## THE JOURNAL

The SPEAKER pro tempore. Pursuant to clause 5 of rule I, the pending business is the question de novo of the Speaker's approval of the Journal.

The question is on the Speaker's approval of the Journal of the last day's proceedings.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

### RECORDED VOTE

Mr. VOLKMER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 323, noes 83, answered ''present'' 1, not voting 24, as follows:

[Roll No. 109]

AYES—323

Ackerman
Allard
Andrews
Archer
Armey
Bachus
Baesler
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Barrett (WI)
Bartlett
Barton
Bass
Bateman
Beilenson
Bentsen
Bereuter
Berman
Bevill
Bilbray
Bilirakis
Bishop
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brown (OH)
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Cardin
Castle
Chabot
Chambliss
Chapman
Chenoweth
Christensen
Chrysler
Clement
Clinger
Clyburn
Coble
Coburn
Collins (GA)
Combest
Condit
Conyers
Cooley
Costello
Cox
Coyne
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Danner
Davis
Deal
DeLauro
DeLay
Dellums
Diaz-Balart
Dickey
Dicks
Dixon
Dooley
Doolittle
Dornan
Doyle
Dreier
Duncan
Dunn
Ehlers
Ehrlich
Emerson
English
Ensign
Evans
Everett
Ewing
Farr
Fattah
Fawell
Fields (LA)
Flake
Flanagan
Foglietta
Foley
Forbes
Fox
Frank (MA)
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Furse
Gallegly
Ganske
Gejdenson
Gekas
Geren
Gilchrest
Gilman
Gonzalez
Goodlatte
Gordon
Goss
Graham
Greenwood
Gunderson
Hall (TX)
Hamilton
Hancock
Hansen
Hastert
Hastings (WA)
Hayworth
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hoyer
Hunter
Hutchinson
Hyde
Inglis
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
Johnson (CT)
Johnson (SD)
Johnson, Sam
Jones
Kanjorski
Kaptur
Kasich
Kelly
Kennedy (MA)
Kennelly
Kim
King
Kingston
Kleczka
Klink
Klug
Knollenberg
LaHood
Lantos
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Lipinski
Livingston
LoBiondo
Lofgren
Longley
Lowey
Lucas
Luther
Maloney
Manton
Manzullo
Martinez
Martini
Mascara
McCarthy
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
McKinney
Meehan
Metcalf
Meyers
Mica
Miller (FL)
Minge
Moakley
Molinari
Mollohan
Montgomery
Moorhead
Moran
Morella
Murtha
Myers
Myrick
Neal
Nethercutt
Neumann
Ney
Norwood
Nussle
Ortiz
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Petri
Pomeroy
Porter
Portman
Poshard
Pryce
Quillen
Quinn
Radanovich
Rahall
Ramstad
Rangel
Reed
Regula
Riggs
Rivers
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Rose
Roth
Roukema
Roybal-Allard
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Schumer
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Skelton
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Stearns
Stenholm
Stockman
Stump
Stupak
Talent
Tanner
Tate
Tauzin
Taylor (NC)
Tejeda
Thomas
Thornberry
Thornton
Tiahrt
Torricelli
Traficant
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Waxman
Weldon (FL)
Weller
White
Whitfield
Wicker
Wilson
Wolf
Woolsey
Wynn
Young (FL)
Zeliff

NOES—83

Abercrombie
Baldacci
Becerra
Bonior
Borski
Brown (CA)
Brown (FL)
Clay
Clayton
Coleman
Collins (MI)
DeFazio
Deutsch
Dingell
Durbin
Edwards
Engel
Fazio
Filner
Frost
Gephardt
Gibbons
Gillmor
Green
Gutknecht
Hall (OH)
Hastings (FL)
Hefley
Hilliard
Hinchey
Jacobs
Johnson, E. B.
Johnston
Kennedy (RI)
Kildee
LaFalce
Levin
Lewis (GA)
Markey
Matsui
McDermott
McHale
Meek
Menendez
Miller (CA)
Mink
Nadler
Oberstar
Obey
Olver
Orton
Owens
Pallone
Pastor
Payne (NJ)
Peterson (MN)
Pickett
Pombo
Richardson
Rush
Sabo
Sawyer
Schroeder
Scott
Skaggs
Slaughter
Spratt
Stark
Studds
Taylor (MS)
Thompson
Thurman
Torkildsen
Towns
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Wise
Yates
Zimmer

ANSWERED ''PRESENT''—1

Harman

NOT VOTING—24

Bryant (TX)
Collins (IL)
de la Garza
Doggett
Eshoo
Fields (TX)
Ford
Fowler
Goodling
Gutierrez
Hayes
Kolbe
McNulty
Pelosi
Sanders
Seastrand
Serrano
Smith (TX)
Stokes
Torres
Velazquez
Weldon (PA)
Williams
Young (AK)

☐ 1159

Mr. DINGELL changed his vote from ''aye'' to ''no.''

