

110TH CONGRESS  
1ST SESSION

# H. R. 2995

To provide small businesses certain protections from litigation excesses.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 11, 2007

Mr. CHABOT (for himself, Mr. AKIN, Mr. BARTLETT of Maryland, Mr. BOREN, Ms. GINNY BROWN-WAITE of Florida, Mr. CONAWAY, Mr. FEENEY, Mr. FRANKS of Arizona, Mr. GINGREY, Mr. MILLER of Florida, Mrs. MUSGRAVE, Mr. PITTS, Mr. WALBERG, and Mr. WELDON of Florida) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To provide 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 Liabil-  
5 ity Reform Act of 2007”.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) the defects in the United States civil justice  
9 system have a direct and undesirable effect on inter-

1 state commerce by decreasing the availability of  
2 goods and services in commerce;

3 (2) the spiraling costs of litigation and the  
4 magnitude and unpredictability of punitive damage  
5 awards and noneconomic damage awards have con-  
6 tinued unabated for at least the past 30 years;

7 (3) the Supreme Court of the United States has  
8 recognized that a punitive damage award can be un-  
9 constitutional if the award is grossly excessive in re-  
10 lation to the legitimate interest of the government in  
11 the punishment and deterrence of unlawful conduct;

12 (4) just as punitive damage awards can be  
13 grossly excessive, so can it be grossly excessive in  
14 some circumstances for a party to be held respon-  
15 sible under the doctrine of joint and several liability  
16 for damages that party did not cause;

17 (5) as a result of joint and several liability, en-  
18 tities including small businesses are often brought  
19 into litigation despite the fact that their conduct  
20 may have little or nothing to do with the accident  
21 or transaction giving rise to the lawsuit, and may  
22 therefore face increased and unjust costs due to the  
23 possibility or result of unfair and disproportionate  
24 damage awards;

1           (6) due to high liability costs and unwarranted  
2 litigation costs, small businesses face higher costs in  
3 purchasing insurance through interstate insurance  
4 markets to cover their activities; and

5           (7) legislation to address these concerns is an  
6 appropriate exercise of the powers of Congress under  
7 clauses 3, 9, and 18 of section 8 of article I of the  
8 Constitution of the United States, and the 14th  
9 amendment to the Constitution of the United States.

10 **SEC. 3. DEFINITIONS.**

11 In this Act:

12           (1) **CRIME OF VIOLENCE.**—The term “crime of  
13 violence” has the same meaning as in section 16 of  
14 title 18, United States Code.

15           (2) **DRUG.**—The term “drug” means any con-  
16 trolled substance (as defined in section 102 of the  
17 Controlled Substances Act (21 U.S.C. 802)) that  
18 was not legally prescribed for use by the defendant  
19 or that was taken by the defendant other than in ac-  
20 cordance with the terms of a lawfully issued pre-  
21 scription.

22           (3) **ECONOMIC LOSS.**—The term “economic  
23 loss” means any pecuniary loss resulting from harm  
24 (including the loss of earnings or other benefits re-  
25 lated to employment, medical expense loss, replace-

1       ment services loss, loss due to death, burial costs,  
2       and loss of business or employment opportunities) to  
3       the extent recovery for such loss is allowed under ap-  
4       plicable State law.

5           (4) HARM.—The term “harm” means any phys-  
6       ical injury, illness, disease, or death or damage to  
7       property.

8           (5) INTERNATIONAL TERRORISM.—The term  
9       “international terrorism” has the same meaning as  
10      in section 2331 of title 18, United States Code.

11          (6) NONECONOMIC LOSS.—The term “non-  
12      economic loss” means loss for physical or emotional  
13      pain, suffering, inconvenience, physical impairment,  
14      mental anguish, disfigurement, loss of enjoyment of  
15      life, loss of society and companionship, loss of con-  
16      sortium (other than loss of domestic service), injury  
17      to reputation, or any other nonpecuniary loss of any  
18      kind or nature.

19          (7) PERSON.—The term “person” means any  
20      individual, corporation, company, association, firm,  
21      partnership, society, joint stock company, or any  
22      other entity (including any governmental entity).

23          (8) PUNITIVE DAMAGES.—The term “punitive  
24      damages” means damages awarded against any per-  
25      son or entity to punish or deter such person, entity,

1 or others from engaging in similar behavior in the  
2 future. Such term does not include any civil pen-  
3 alties, fines, or treble damages that are assessed or  
4 enforced by an agency of State or Federal govern-  
5 ment pursuant to a State or Federal statute.

6 (9) SMALL BUSINESS.—

7 (A) IN GENERAL.—The term “small busi-  
8 ness” means any unincorporated business, or  
9 any partnership, corporation, association, unit  
10 of local government, or organization that has  
11 fewer than 50 full-time employees as deter-  
12 mined on the date the civil action involving the  
13 small business is filed.

