

Calendar No. 409

103^D CONGRESS
2^D SESSION

S. 687

[Report No. 103-203]

A BILL

To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

APRIL 11, 1994

Committee discharged; placed on calendar

Calendar No. 409103D CONGRESS
2D SESSION**S. 687****[Report No. 103-203]**

To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 31 (legislative day, MARCH 3), 1993

Mr. ROCKEFELLER (for himself, Mr. GORTON, Mr. LIEBERMAN, Mr. DANFORTH, Mr. DODD, Mr. COATS, Mr. CHAFEE, Mr. WALLOP, Mr. PRESSLER, Mr. LOTT, Mr. BURNS, Mrs. KASSEBAUM, Mr. BOREN, Mr. EXON, Mr. NICKLES, Mr. THURMOND, Mr. PELL, Mr. GRASSLEY, Mr. HELMS, Mr. HATCH, Mr. MCCONNELL, Mr. LUGAR, Mr. JEFFORDS, Mr. FAIRCLOTH, Mr. GLENN, Mr. CRAIG, Mr. DOLE, Mr. BOND, Mr. BROWN, Mr. DOMENICI, Mr. MACK, Mr. MCCAIN, Mr. MURKOWSKI, Mr. SMITH, Mr. BENNETT, Mr. COVERDELL, Mr. GREGG, Mr. KEMPTHORNE, Mr. HATFIELD, Mrs. HUTCHISON, Mr. WARNER, Mr. DURENBERGER, Mr. MATHEWS, Mr. PRYOR, and Mr. GRAMM) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

NOVEMBER 20 (legislative day, NOVEMBER 2), 1993

Reported by Mr. HOLLINGS, without amendment

MARCH 1 (legislative day, FEBRUARY 22), 1994

Ordered referred to the Committee on the Judiciary for a period not to extend beyond April 11, 1994

APRIL 11, 1994

Committee on the Judiciary discharged pursuant to the order of March 1 (legislative day, February 22, 1994), and placed on the calendar

A BILL

To regulate interstate commerce by providing for a uniform product liability law, and for other purposes.

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 “Product Liability Fair-
5 ness Act”.

6 **SEC. 2. TABLE OF CONTENTS.**

7 The table of contents of this Act is as follows:

TABLE OF CONTENTS

- Sec. 1. Short title.
- Sec. 2. Table of contents.
- Sec. 3. Definitions.
- Sec. 4. Applicability; preemption.
- Sec. 5. Jurisdiction of Federal courts.
- Sec. 6. Effective date.

TITLE I—EXPEDITED JUDGMENTS AND ALTERNATIVE DISPUTE
RESOLUTION PROCEDURES

- Sec. 101. Expedited product liability judgments.
- Sec. 102. Alternative dispute resolution procedures.

TITLE II—STANDARDS FOR CIVIL ACTIONS

- Sec. 201. Civil actions.
- Sec. 202. Uniform standards of product seller liability.
- Sec. 203. Uniform standards for award of punitive damages.
- Sec. 204. Uniform time limitations on liability.
- Sec. 205. Workers’ compensation subrogation standards.
- Sec. 206. Several liability for noneconomic loss.
- Sec. 207. Defenses involving intoxicating alcohol or drugs.

8 **SEC. 3. DEFINITIONS.**

9 As used in this Act, the term—

- 10 (1) “claimant” means any person who brings a
11 civil action pursuant to this Act, and any person on

1 whose behalf such an action is brought; if such an
2 action is brought through or on behalf of an estate,
3 the term includes the claimant's decedent, or if it is
4 brought through or on behalf of a minor or incom-
5 petent, the term includes the claimant's parent or
6 guardian;

7 (2) "clear and convincing evidence" is that
8 measure or degree of proof that will produce in the
9 mind of the trier of fact a firm belief or conviction
10 as to the truth of the allegations sought to be estab-
11 lished; the level of proof required to satisfy such
12 standard is more than that required under prepon-
13 derance of the evidence, but less than that required
14 for proof beyond a reasonable doubt;

15 (3) "collateral benefits" means all benefits and
16 advantages received or entitled to be received (ex-
17 cluding any benefits any other person has or is enti-
18 tled to assert for recoupment through subrogation,
19 trust agreement, lien, or otherwise) by any claimant
20 harmed by a product or by any other person as re-
21 imbursement of loss because of harm to person or
22 property payable or required to be paid to the claim-
23 ant, under—

1 (A) any Federal law or the laws of any
2 State (other than through a claim for breach of
3 an obligation or duty); or

4 (B) any life, health, or accident insurance
5 or plan, wage or salary continuation plan, or
6 disability income or replacement service insur-
7 ance, result of participation in any pre-paid
8 medical plan or health maintenance organiza-
9 tion;

