

105TH CONGRESS
1ST SESSION

S. 836

To offer small businesses certain protections from litigation excesses.

IN THE SENATE OF THE UNITED STATES

JUNE 5, 1997

Mr. ABRAHAM (for himself, Mr. McCONNELL, Mr. COVERDELL, Mr. SANTORUM, Mr. McCAIN, and Mr. ASHCROFT) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To offer small businesses certain protections from litigation excesses.

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 “Small Business Law-
5 suit Abuse Protection Act of 1997”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the United States civil justice system is in-
9 efficient, unpredictable, unfair, costly, and impedes

1 competitiveness in the marketplace for goods, serv-
2 ices, business, and employees;

3 (2) the defects in the civil justice system have
4 a direct and undesirable effect on interstate com-
5 merce by decreasing the availability of goods and
6 services in commerce;

7 (3) there is a need to restore rationality, cer-
8 tainty, and fairness to the legal system;

9 (4) the spiralling costs of litigation and the
10 magnitude and unpredictability of punitive damage
11 awards and noneconomic damage awards have con-
12 tinued unabated for at least the past 30 years;

13 (5) the Supreme Court of the United States has
14 recognized that a punitive damage award can be un-
15 constitutional if the award is grossly excessive in re-
16 lation to the legitimate interest of the government in
17 the punishment and deterrence of unlawful conduct;

18 (6) just as punitive damage awards can be
19 grossly excessive, so can it be grossly excessive in
20 some circumstances for a party to be held respon-
21 sible under the doctrine of joint and several liability
22 for damages that party did not cause;

23 (7) as a result of joint and several liability, en-
24 tities including small businesses are often brought
25 into litigation despite the fact that their conduct

1 may have little or nothing to do with the accident
2 or transaction giving rise to the lawsuit, and may
3 therefore face increased and unjust costs due to the
4 possibility or result of unfair and disproportionate
5 damage awards;

6 (8) the costs imposed by the civil justice system
7 on small businesses are particularly acute, since
8 small businesses often lack the resources to bear
9 those costs and to challenge unwarranted lawsuits;

10 (9) due to high liability costs and unwarranted
11 litigation costs, small businesses face higher costs in
12 purchasing insurance through interstate insurance
13 markets to cover their activities;

14 (10) liability reform for small businesses will
15 promote the free flow of goods and services, lessen
16 burdens on interstate commerce, and decrease liti-
17 giousness; and

18 (11) legislation to address these concerns is an
19 appropriate exercise of Congress' powers under Arti-
20 cle I, section 8, clauses 3, 9, and 18 of the Constitu-
21 tion, and the fourteenth amendment to the Constitu-
22 tion.

23 **SEC. 3. DEFINITIONS.**

24 In this Act:

1 (1) ACT OF INTERNATIONAL TERRORISM.—The
2 term “act of international terrorism” has the same
3 meaning as in section 2331 of title 18, United
4 States Code).

5 (2) CRIME OF VIOLENCE.—The term “crime of
6 violence” has the same meaning as in section 16 of
7 title 18, United States Code.

8 (3) DRUG.—The term “drug” means any con-
9 trolled substance (as that term is defined in section
10 102 of the Controlled Substances Act (21 U.S.C.
11 802(b)) that was not legally prescribed for use by
12 the defendant or that was taken by the defendant
13 other than in accordance with the terms of a law-
14 fully issued prescription.

15 (4) ECONOMIC LOSS.—The term “economic
16 loss” means any pecuniary loss resulting from harm
17 (including the loss of earnings or other benefits re-
18 lated to employment, medical expense loss, replace-
19 ment services loss, loss due to death, burial costs,
20 and loss of business or employment opportunities) to
21 the extent recovery for such loss is allowed under ap-
22 plicable State law.

23 (5) HARM.—The term “harm” includes phys-
24 ical, nonphysical, economic, and noneconomic losses.

1 (6) HATE CRIME.—The term “hate crime”
 2 means a crime described in section 1(b) of the Hate
 3 Crime Statistics Act (28 U.S.C. 534 note)).

4 (7) NONECONOMIC LOSSES.—The term “non-
 5 economic losses” means losses for physical and emo-
 6 tional pain, suffering, inconvenience, physical im-
 7 pairment, mental anguish, disfigurement, loss of en-
 8 joyment of life, loss of society and companionship,
 9 loss of consortium (other than loss of domestic serv-
 10 ice), injury to reputation, and all other nonpecuniary
 11 losses of any kind or nature.

12 (8) SMALL BUSINESS.—

13 (A) IN GENERAL.—The term “small busi-
 14 ness” means any unincorporated business, or
 15 any partnership, corporation, association, unit
 16 of local government, or organization that has
 17 less than 25 full-time employees.

18 (B) CALCULATION OF NUMBER OF EM-
 19 PLOYEES.—For purposes of subparagraph (A),
 20 the number of employees of a subsidiary of a
 21 wholly-owned corporation includes the employ-
 22 ees of—

- 23 (i) a parent corporation; and
 24 (ii) any other subsidiary corporation
 25 of that parent corporation.