Mr. BARCIA changed his vote from ''no'' to ''aye.''

So the Journal was approved.

The result of the vote was announced as above recorded.

## PERSONAL EXPLANATION

Mr. GOODLING. Mr. Speaker, this morning I was attending the funeral of a close friend. Regrettably, I missed rollcall vote 108, House Resolution 394, on ordering the previous question. I also missed rollcall vote 109 on approving the Journal. Had I been present I would have voted ''yea'' on both.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF HOUSE JOINT RESOLUTION 159

Mr. GOSS. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of House Joint Resolution 159.

The SPEAKER pro tempore (Mr. GUNDERSON). Is there objection to the request of the gentleman from Florida?

There was no objection.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF HOUSE JOINT RESOLUTION 159, TAX LIMITATION CONSTITUTIONAL AMENDMENT

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 104–513) on the resolution (H. Res. 395) providing for consideration of the joint resolution (H.J. Res. 159) proposing an amendment to the Constitution of the United States to require two-thirds majorities for bills increasing taxes, which was referred to the House Calendar and ordered to be printed.

## REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 842, TRUTH IN BUDGETING ACT

Mr. GOSS, from the Committee on Rules, submitted a privileged report (Rept. No. 104–514) on the resolution (H. Res. 396) providing for consideration of the bill (H.R. 842) to provide off-budget treatment for the Highway Trust Fund, the Airport and Airway Trust Fund, the Inland Waterways Trust Fund, and the Harbor Maintenance Trust Fund, which was referred to the House Calendar and ordered to be printed.

## REMOVAL OF NAME OF MEMBER AS COSPONSOR OF H.R. 1834

Ms. JOHNSON of Connecticut. Mr. Speaker, I ask unanimous consent that my name be removed as a cosponsor of H.R. 1834.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Connecticut?

There was no objection.

## CONFERENCE REPORT ON H.R. 956, COMMONSENSE PRODUCT LIABILITY LEGAL REFORM ACT OF 1996

Mr. HYDE. Mr. Speaker, pursuant to House Resolution 394, I call up the conference report on the bill (H.R. 956) to establish legal standards and procedures for product liability litigation, and for other purposes.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Pursuant to clause 2(c) of rule XXVIII, the conference report is considered as having been read.

(For conference report and statement, see proceedings of the House of March 14, 1996, at page H2238.)

The SPEAKER pro tempore. The gentleman from Illinois [Mr. HYDE] and the gentleman from Michigan [Mr. CONYERS] each will control 30 minutes.

The Chair recognizes the gentleman from Illinois [Mr. HYDE].

GENERAL LEAVE

Mr. HYDE. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the conference report on H.R. 956.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield 15 minutes of my time to the gentleman from Virginia [Mr. BLILEY], chairman of the Committee on Commerce, and I ask unanimous consent that he may be permitted to control that 15 minutes.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Illinois?

There was no objection.

Mr. CONYERS. Mr. Speaker, I yield 15 minutes to the gentleman from Michigan [Mr. DINGELL], former ranking member of the Committee on Commerce, the Dean of the House, and I ask unanimous consent that he be permitted to yield time in blocks.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. HYDE. Mr. Speaker, I yield myself 2 minutes.

(Mr. HYDE asked and was given permission to revise and extend his remarks.)

Mr. HYDE. Mr. Speaker, I rise in support of the conference report on H.R. 956, the Commonsense Product Liability Legal Reform Act of 1996. This legislation is an important first step in the longstanding congressional effort to reform our legal system. Although the reforms contained in the conference report do not go as far as I and many in this Chamber would have liked, this legislation takes some important first steps in restraining the excesses of the current out-of-control legal system. It is a solid downpayment on long-needed reform.