10 (4) “commerce” means trade, traffic, com-
11 merce, or transportation—

12 (A) between a place in a State and any
13 place outside of that State; or

14 (B) which affects trade, traffic, commerce,
15 or transportation described in subparagraph
16 (A);

17 (5) “commercial loss” means any loss incurred
18 in the course of an ongoing business enterprise con-
19 sisting of providing goods or services for compensa-
20 tion;

21 (6) “economic loss” means any pecuniary loss
22 resulting from harm (including but not limited to
23 medical expense loss, work loss, replacement services
24 loss, loss due to death, burial costs, and loss of busi-
25 ness or employment opportunities), to the extent re-

1 covery for such loss is allowed under applicable State
2 law;

3 (7) “exercise of reasonable care” means conduct
4 of a person of ordinary prudence and intelligence
5 using the attention, precaution, and judgment that
6 society expects of its members for the protection of
7 their own interests and the interests of others;

8 (8) “harm” means any bodily injury to an indi-
9 vidual sustained in an accident and any illness, dis-
10 ease, or death of that individual resulting from that
11 injury; the term does not include commercial loss or
12 loss or damage to a product itself;

13 (9) “manufacturer” means—

14 (A) any person who is engaged in a busi-
15 ness to produce, create, make, or construct any
16 product (or component part of a product) and
17 who designs or formulates the product (or com-
18 ponent part of the product) or has engaged an-
19 other person to design or formulate the product
20 (or component part of the product);

21 (B) a product seller, but only with respect
22 to those aspects of a product (or component
23 part of a product) which are created or affected
24 when, before placing the product in the stream
25 of commerce, the product seller produces, cre-

1 ates, makes, or constructs and designs or for-
2 mulates, or has engaged another person to de-
3 sign or formulate, an aspect of a product (or
4 component part of a product) made by another;
5 or

6 (C) any product seller not described in
7 subparagraph (B) which holds itself out as a
8 manufacturer to the user of a product;

9 (10) “noneconomic loss” means subjective,
10 nonmonetary loss resulting from harm, including but
11 not limited to pain, suffering, inconvenience, mental
12 suffering, emotional distress, loss of society and
13 companionship, loss of consortium, injury to reputa-
14 tion, and humiliation; the term does not include eco-
15 nomic loss;

16 (11) “person” means any individual, corpora-
17 tion, company, association, firm, partnership, soci-
18 ety, joint stock company, or any other entity (includ-
19 ing any governmental entity);

20 (12) “preponderance of the evidence” is that
21 measure or degree of proof which, by the weight,
22 credit, and value of the aggregate evidence on either
23 side, establishes that it is more probable than not
24 that a fact occurred or did not occur;

1 (13) “product” means any object, substance,
2 mixture, or raw material in a gaseous, liquid, or
3 solid state—

4 (A) which is capable of delivery itself or as
5 an assembled whole, in a mixed or combined
6 state, or as a component part or ingredient;

7 (B) which is produced for introduction into
8 trade or commerce;

9 (C) which has intrinsic economic value;
10 and

11 (D) which is intended for sale or lease to
12 persons for commercial or personal use;

13 the term does not include human tissue, blood and
14 blood products, or organs unless specifically recog-
15 nized as a product pursuant to State law;

16 (14) “product seller” means a person who, in
17 the course of a business conducted for that purpose,
18 sells, distributes, leases, prepares, blends, packages,
19 labels, or otherwise is involved in placing a product
20 in the stream of commerce, or who installs, repairs,
21 or maintains the harm-causing aspect of a product;
22 the term does not include—

23 (A) a seller or lessor of real property;

24 (B) a provider of professional services in
25 any case in which the sale or use of a product

1 is incidental to the transaction and the essence
2 of the transaction is the furnishing of judg-
3 ment, skill, or services; or

4 (C) any person who—

5 (i) acts in only a financial capacity
6 with respect to the sale of a product; and

7 (ii) leases a product under a lease ar-
8 rangement in which the selection, posses-
9 sion, maintenance, and operation of the
10 product are controlled by a person other
11 than the lessor; and

12 (15) “State” means any State of the United
13 States, the District of Columbia, Puerto Rico, the
14 Northern Mariana Islands, the Virgin Islands,
15 Guam, American Samoa, and any other territory or
16 possession of the United States, or any political sub-
17 division thereof.

18 **SEC. 4. APPLICABILITY; PREEMPTION.**

19 (a) **APPLICABILITY TO PRODUCT LIABILITY AC-**
20 **TIONS.**—This Act applies to any civil action brought
21 against a manufacturer or product seller, on any theory,
22 for harm caused by a product. A civil action brought
23 against a manufacturer or product seller for loss or dam-
24 age to a product itself or for commercial loss is not subject

1 to this Act and shall be governed by applicable commercial
2 or contract law.