1 (10) STATE.—The term “State” means each of
2 the several States, the District of Columbia, the
3 Commonwealth of Puerto Rico, the Virgin Islands,
4 Guam, American Samoa, the Northern Mariana Is-
5 lands, any other territory or possession of the Unit-
6 ed States, or any political subdivision of any such
7 State, territory, or possession.

8 **SEC. 4. LIMITATION ON PUNITIVE DAMAGES FOR SMALL**
9 **BUSINESSES.**

10 (a) GENERAL RULE.—Except as provided in section
11 6, in any civil action against a small business, punitive
12 damages may, to the extent permitted by applicable State
13 law, be awarded against the small business only if the
14 claimant establishes by clear and convincing evidence that
15 conduct carried out by that defendant through willful mis-
16 conduct or with a conscious, flagrant indifference to the
17 rights or safety of others was the proximate cause of the
18 harm that is the subject of the action.

19 (b) LIMITATION ON AMOUNT.—In any civil action
20 against a small business, punitive damages shall not ex-
21 ceed the lesser of—

22 (1) two times the total amount awarded to the
23 claimant for economic and noneconomic losses; or

24 (2) \$250,000.

1 (c) APPLICATION BY COURT.—This section shall be
 2 applied by the court and shall not be disclosed to the jury.

3 **SEC. 5. LIMITATION ON SEVERAL LIABILITY FOR NON-**
 4 **ECONOMIC LOSS FOR SMALL BUSINESSES.**

5 (a) GENERAL RULE.—Except as provided in section
 6 6, in any civil action against a small business, the liability
 7 of each defendant that is a small business, or the agent
 8 of a small business, for noneconomic loss shall be deter-
 9 mined in accordance with subsection (b).

10 (b) AMOUNT OF LIABILITY.—

11 (1) IN GENERAL.—In any civil action described
 12 in subsection (a)—

13 (A) each defendant described in that sub-
 14 section shall be liable only for the amount of
 15 noneconomic loss allocated to that defendant in
 16 direct proportion to the percentage of respon-
 17 sibility of that defendant (determined in accord-
 18 ance with paragraph (2)) for the harm to the
 19 claimant with respect to which the defendant is
 20 liable; and

21 (B) the court shall render a separate judg-
 22 ment against each defendant described in that
 23 subsection in an amount determined pursuant
 24 to subparagraph (A).

1 (2) PERCENTAGE OF RESPONSIBILITY.—For
2 purposes of determining the amount of noneconomic
3 loss allocated to a defendant under this section, the
4 trier of fact shall determine the percentage of re-
5 sponsibility of each person responsible for the harm
6 to the claimant, regardless of whether or not the
7 person is a party to the action.

8 **SEC. 6. EXCEPTIONS TO LIMITATIONS ON LIABILITY.**

9 The limitations on liability under sections 4 and 5
10 do not apply to any misconduct of a defendant—

11 (1) that constitutes—

12 (A) a crime of violence;

13 (B) an act of international terrorism; or

14 (C) a hate crime;

15 (2) that involves—

16 (A) a sexual offense, as defined by applica-
17 ble State law; or

18 (B) a violation of a Federal or State civil
19 rights law; or

20 (3) if the defendant was under the influence (as
21 determined pursuant to applicable State law) of in-
22 toxicating alcohol or a drug at the time of the mis-
23 conduct, and the fact that the defendant was under
24 the influence was the cause of any harm alleged by
25 the plaintiff in the subject action.

1 **SEC. 7. PREEMPTION AND ELECTION OF STATE NON-**
 2 **APPLICABILITY.**

3 (a) **PREEMPTION.**—Subject to subsection (b), this
 4 Act preempts the laws of any State to the extent that
 5 State laws are inconsistent with this Act, except that this
 6 Act shall not preempt any State law that provides addi-
 7 tional protections from liability for small businesses.

8 (b) **ELECTION OF STATE REGARDING NON-**
 9 **APPLICABILITY.**—This Act does not apply to any action
 10 in a State court against a small business in which all par-
 11 ties are citizens of the State, if the State enacts a stat-
 12 ute—

13 (1) citing the authority of this subsection;

14 (2) declaring the election of such State that this
 15 Act does not apply as of a date certain to such ac-
 16 tions in the State; and

17 (3) containing no other provision.

18 **SEC. 8. EFFECTIVE DATE.**

19 (a) **IN GENERAL.**—This Act shall take effect 90 days
 20 after the date of enactment of this Act.

21 (b) **APPLICATION.**—This Act applies to any claim for
 22 harm caused by an act or omission of a small business,
 23 if the claim is filed on or after the effective date of this
 24 Act, without regard to whether the harm that is the sub-

- 1 ject of the claim or the conduct that caused the harm oc-
- 2 curred before such effective date.

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