employee against a manufacturer of a product or
24 a product seller or in any settlement of such an ac-
25 tion, the employer of such employee or the workers'
26 compensation insurer of such employer shall have an

1 opportunity to participate in such action and to as-
2 sert a right of subrogation upon any payment made
3 by such manufacturer or product seller in satisfac-
4 tion of a judgment in such action, in connection with
5 a settlement of such action, as consideration for a
6 covenant not to sue, or otherwise. Such employee
7 shall not make any settlement of such an action
8 with, or accept any payment from, such manufac-
9 turer or product seller without the written consent
10 of such employee's employer. No release to or agree-
11 ment with such manufacturer or product seller made
12 by such employee shall be valid or enforceable for
13 any purpose without such consent unless such em-
14 ployer or workers' compensation insurer of such em-
15 ployer is made whole for all workers' compensation
16 benefits paid to such employee.

17 (3) CLAIMANT'S HARM.—In a product liability
18 action brought for harm from a product by an em-
19 ployee, the manufacturer of such product or a prod-
20 uct seller may allege to the trier of fact that the
21 claimant's harm was caused by the fault of the
22 claimant's employer or a coemployee of the claimant.
23 If the manufacturer of a product or a product seller
24 makes such an allegation, the manufacturer or prod-
25 uct seller shall provide written notice to the em-

1 ployer involved in such allegation. Such employer
2 shall have the right to appear in such product liabil-
3 ity action, to be represented, to introduce evidence,
4 to cross-examine adverse witnesses, and to argue to
5 the trier of fact on such allegation as though such
6 employer were a party to such product liability ac-
7 tion. The issue of the cause of the claimant's harm
8 shall be the last issue submitted to the trier of fact
9 in such product liability action. If the trier of fact
10 finds by clear and convincing evidence that the
11 claimant's harm was caused by the fault of the
12 claimant's employer or a coemployee of such claim-
13 ant, the court shall reduce the damages awarded
14 against such manufacturer or product seller and, ex-
15 cept as provided in the last sentence, correspond-
16 ingly the subrogation lien of such employer by the
17 sum of the amount paid as workers' compensation
18 benefits to such employee and the present value of
19 all workers' compensation benefits to which such em-
20 ployee is or would be entitled for such harm as de-
21 termined by the appropriate workers' compensation
22 authority. Such manufacturer or product seller shall
23 have no further right, by way of contribution or oth-
24 erwise, against such employer with respect to such
25 harm. Such employer shall not lose its right of sub-

1 rogation if the employee's harm was the result of an
2 intentional tort committed against the claimant by a
3 coemployee of the claimant or for acts committed by
4 such coemployee outside the scope of normal work
5 practices.

6 (4) REIMBURSEMENT.—If in a product liability
7 action brought by an employee for harm from a
8 product the judgment is that the claimant's harm
9 was not caused by the fault of the claimant's em-
10 ployer or a coemployee of the claimant, the manufac-
11 turer of such product or product seller shall reim-
12 burse such employer or workers' compensation in-
13 surer of such employer for reasonable attorney's fees
14 and court costs, as determined by the court, in-
15 curred in the resolution of the subrogation claim.

16 (b) THIRD PARTY TORTFEASOR.—In any product li-
17 ability action brought by an employee in which damages
18 are sought for harm for which the person injured is or
19 would have been entitled to receive compensation under
20 any State or Federal workers' compensation law, no third
21 party tortfeasor may maintain any action for implied in-
22 demnity or contribution against such employee's employer,
23 any coemployee of such employee, or the exclusive rep-
24 resentative of such employee.

1 (c) CONSTRUCTION.—Nothing in this Act shall be
2 construed to affect any provision of a State or Federal
3 workers' compensation law—

4 (1) which prohibits—

5 (A) a person who is or would have been en-
6 titled to receive compensation under such law,
7 or

8 (B) any other person whose claim for bene-
9 fits under such law would have been derivative
10 from the claim of the person described in sub-
11 paragraph (A),

12 from recovering for harm caused by a product in any
13 product liability action other than a workers' com-
14 pensation claim against a present or former em-
15 ployer or workers' compensation insurer of such an
16 employer, any coemployee, or the exclusive rep-
17 resentative of the person who is injured, or

18 (2) which permits recovery based on a claim of
19 an intentional tort by an employer or any
20 coemployee if the claimant's harm was caused by
21 such a tort.

22 (d) STAY PENDING COMPENSATION DETERMINA-
23 TION.—In any product liability action brought by an em-
24 ployee in which damages are sought for harm for which
25 the person injured is or would have been entitled to receive

1 compensation under any State or Federal workers' com-
2 pensation law, such action shall, on application of the
3 claimant made at the claimant's sole election, be stayed
4 until such time as the full amount payable as workers'
5 compensation benefits has been finally determined under
6 such workers' compensation law. If the claimant elects to
7 bring a product liability action and not stay the claimant's
8 action until the full amount of such benefits has been fi-
9 nally determined by the appropriate workers' compensa-
10 tion authority, the court shall determine the amount of
11 workers' compensation benefits that has been or would be
12 payable if the amount had been determined by such an
13 authority.

14 (e) EFFECT OF VERDICT.—The verdict of any court
15 in a product liability action shall not be used as evidence
16 in any proceeding relating to workers' compensation.