3 (b) SCOPE OF PREEMPTION.—(1) Except as provided
4 in paragraph (2), this Act supersedes any State law re-
5 garding recovery for harm caused by a product only to
6 the extent that this Act establishes a rule of law applicable
7 to any such recovery. Any issue arising under this Act that
8 is not governed by any such rule of law shall be governed
9 by applicable State or Federal law.

10 (2) The provisions of title I shall not supersede or
11 otherwise preempt any provision of applicable State or
12 Federal law.

13 (c) EFFECT ON OTHER LAW.—Nothing in this Act
14 shall be construed to—

15 (1) waive or affect any defense of sovereign im-
16 munity asserted by any State under any provision of
17 law;

18 (2) supersede any Federal law, except chapter
19 81 of title 5, United States Code (relating to Fed-
20 eral employees' compensation for work injuries) and
21 the Longshore and Harbor Workers' Compensation
22 Act (33 U.S.C. 901 et seq.);

23 (3) waive or affect any defense of sovereign im-
24 munity asserted by the United States;

1 (4) affect the applicability of any provision of
2 chapter 97 of title 28, United States Code;

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

6 (6) affect the right of any court to transfer
7 venue or to apply the law of a foreign nation or to
8 dismiss a claim of a foreign nation or of a citizen
9 of a foreign nation on the ground of inconvenient
10 forum; or

11 (7) supersede any statutory or common law, in-
12 cluding an action to abate a nuisance, that author-
13 izes a State or person to institute an action for civil
14 damages or civil penalties, cleanup costs, injunc-
15 tions, restitution, cost recovery, punitive damages, or
16 any other form of relief resulting from contamina-
17 tion or pollution of the environment (as defined in
18 section 101(8) of the Comprehensive Environmental
19 Response, Compensation, and Liability Act of 1980;
20 42 U.S.C. 9601(8)), or the threat of such contami-
21 nation or pollution.

22 (d) CONSTRUCTION.—This Act shall be construed
23 and applied after consideration of its legislative history to
24 promote uniformity of law in the various jurisdictions.

1 (e) EFFECT OF COURT OF APPEALS DECISIONS.—
2 Any decision of a United States court of appeals interpret-
3 ing the provisions of this Act shall be considered a control-
4 ling precedent and followed by each Federal and State
5 court within the geographical boundaries of the circuit in
6 which such court of appeals sits, except to the extent that
7 the decision is overruled or otherwise modified by the
8 United States Supreme Court.

9 **SEC. 5. JURISDICTION OF FEDERAL COURTS.**

10 The district courts of the United States shall not
11 have jurisdiction over any civil action pursuant to this Act,
12 based on section 1331 or 1337 of title 28, United States
13 Code.

14 **SEC. 6. EFFECTIVE DATE.**

15 This Act shall take effect on the date of its enactment
16 and shall apply to all civil actions pursuant to this Act
17 commenced on or after such date, including any action in
18 which the harm or the conduct which caused the harm
19 occurred before the effective date of this Act.

20 TITLE I—EXPEDITED JUDGMENTS AND ALTER-
21 NATIVE DISPUTE RESOLUTION PROCE-
22 DURES

23 **SEC. 101. EXPEDITED PRODUCT LIABILITY JUDGMENTS.**

24 (a) CLAIMANT'S OFFER OF JUDGMENT.—Any claim-
25 ant may, in addition to any claim for relief made in ac-

1 cordance with State law, include in the complaint an offer
2 of judgment to be entered against a defendant for a spe-
3 cific dollar amount as complete satisfaction of the claim.

4 (b) DEFENDANT'S OFFER.—A defendant may serve
5 an offer to allow judgment to be entered against that de-
6 fendant for a specific dollar amount as complete satisfac-
7 tion of the claim, within sixty days after service of the
8 claimant's complaint or within the time permitted pursu-
9 ant to State law for a responsive pleading, whichever is
10 longer, except that if such pleading includes a motion to
11 dismiss in accordance with applicable law, the defendant
12 may serve such offer within 10 days after the court's de-
13 termination regarding such motion.

14 (c) EXTENSION OF RESPONSE PERIOD.—In any case
15 in which an offer of judgment is served pursuant to sub-
16 section (a) or (b), the court may, upon motion by the
17 offeree made prior to the expiration of the applicable pe-
18 riod for response, enter an order extending such period.
19 Any such order shall contain a schedule for discovery of
20 evidence material to the issue of the appropriate amount
21 of relief, and shall not extend such period for more than
22 sixty days. Any such motion shall be accompanied by a
23 supporting affidavit of the moving party setting forth the
24 reasons why such extension is necessary to promote the
25 interests of justice and stating that the information likely

1 to be discovered is material and is not, after reasonable
2 inquiry, otherwise available to the moving party.