When the House passed H.R. 956, the Commonsense Product Liability Legal Reform Act of 1995, in March of last year, we did so on a strong bipartisan vote of 265 to 161. That vote sent a message that the new Republican majority in Congress was resolute in its commitment to bring about broad-based legal reform and an end to lawsuit abuse. It has taken us more than a year to complete this process, but we now have before us a conference agreement which, while not as ambitious as the House bill, will for the first time in the history of Congress take aim at the inequities and inefficiencies of our legal system.

This is not only a first step in the direction we need to head, but it is a step which we can realistically enact this year. The Senate has already approved this measure by a vote of 59 to 40. Despite the fact that the agreement does not go far as reforms that the House voted for—notably extending relief to all civil actions—we must not lose sight of the fact that product liability reform is an historic accomplishment. It will unleash an American job creation boom and will translate into real growth for our economy.

I would like to take this opportunity to highlight several key provisions contained in the conference report.

STATUTE OF REPOSE

One very important part of this conference agreement imposes a uniform statute of repose of 15 years for cases involving durable goods. A statute of repose specifies the period of time after manufacture of a product during which a lawsuit relating to the product may be brought. The statute of repose addresses the unfairness that results when manufacturers are sued on the basis of products that left their control many years ago. This allows U.S. manufacturers to compete with foreign companies that have entered the marketplace in recent years and face no liability exposure for very old products.

Section 101(7) of the conference report defines the term durable good as meaning first, ''any product or any component of any such product which has a normal life expectancy of three or more years'' or second, any product which ''is of a character subject to allowance for depreciation under the Internal Revenue Code of 1986 and which is: (A) used in a trade or business; (B) held for the production of income; or (C) sold or donated to a governmental or private entity for the production of goods, training, demonstration or any other similar purpose.'' Thus, the agreement describes two distinct categories of products which will be covered by the statute of repose provision.

Under the first clause of the definition, a manufacturer of a product such as a machine tool, farm equipment, a bicycle or a ladder, a toaster or gas furnace, an elevator, or building materials such as plate glass, wall coatings, or roofing tiles could not be sued based on harm allegedly caused by that product more than 15 years after the product was first delivered. Thus, a product which has a normal life expectancy of 3 or more years need not meet any other criteria to qualify as a durable good.

Again, the second clause of section 101(7) covers products that are subject to allowance for depreciation under the Internal Revenue Code and used in a trade or business, held for the production of income, or sold or donated to a governmental or private entity for the production of goods, training, or similar purposes. These types of products would also be covered by the 15-year statute of repose adopted in the conference agreement.

Some have erroneously stated that the statute of repose in the conference report is confined to goods used in the workplace. That is not correct. The language of the conference agreement is clearly not limited in this manner, nor should it be.

In his eloquent statement in support of the legislation, Senator GORTON pointed out two examples—step ladders and football helmets—where a large proportion of the price of the product is accounted for by the cost of product liability actions and insurance. Senator GORTON's use of these examples underscores the irrationality of any workplace limitation on the statute of repose. A workplace limitation would make unjustified and unfair distinctions between products, and could produce wildly inconsistent results for manufacturers who may have no control over where, and under what circumstances, their products may be used.

For example, if the statute of repose were limited in such a manner, a manufacturer of a ladder used in the workplace would be protected 15 years after the ladder is sold; but if that same ladder is used in the home the statute of repose would not apply. A football helmet used in professional sports would be covered by the statute of repose; but one used in other settings would not be. There are numerous other examples of arbitrary distinctions and unequal treatment that would result from a workplace limitation. A manufacturer of a mower used by a farmer would be protected from lawsuits after 15 years, while one whose same product is used by a weekend gardener would not be. The conference report rightly eliminates these types of arbitrary and unfair distinctions.

The statute of repose provision contains certain exceptions. It does not, for example, preempt the 18-year statute of repose contained in the General Aviation Revitalization Act of 1994. Neither does it apply in a case involving a vehicle used primarily for hire, where the existing State statute of repose, if any, would continue to apply.

The conference agreement provisions will also not apply in the case where the manufacturer or seller has expressly warranted the safety or life expectancy of the product to be longer than 15 years. In those cases, the private agreement of the parties will control.