17 (f) WRITTEN NOTICE.—A claimant in a product li-
18 ability action who is or may be eligible to receive com-
19 pensation under any State or Federal workers' compensa-
20 tion law shall provide written notice of the filing of the
21 product liability action to the claimant's employer within
22 30 days of such filing. The written notice shall include
23 information regarding the date and court in which the
24 product liability action was filed, the names and addresses
25 of all plaintiffs and defendants appearing on the com-

1 plaint, the court docket number if available, and a copy
2 of the complaint which was filed in the product liability
3 action.

4 **SEC. 10. FEDERAL CAUSE OF ACTION PRECLUDED.**

5 The district courts of the United States shall not
6 have jurisdiction under section 1331 or 1337 of title 28,
7 United States Code, over any civil action arising under
8 this Act.

9 **SEC. 11. DEFINITIONS.**

10 As used in this Act—

11 (1) the term “capital good”—

12 (A) means any product, or any component
13 of such product, which is of a character subject
14 to allowance for depreciation under the Internal
15 Revenue Code of 1986 and is—

16 (i) used in a trade or business,

17 (ii) held for the production of income,

18 or

19 (iii) sold, leased, or donated to a gov-
20 ernmental or private entity for the produc-
21 tion of goods for training, for demonstra-
22 tion, or other similar purposes, and

23 (B) does not mean a motor vehicle, vessel,
24 aircraft, or railroad car used primarily to trans-
25 port passengers for hire,

1 (2) the term “claimant” means any person who
2 brings a product liability action and any person on
3 whose behalf such an action is brought, including
4 such person’s decedent if such an action is brought
5 through or on behalf of an estate or such person’s
6 legal representative if it is brought through or on be-
7 half of a minor or incompetent,

8 (3) with respect to a civil action brought
9 against a manufacturer or product seller of a prod-
10 uct the term “commercial loss” means loss, includ-
11 ing damage to the product itself, which is not harm
12 described in clause (i) or (ii) or paragraph (4)(A)
13 and is of a kind for which there is a remedy under
14 applicable contract or commercial law,

15 (4) the term “harm”—

16 (A) means—

17 (i) personal physical illness, injury, or
18 death of the claimant,

19 (ii) mental anguish or emotional harm
20 of the claimant caused by or causing the
21 claimant personal physical illness or injury,
22 or

23 (iii) physical damage to property other
24 than the product itself,

25 caused by a product, and

1 (B) does not include commercial loss,

2 (5) with respect to a product, the term “manu-
3 facturer” means—

4 (A) any person who is engaged in a busi-
5 ness to produce, create, make, or construct the
6 product and who designs or formulates the
7 product or has engaged another person to de-
8 sign or formulate the product,

9 (B) a product seller of the product who,
10 before placing the product in the stream of
11 commerce—

12 (i) designs or formulates or has en-
13 gaged another person to design or formu-
14 late an aspect of the product after the
15 product was initially made by another, and

16 (ii) produces, creates, makes, or con-
17 structs such aspect of the product, or

18 (C) any product seller not described in
19 subparagraph (B) which holds itself out as a
20 manufacturer to the user of the product,

21 (6) the term “product”—

22 (A) means any object, substance, mixture,
23 or raw material in a gaseous, liquid, or solid
24 state—

1 (i) which is capable of delivery itself,
2 in a mixed or combined state, or as a com-
3 ponent part or ingredient,

4 (ii) which is produced for introduction
5 into trade or commerce,

6 (iii) which has intrinsic economic
7 value, and

8 (iv) which is intended for sale or lease
9 to persons for commercial or personal use,
10 and

11 (B) does not include—

12 (i) human tissue, human organs,
13 human blood, and human blood products,
14 or

15 (ii) electricity, water delivered by a
16 utility, natural gas, or steam,

17 (7) the term “product liability action” means a
18 civil action brought against a manufacturer or prod-
19 uct seller, on any theory, for harm caused by a prod-
20 uct,

21 (8) with respect to a product, the term “prod-
22 uct seller”—

23 (A) means a person—

24 (i) who sells, distributes, leases, pre-
25 pares, blends, packages, or labels a product

1 or is otherwise involved in placing a prod-
2 uct in the stream of commerce, or

3 (ii) who installs, repairs, or maintains
4 the harm-causing aspect of a product, and
5 (B) does not include—

6 (i) a manufacturer as defined in para-
7 graph (5) of this section,

8 (ii) a seller or lessor of real property,

9 (iii) a provider of professional services
10 in any case in which the sale or use of a
11 product is incidental to the transaction and
12 the essence of the transaction is the fur-
13 nishing of judgment, skill, or services,

14 (iv) any person who acts only in a fi-
15 nancial capacity with respect to the sale of
16 a product, or

17 (v) any person who leases a product
18 under a lease arrangement in which the se-
19 lection, possession, maintenance, and oper-
20 ation of the product are controlled by a
21 person other than the lessor, and

22 (9) the term “State” means any State of the
23 United States, the District of Columbia, the Com-
24 monwealth of Puerto Rico, the Virgin Islands,
25 Guam, American Samoa, the Northern Mariana Is-

1 lands, the Trust Territory of the Pacific Islands, and
2 any other territory or possession of the United
3 States, or any political subdivision thereof.

4 **SEC. 12. EFFECTIVE DATE.**

5 This Act shall apply with respect to product liability
6 actions which are commenced after the date of the enact-
7 ment of this Act.

○

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