3 (d) DEFENDANT'S PENALTY FOR REJECTION OF
4 OFFER.—If a defendant, as offeree, does not serve on a
5 claimant a written notification of acceptance of an offer
6 of judgment served by a claimant in accordance with sub-
7 section (a) within the time permitted pursuant to State
8 law for a responsive pleading or, if such pleading includes
9 a motion to dismiss in accordance with applicable law,
10 within thirty days after the court's determination regard-
11 ing such motion, and a final judgment is entered in such
12 action in an amount greater than the specific dollar
13 amount of such offer of judgment, the court shall modify
14 the judgment against that defendant by including in the
15 judgment an amount for the claimant's reasonable attor-
16 ney's fees and costs, not to exceed \$50,000. Such fees
17 shall be offset against any fees owed by the claimant to
18 the claimant's attorney by reason of the final judgment.

19 (e) CLAIMANT'S PENALTY FOR REJECTION OF
20 OFFER.—If the claimant, as offeree, does not serve on the
21 defendant a written notice of acceptance of an offer of
22 judgment served by a defendant in accordance with sub-
23 section (b) within thirty days after such service and a final
24 judgment is entered in such action in an amount less than
25 the specific dollar amount of such offer of judgment, the

1 court shall reduce the amount of the final judgment in
2 such action by that portion of the judgment which is allo-
3 cable to economic loss for which the claimant has received
4 or is entitled to receive collateral benefits. If the claimant
5 is not the prevailing party in such action, the claimant's
6 refusal to accept an offer of judgment shall not result in
7 the payment of any penalty under this subsection.

8 (f) REASONABLE ATTORNEY'S FEE.—For purposes
9 of this section, a reasonable attorney's fee shall be cal-
10 culated on the basis of an hourly rate which shall not ex-
11 ceed that which is considered acceptable in the community
12 in which the attorney practices, considering the attorney's
13 qualifications and experience and the complexity of the
14 case.

15 (g) EVIDENCE OF OFFER.—An offer not accepted
16 shall be deemed withdrawn and evidence thereof is not ad-
17 missible except in a proceeding to determine attorney's
18 fees and costs.

19 **SEC. 102. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
20 **DURES.**

21 (a) IN GENERAL.—A claimant or defendant in a civil
22 action subject to this Act may, within the time permitted
23 for making an offer of judgment under section 101, serve
24 upon an adverse party an offer to proceed pursuant to
25 any voluntary, nonbinding alternative dispute resolution

1 procedure established or recognized under the law of the
2 State in which the civil action is brought or under the
3 rules of the court in which such action is maintained. An
4 offeree shall, within ten days of such service, file a written
5 notice of acceptance or rejection of the offer; except that
6 the court may, upon motion by the offeree make prior to
7 the expiration of such ten-day period, extend the period
8 for response for up to sixty days, during which discovery
9 may be permitted.

10 (b) DEFENDANT'S PENALTY FOR UNREASONABLE
11 REFUSAL.—The court shall assess reasonable attorney's
12 fees (calculated in the manner described in section 101(f))
13 and costs against the offeree, if—

14 (1) a defendant as offeree refuses to proceed
15 pursuant to such alternative dispute resolution pro-
16 cedure;

17 (2) final judgment is entered against the de-
18 fendant for harm caused by a product; and

19 (3) the defendant's refusal to proceed pursuant
20 to such alternative dispute resolution procedure was
21 unreasonable or not in good faith.

22 (c) GOOD FAITH REFUSAL.—In determining whether
23 an offeree's refusal to proceed pursuant to such alter-
24 native dispute resolution procedure was unreasonable or

1 not in good faith, the court shall consider such factors as
2 the court deems appropriate.

3 TITLE II—STANDARDS FOR CIVIL ACTIONS

4 **SEC. 201. CIVIL ACTIONS.**

5 A person seeking to recover for harm caused by a
6 product may bring a civil action against the product's
7 manufacturer or product seller pursuant to applicable
8 State or Federal law, except to the extent such law is in-
9 consistent with any provision of this Act.

10 **SEC. 202. UNIFORM STANDARDS OF PRODUCT SELLER LI-**
11 **ABILITY.**

12 (a) STANDARDS OF LIABILITY.—In any civil action
13 for harm caused by a product, a product seller other than
14 a manufacturer is liable to a claimant, only if the claimant
15 establishes by a preponderance of the evidence that—

16 (1)(A) the individual product unit which alleg-
17 edly caused the harm complained of was sold by the
18 defendant; (B) the product seller failed to exercise
19 reasonable care with respect to the product; and (C)
20 such failure to exercise reasonable care was a proxi-
21 mate cause of the claimant's harm; or

22 (2)(A) the product seller made an express war-
23 ranty, independent of any express warranty made by
24 a manufacturer as to the same product; (B) the
25 product failed to conform to the product seller's war-

1 ranty; and (C) the failure of the product to conform
2 to the product seller's warranty caused the claim-
3 ant's harm.