The statute of repose also includes a toxic harm exception, which has been the source of a great deal of confusion and uncertainty. This exception was included in the Senate-passed bill to address a concern which had been raised about products that cause physical injuries that are latent, that is, injuries that do not manifest themselves for many years after a person is first exposed to a product.

Because the term ''toxic harm'' was not defined in the Senate bill and is

not defined in the conference report, I want to spend a few moments clarifying the congressional intent with respect to the scope of this provision. Numerous Federal statutes and regulations contain definitions of the word ''toxic,'' and some of those definitions differ widely from others. Some of those definitions, if relied upon to interpret the ''toxic harm'' exception in H.R. 956, would broadly except from the statute of repose products where the alleged harm ranges from harm caused by excessive noise, cold, vibration, or repetitive motion—such as repetitive stress injury—to those in which the alleged harm is caused by chemical or other elements, to products like asbestos, where the injury to a person caused by the product may be latent for many years. The conferees did not adopt or incorporate these wide-ranging definitions.

The House-passed bill contained a provision which addressed the problem the Senate bill sought to address, but which used different words. The House provision excluded from the statute of repose products that cause latent harm, specifically, a ''physical illness the evidence of which does not ordinarily appear less than 15 years after the first exposure to the product.'' Although the words used were different, the intent of the House and Senate provisions was the same: to except from the statute's time bar actions involving products alleged to cause latent illness.

The House, therefore, receded to the Senate bill's use of the ''toxic harm'' language, because it too is intended to provide an exception only for products that cause physical illness, evidence of which cannot be detected until long after exposure to the product, such as, harm that cannot be detected within a 15-year period.

Finally, it is important to note that the statute of repose contained in the conference agreement only preempts State statutes of repose which are longer than 15 years. It also does not limit a State statute of repose from extending beyond durable goods to other types of products. Thus, for example, a State statute of repose, which limits suits to those brought within 12 years of delivery of the product, and which covers all goods, would not be affected by the conference agreement.

PUNITIVE DAMAGES

The conference agreement generally adopts the Senate's language regarding a limitation on punitive damages. Punitive damages are intended for cases where the defendant's conduct has been particularly harmful—where the conduct involved gross negligence or intentional conduct. They should be awarded only in the most serious cases.

Punitive damages are generally limited to two times compensatory damages or $250,000 whichever is greater. This limitation will be imposed by the court in the event that a jury—which is not to be told of the cap—awards a higher amount. In the event that the cap operates to limit an otherwise higher jury award, the conference agreement allows the court to consider whether that cap is appropriate. If after reviewing the facts of the case the court finds that the amount of punitive damages allowed under the cap is inadequate, the court may increase the award, up to the amount of the initial jury punitive damage award level. In no event may the punitive damage award exceed the amount of the original jury verdict.

The limitation on the court's ability to award punitive damages in excess of the cap in no way suggests that the court will not have the normal discretion to review and decrease punitive damage awards in the proper circumstances. This power will continue to exist whether or not the initial jury award exceeds the limitation imposed under the conference agreement.

A special rule applies in the case of defendants with a net worth of $500,000 or less, or entities employing 25 or fewer full-time employees. For cases involving those defendants, the cap on punitive damages will be two times compensatory damages or $250,000, whichever is greater. For cases involving those defendants, the court may not increase the award beyond the statutory limit.

The limitations imposed by the section are to be applied defendant by defendant. Thus, in a case involving two or more defendants, the plaintiff could potentially obtain the maximum amount of punitive damages from each defendant. For purposes of calculating the limit for each defendant, compensatory damages will include only the percentage of damages for which that defendant is found liable.

The conference agreement permits a court to award additional damage under section 108(a)(3), but only in cases of egregious conduct. Egregious conduct in this context means conduct where the defendant against which the punitive damages are awarded specifically intended to cause the harm that is the subject of the action or acted with actual malice toward the claimant. Unless the defendant's conduct meets this standard, the provisions of section 108(a)(3) will not apply, and the court will have no authority to exceed the amount of punitive damages established in section 108(a)(1).

The provisions of the conference agreement in section 108(a)(3) which allow the court to exceed limitations on punitive damages are intended by the conferees to be treated as severable in the event a court determines that judges lack constitutional authority to award additional amounts of punitive damages. Should a court so find, the continued operation of the limitations otherwise imposed by section 108 will not be affected.