14 (B) CALCULATION OF NUMBER OF EM-  
15 PLOYEES.—For purposes of subparagraph (A),  
16 the number of employees of a subsidiary of a  
17 wholly owned corporation includes the employ-  
18 ees of—

19 (i) a parent corporation; and

20 (ii) any other subsidiary corporation  
21 of that parent corporation.

22 (10) STATE.—The term “State” means each of  
23 the several States, the District of Columbia, the  
24 Commonwealth of Puerto Rico, the Virgin Islands,  
25 Guam, American Samoa, the Northern Mariana Is-

1 lands, any other territory or possession of the  
2 United States, or any political subdivision of any  
3 such State, commonwealth, territory, or possession.

4 **SEC. 4. LIMITATION ON PUNITIVE DAMAGES FOR SMALL**  
5 **BUSINESSES.**

6 Except as provided in section 6, in any civil action  
7 against a small business, punitive damages may, to the  
8 extent permitted by applicable Federal or State law, be  
9 awarded against the small business only if the claimant  
10 establishes by clear and convincing evidence that conduct  
11 carried out by that defendant with a conscious, flagrant  
12 indifference to the rights or safety of others was the proximate  
13 cause of the harm that is the subject of the action.

14 **SEC. 5. LIMITATION ON JOINT AND SEVERAL LIABILITY**  
15 **FOR NONECONOMIC LOSS FOR SMALL BUSI-**  
16 **NESSES.**

17 (a) GENERAL RULE.—Except as provided in section  
18 6, in any civil action against a small business, the liability  
19 of each defendant that is a small business, or the agent  
20 of a small business, for noneconomic loss shall be deter-  
21 mined in accordance with subsection (b).

22 (b) AMOUNT OF LIABILITY.—

23 (1) IN GENERAL.—In any civil action described  
24 in subsection (a)—

1 (A) each defendant described in that sub-  
2 section shall be liable only for the amount of  
3 noneconomic loss allocated to that defendant in  
4 direct proportion to the percentage of responsi-  
5 bility of that defendant (determined in accord-  
6 ance with paragraph (2)) for the harm to the  
7 claimant with respect to which that defendant  
8 is liable; and

9 (B) the court shall render a separate judg-  
10 ment against each defendant described in that  
11 subsection in an amount determined under sub-  
12 paragraph (A).

13 (2) PERCENTAGE OF RESPONSIBILITY.—For  
14 purposes of determining the amount of noneconomic  
15 loss allocated to a defendant under this section, the  
16 trier of fact shall determine the percentage of re-  
17 sponsibility of each person responsible for the harm  
18 to the claimant, regardless of whether or not the  
19 person is a party to the action.

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

21 The limitations on liability under sections 4 and 5  
22 do not apply—

23 (1) to any defendant whose misconduct—

24 (A) constitutes—

25 (i) a crime of violence; or

1 (ii) an act of international terrorism;

2 (B) results in liability for damages relating  
3 to the injury to, destruction of, loss of, or loss  
4 of use of, natural resources described in—

5 (i) section 1002(b)(2)(A) of the Oil  
6 Pollution Act of 1990 (33 U.S.C.  
7 2702(b)(2)(A)); or

8 (ii) section 107(a)(4)(C) of the Com-  
9 prehensive Environmental Response, Com-  
10 pensation, and Liability Act of 1980 (42  
11 U.S.C. 9607(a)(4)(C));

12 (C) involves—

13 (i) a sexual offense, as defined by ap-  
14 plicable State law; or

15 (ii) a violation of a Federal or State  
16 civil rights law;

17 (D) occurred at the time the defendant  
18 was under the influence (as determined under  
19 applicable State law) of intoxicating alcohol or  
20 a drug, and the fact that the defendant was  
21 under the influence was the cause of any harm  
22 alleged by the plaintiff in the subject action; or

23 (2) to any cause of action which is brought  
24 under the provisions of title 31, United States Code,  
25 relating to false claims (31 U.S.C. 3729–3733) or to



1 any other cause of action brought by the United  
2 States relating to fraud or false statements.

3 **SEC. 7. PREEMPTION AND ELECTION OF STATE NON-**  
4 **APPLICABILITY.**

5 (a) PREEMPTION.—Subject to subsection (b), this  
6 title preempts the laws of any State to the extent that  
7 State laws are inconsistent with this title.

8 (b) ELECTION OF STATE REGARDING NONAPPLICA-  
9 BILITY.—This title does not apply to any action in a State  
10 court against a small business in which all parties are citi-  
11 zens of the State, if the State enacts a statute—

12 (1) citing the authority of this subsection;

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

16 (3) containing no other provision.

17 **SEC. 8. EFFECTIVE DATE.**

18 This Act shall take effect with respect to any civil  
19 action commenced after the date of the enactment of this  
20 Act without regard to whether the harm that is the subject  
21 of the action occurred before such date.

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