4 (b) CONDUCT OF PRODUCT SELLER.—(1) In deter-
5 mining whether a product seller is subject to liability
6 under subsection (a)(1), the trier of fact may consider the
7 effect of the conduct of the product seller with respect to
8 the construction, inspection, or condition of the product,
9 and any failure of the product seller to pass on adequate
10 warnings or instructions from the product's manufacturer
11 about the dangers and proper use of the product.

12 (2) A product seller shall not be liable in a civil action
13 subject to this Act based upon an alleged failure to provide
14 warnings or instructions unless the claimant establishes
15 that, when the product left the possession and control of
16 the product seller, the product seller failed—

17 (A) to provide to the person to whom the prod-
18 uct seller relinquished possession and control of the
19 product any pamphlets, booklets, labels, inserts, or
20 other written warnings or instructions received while
21 the product was in the product seller's possession
22 and control; or

23 (B) to make reasonable efforts to provide users
24 with the warnings and instructions with it received
25 after the product left its possession and control.

1 (3) A product seller shall not be liable in a civil action
2 subject to this Act except for breach of express warranty
3 where there was no reasonable opportunity to inspect the
4 product in a manner which would or should, in the exercise
5 of reasonable care, have revealed the aspect of the product
6 which allegedly caused the claimant's harm.

7 (c) TREATMENT AS MANUFACTURER.—A product
8 seller shall be deemed to be the manufacturer of a product
9 and shall be liable for harm to the claimant caused by
10 a product as if it were the manufacturer of the product
11 if—

12 (1) the manufacturer is not subject to service of
13 process under the laws of any State in which the ac-
14 tion might have been brought; or

15 (2) the court determines that the claimant
16 would be unable to enforce a judgment against the
17 manufacturer.

18 **SEC. 203. UNIFORM STANDARDS FOR AWARD OF PUNITIVE**
19 **DAMAGES.**

20 (a) IN GENERAL.—Punitive damages may, if other-
21 wise permitted by applicable law, be awarded in any civil
22 action subject to this Act to any claimant who establishes
23 by clear and convincing evidence that the harm suffered
24 by the claimant was the result of conduct manifesting a
25 manufacturer's or product seller's conscious, flagrant in-

1 difference to the safety of those persons who might be
2 harmed by the product. A failure to exercise reasonable
3 care in choosing among alternative product designs, for-
4 mulations, instructions, or warnings is not of itself such
5 conduct. Punitive damages may not be awarded in the ab-
6 sence of an award of compensatory damages.

7 (b) LIMITATION CONCERNING CERTAIN DRUGS AND
8 MEDICAL DEVICES.—(1) Punitive damages shall not be
9 awarded pursuant to this section against a manufacturer
10 or product seller of a drug (as defined in section 201(g)(1)
11 of the Federal Food, Drug, and Cosmetic Act; 21 U.S.C.
12 321(g)(1)) or medical device (as defined under section
13 201(h) of the Federal Food, Drug, and Cosmetic Act; 21
14 U.S.C. 321(h)) which caused the claimant's harm where—

15 (A) such drug or device was subject to pre-mar-
16 ket approval by the Food and Drug Administration
17 with respect to the safety of the formulation or per-
18 formance of the aspect of such drug or device which
19 caused the claimant's harm or the adequacy of the
20 packaging or labeling of such drug or device, and
21 such drug or device was approved by the Food and
22 Drug Administration; or

23 (B) the drug or device is generally recognized
24 as safe and effective pursuant to conditions estab-
25 lished by the Food and Drug Administration and ap-

1 plicable regulations, including packaging and label-
2 ing regulations.

3 (2) The provisions of paragraph (1) shall not apply
4 in any case in which—

5 (A) the defendant, before or after pre-market
6 approval of a drug or device, withheld from or mis-
7 represented to the Food and Drug Administration or
8 any other agency or official of the Federal Govern-
9 ment required information that is material and rel-
10 evant to the performance of such drug or device and
11 is causally related to the harm which the claimant
12 allegedly suffered; or

13 (B) the defendant made an illegal payment to
14 an official of the Food and Drug Administration for
15 the purpose of either securing or maintaining ap-
16 proval of such drug or device.

17 (c) LIMITATION CONCERNING CERTAIN AIRCRAFT
18 AND COMPONENTS.—(1) Punitive damages shall not be
19 awarded pursuant to this section against a manufacturer
20 of an aircraft or aircraft component which caused the
21 claimant's harm where—

22 (A) such aircraft or component was subject to
23 pre-market certification by the Federal Aviation Ad-
24 ministration with respect to the safety of the design
25 or performance of the aspect of such aircraft or

1 component which caused the claimant's harm or the
2 adequacy of the warnings regarding the operation or
3 maintenance of such aircraft or component;

4 (B) the aircraft or component was certified by
5 the Federal Aviation Administration under the Fed-
6 eral Aviation Act of 1958 (49 App. U.S.C. 1301 et
7 seq.); and

8 (C) the manufacturer of the aircraft or compo-
9 nent complied, after delivery of the aircraft or com-
10 ponent to a user, with Federal Aviation Administra-
11 tion requirements and obligations with respect to
12 continuing airworthiness, including the requirement
13 to provide maintenance and service information re-
14 lated to airworthiness whether or not such informa-
15 tion is used by the Federal Aviation Administration
16 in the preparation of mandatory maintenance, in-
17 spection, or repair directives.

18 (2) The provisions of paragraph (1) shall not apply
19 in any case in which—

20 (A) the defendant, before or after pre-market
21 certification of an aircraft or aircraft component,
22 withheld from or misrepresented to the Federal
23 Aviation Administration required information that is
24 material and relevant to the performance or the
25 maintenance or operation of such aircraft or compo-

1 nent or is causally related to the harm which the
2 claimant allegedly suffered; or

3 (B) the defendant made an illegal payment to
4 an official of the Federal Aviation Administration
5 for the purpose of either securing or maintaining
6 certification of such aircraft or component.

7 (d) SEPARATE PROCEEDING.—At the request of the
8 manufacturer or product seller, the trier of fact shall con-
9 sider in a separate proceeding (1) whether punitive dam-
10 ages are to be awarded and the amount of such award,
11 or (2) the amount of punitive damages following a deter-
12 mination of punitive liability. If a separate proceeding is
13 requested, evidence relevant only to the claim of punitive
14 damages, as determined by applicable State law, shall be
15 inadmissible in any proceeding to determine whether com-
16 pensatory damages are to be awarded.

17 (e) DETERMINING AMOUNT OF PUNITIVE DAM-
18 AGES.—In determining the amount of punitive damages,
19 the trier of fact shall consider all relevant evidence, includ-
20 ing—

21 (1) the financial condition of the manufacturer
22 or product seller;

23 (2) the severity of the harm caused by the con-
24 duct of the manufacturer or product seller;

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

3 (4) the profitability of the conduct to the manu-
4 facturer or product seller;

5 (5) the number of products sold by the manu-
6 facturer or product seller of the kind causing the
7 harm complained of by the claimant;

8 (6) awards of punitive or exemplary damages to
9 persons similarly situated to the claimant;

10 (7) prospective awards of compensatory dam-
11 ages to persons similarly situated to the claimant;

12 (8) any criminal penalties imposed on the man-
13 ufacturer or product seller as a result of the conduct
14 complained of by the claimant; and

15 (9) the amount of any civil fines assessed
16 against the defendant as a result of the conduct
17 complained of by the claimant.

18 **SEC. 204. UNIFORM TIME LIMITATIONS ON LIABILITY.**

19 (a) STATUTE OF LIMITATIONS.—Any civil action sub-
20 ject to this Act shall be barred unless the complaint is
21 filed within two years of the time the claimant discovered
22 or, in the exercise of reasonable care, should have discov-
23 ered the harm and its cause, except that any such action
24 of a person under legal disability may be filed within two
25 years after the disability ceases. If the commencement of

1 such an action is stayed or enjoined, the running of the
2 statute of limitations under this section shall be suspended
3 for the period of the stay or injunction.

4 (b) STATUTE OF REPOSE FOR CAPITAL GOODS.—(1)
5 Any civil action subject to this Act shall be barred if a
6 product which is a capital good is alleged to have caused
7 harm which is not a toxic harm unless the complaint is
8 served and filed within twenty-five years after the time
9 of delivery of the product. This subsection shall apply only
10 if the court determines that the claimant has received or
11 would be eligible to receive compensation under any State
12 or Federal workers' compensation law for harm caused by
13 the product.

14 (2) A motor vehicle, vessel, aircraft, or train, used
15 primarily to transport passengers for hire, shall not be
16 subject to this subsection.

17 (3) As used in this subsection, the term—

18 (A) “capital good” means any product, or any
19 component of any such product, which is of a char-
20 acter subject to allowance for depreciation under the
21 Internal Revenue Code of 1986, and which was—

22 (i) used in a trade or business;

23 (ii) held for the production of income; or

24 (iii) sold or donated to a governmental or
25 private entity for the production of goods, for

1 training, for demonstration, or for other similar
2 purposes; and

3 (B) “time of delivery” means the time when a
4 product is delivered to its first purchaser or lessee
5 who was not involved in the business of manufactur-
6 ing or selling such product or using it as a compo-
7 nent part of another product to be sold.

8 (c) EXTENSION OF PERIOD FOR BRINGING CERTAIN
9 ACTIONS.—If any provision of this section would shorten
10 the period during which a civil action could be brought
11 under otherwise applicable law, the claimant may, notwith-
12 standing such provision of this section, bring the civil ac-
13 tion pursuant to this Act within one year after the effec-
14 tive date of this Act.

15 (d) EFFECT ON RIGHT TO CONTRIBUTION OR IN-
16 DEMNITY.—Nothing in this section shall affect the right
17 of any person who is subject to liability for harm under
18 this Act to seek and obtain contribution or indemnity from
19 any other person who is responsible for such harm.

20 **SEC. 205. WORKERS’ COMPENSATION SUBROGATION**
21 **STANDARDS.**

22 (a) IN GENERAL.—(1) An employer or workers’ com-
23 pensation insurer of an employer shall have a right of sub-
24 rogation against a manufacturer or product seller to re-
25 cover the sum of the amount paid as workers’ compensa-

1 tion benefits and the present value of all workers' com-
2 pensation benefits to which the employee is or would be
3 entitled as determined by the appropriate workers' com-
4 pensation authority for harm caused to an employee by
5 a product if the harm is one for which a civil action has
6 been brought pursuant to this Act. To assert a right of
7 subrogation an employer or workers' compensation insurer
8 of an employer shall provide written notice that it is as-
9 serting a right of subrogation to the court in which the
10 claimant has filed a complaint. The employer or workers'
11 compensation insurer of the employer shall not be required
12 to be a necessary and proper party to the proceeding insti-
13 tuted by the employee.

14 (2) In any proceeding against or settlement with the
15 manufacturer or product seller, the employer or the work-
16 ers' compensation insurer of the employer shall have an
17 opportunity to participate and to assert a right of subroga-
18 tion upon any payment and to assert a right of subroga-
19 tion upon any payment made by the manufacturer or
20 product seller by reason of such harm, whether paid in
21 settlement, in satisfaction of judgment, as consideration
22 for covenant not to sue, or otherwise. The employee shall
23 not make any settlement with or accept any payment from
24 the manufacturer or product seller without the written
25 consent of the employer and no release to or agreement

1 with the manufacturer or product seller shall be valid or
2 enforceable for any purpose without such consent. How-
3 ever, the preceding sentence shall not apply if the em-
4 ployer or workers' compensation insurer of the employer
5 is made whole for all benefits paid in workers' compensa-
6 tion benefits.

7 (3) If the manufacturer or product seller attempts
8 to persuade the trier of fact that the claimant's harm was
9 caused by the fault of the claimant's employer or
10 coemployees, then the issue whether the claimant's harm
11 was caused by the claimant's employer or coemployees
12 shall be submitted to the trier of fact. If the manufacturer
13 or product seller so attempts to persuade the trier of fact,
14 it shall provide written notice to the employer. The em-
15 ployer shall have the right to appear, to be represented,
16 to introduce evidence, to cross-examine adverse witnesses,
17 and to argue to the trier of fact as to this issue as fully
18 as though the employer were a party although not named
19 or joined as a party to the proceeding. Such issue shall
20 be the last issue submitted to the trier of fact. If the trier
21 of fact finds by clear and convincing evidence that the
22 claimant's harm was caused by the fault of the claimant's
23 employer or coemployees, then the court shall reduce the
24 damages awarded by the trier of fact against the manufac-
25 turer or product seller (and correspondingly the subroga-

1 tion lien of the employer) by the sum of the amount paid
2 as workers' compensation benefits and the present value
3 of all workers' compensation benefits to which the em-
4 ployee is or would be entitled for such harm as determined
5 by the appropriate workers' compensation authority. The
6 manufacturer or product seller shall have no further right
7 by way of contribution or otherwise against the employer.
8 However, the employer shall not lose its right of subroga-
9 tion because of an intentional tort committed against the
10 claimant by the claimant's coemployees or for acts com-
11 mitted by coemployees outside the scope of normal work
12 practices.

13 (4) If the verdict shall be that the claimant's harm
14 was not caused by the fault of the claimant's employer
15 or coemployees, then the manufacturer or product seller
16 shall reimburse the employer or workers' compensation in-
17 surer of the employer for reasonable attorney's fees and
18 court costs incurred in the resolution of the subrogation
19 claim, as determined by the court.

20 (b) EFFECT ON CERTAIN CIVIL ACTIONS.—(1) In
21 any civil action subject to this Act in which damages are
22 sought for harm for which the person injured is or would
23 have been entitled to receive compensation under any
24 State or Federal workers' compensation law, no third
25 party tortfeasor may maintain any action for implied in-

1 demnity or contribution against the employer, any
2 coemployee, or the exclusive representative of the person
3 who was injured.

4 (2) Nothing in this Act shall be construed to affect
5 any provision of a State or Federal workers' compensation
6 law which prohibits a person who is or would have been
7 entitled to receive compensation under any such law, or
8 any other person whose claim is or would have been deriv-
9 ative from such a claim, from recovering for harm caused
10 by a product in any action other than a workers' com-
11 pensation claim against a present or former employer or
12 workers' compensation insurer of the employer, any
13 coemployee, or the exclusive representative of the person
14 who was injured.

15 (3) Nothing in this Act shall be construed to affect
16 any State or Federal workers' compensation law which
17 permits recovery based on a claim of an intentional tort
18 by the employer or coemployee, where the claimant's harm
19 was caused by such an intentional tort.

20 (c) STAY PENDING COMPENSATION DETERMINA-
21 TION.—In any civil action subject to this Act in which
22 damages are sought for harm for which the person injured
23 is entitled to receive compensation under any State or
24 Federal workers' compensation law, the action shall, on
25 application of the claimant made at the claimant's sole

1 election, be stayed until such time as the full amount pay-
2 able as workers' compensation benefits has been finally de-
3 termined under such workers' compensation law. Should
4 the claimant elect to bring a civil action under this Act
5 and not stay his or her action until the full amount pay-
6 able as workers' compensation benefits has been finally de-
7 termined by the appropriate workers' compensation au-
8 thority, then the court shall determine the amount of
9 worker's compensation that has been or would be payable
10 if the issue had been determined by the appropriate work-
11 er's compensation authority. The verdict as determined by
12 the trier of fact pursuant to this title shall have no binding
13 effect on and shall not be used as evidence in any other
14 proceeding.

15 (d) WRITTEN NOTICE.—A claimant in a civil action
16 subject to this Act who is or may be eligible to receive
17 compensation under any State or Federal workers' com-
18 pensation law must provide written notice of the filing of
19 the civil action to the claimant's employer within thirty
20 days of the filing. The written notice shall include infor-
21 mation regarding the date and court in which the civil ac-
22 tion was filed, the names and addresses of all plaintiffs
23 and defendants appearing on the complaint, the court
24 docket number if available, and a copy of the complaint
25 which was filed in the civil action.

1 **SEC. 206. SEVERAL LIABILITY FOR NONECONOMIC LOSS.**

2 (a) IN GENERAL.—In any civil action subject to this
3 Act, the liability of each defendant for noneconomic loss
4 shall be several only and shall not be joint. Each defendant
5 shall be liable only for the amount of noneconomic loss
6 allocated to such defendant in direct proportion to such
7 defendant's percentage of responsibility as determined
8 under subsection (b). A separate judgment shall be ren-
9 dered against such defendant for that amount.

10 (b) PROPORTION OF RESPONSIBILITY.—For pur-
11 poses of this section, the trier of fact shall determine the
12 proportion of responsibility of each party for the claim-
13 ant's harm.

14 **SEC. 207. DEFENSES INVOLVING INTOXICATING ALCOHOL**
15 **OR DRUGS.**

16 (a) CIVIL ACTIONS IN WHICH ALL DEFENDANTS
17 ARE MANUFACTURERS OR PRODUCT SELLERS.—In any
18 civil action subject to this Act in which all defendants are
19 manufacturers or product sellers, it shall be a complete
20 defense to such action that the claimant was intoxicated
21 or was under the influence of intoxicating alcohol or any
22 drug and that as a result of such intoxication or the influ-
23 ence of the alcohol or drug the claimant was more than
24 50 percent responsible for the accident or event which re-
25 sulted in such claimant's harm.

1 (b) OTHER CIVIL ACTIONS.—In any civil action sub-
2 ject to this Act in which not all defendants are manufac-
3 turers or product sellers and the trier of fact determines
4 that no liability exists against those defendants who are
5 not manufacturers or product sellers, the court shall enter
6 a judgment notwithstanding the verdict in favor of any
7 defendant which is a manufacturer or product seller if it
8 is proved that the claimant was intoxicated or was under
9 the influence of intoxicating alcohol or any drug and that
10 as a result of such intoxication or the influence of the alco-
11 hol or drug the claimant was more than 50 percent re-
12 sponsible for the accident or event which resulted in such
13 claimant’s harm.

14 (c) INTOXICATION DETERMINATION TO BE MADE
15 UNDER STATE LAW.—For purposes of this section, the
16 determination of whether a person was intoxicated or was
17 under the influence of intoxicating alcohol or any drug
18 shall be made pursuant to applicable State law.

19 (d) DEFINITION.—As used in this section, the term
20 “drug” means any non-over-the-counter drug which has
21 not been prescribed by a physician for use by the claimant.

S 687 PCS—2

S 687 PCS—3