Section 108 does not preempt State laws which more narrowly limit the amount of punitive damages that may be awarded. Thus, if a State imposes a dollar limit on punitive damages which is less than the cap set forth in section 108(a)(1), the State law will apply, and the conference agreement's provision allowing for the award of additional damages by the court will not apply. Similarly, if the State law contains a provision for additur, but restricts the amount of additur permitted to less than the initial jury award, the provisions of the State law will prevail.

Thus, the punitive damage reforms of H.R. 956 are minimum standards and limitations designed to provide some measure of rationality; they would not displace the law of States with more restrictive punitive damage regimes. For example, many States have punitive damage limitations that do not allow the judge to override the statutory maximum. Nothing in the conference report displaces the laws of such States. Similarly, States are free to require higher standards of proof and to impose substantive requirements in addition to those in the conference report.

The preemptive effect of the punitive damage reforms turns on three separate provisions of the conference report. First, the Federal law ''supersedes State law only to the extent that State law applies to an issue covered by the Act.'' Second, the conference report provides that ''punitive damages may, to the extent permitted by applicable State law, be awarded against a defendant if the claimant establishes by clear and convincing evidence that conduct carried out by the defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.'' Third, the conference report provides that the Act ''does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.''

Mr. Speaker, the express preservation of State laws that further limit the award of punitive damages was part of the bill approved by the House in March, but it was not part of the amendment passed by the Senate. During the Conference, I led the House conferees in insisting that this provision be included. The conference report adopts the House preemption language—language that makes very clear the preemptive effect of the punitive damage reforms.

Taken together with the other provisions, this provision conclusively demonstrates that the Act would not expand liability for punitive damages, or increase the permissible amount of punitive damages, in any State. If State law imposes substantive or procedural requirements concerning the circumstances under which punitive damages may be awarded that are more stringent than the Federal law, the State law controls. Similarly, if the application of State law limits on the amount of punitive damages results in an award of punitive damages that is less than that permitted under the Federal law, the State law controls.

Let me explain, Mr. Speaker, why this is the only interpretation that is consistent with the plain language of the conference report, as well as the intent of its drafters.

Consider, for example, more stringent State standards for the award of punitive damages. Everyone agrees that the act would not make punitive damages available in States, such as Washington, that do not currently allow the award of punitive damages. In such States, no award of punitive damages is permitted by applicable State law and the punitive damage provisions therefore do not come into play.

Likewise, the act would not lower the standards for awarding punitive damages in States such as Colorado—which requires proof beyond a reasonable doubt—or Maryland—which requires proof of actual malice. If a claimant meets the standard of proof in the Federal law but not the higher standard imposed by State law, no award of punitive damages is permitted by applicable state law. Again, the punitive damage provisions of the Federal statute simply do not apply to cases in which punitive damages would not otherwise be available under State law.

In addition, State laws that impose a higher standard of proof than the Federal act, or that provide for additional substantive requirements, further limit awards of punitive damages and therefore are not preempted by the act, which does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages. Any State law that would make punitive damages unavailable even if the Federal requirements are met, or that would result in an award of punitive damages lower than the Federal limitations, is one that further limits the award of punitive damages. Such laws expressly are not preempted.

It is also important to recognize, Mr. Speaker, that the act would not affect State caps on punitive damages. In most cases, the act would limit punitive damages to the greater of $250,000 or two times compensatory damages. At the same time, many States have limited punitive damages by providing a maximum dollar amount, a multiplier, or some other statutory limitation on the amount of punitive damages. In many cases, application of these State limitations would result in a lower punitive damage award than would application of the Federal limitations. In such cases, these State laws would remain in effect.

For example, Virginia has enacted an absolute cap of $350,000 for punitive damages. Illinois limits punitive damages to three times economic damages. Application of these limitations to a punitive damage award results in the maximum amount of punitive damages permitted by applicable State law. Even if the Federal law would allow a higher award of punitive damages, therefore, the State law limitations would control. By contrast, if the Federal limitations resulted in a lower amount, the Federal limitations would control.

Lest there be any doubt on this subject, the conference report expressly provides that the act ''does not preempt or supersede any State or Federal law to the extent that such law would further limit the award of punitive damages.'' This provision can only mean that if application of a State limitation would result in a lower award of punitive damages than the Federal rule, the further limit of the State law controls.

COMMERCIAL LOSS

The conference revisions to H.R. 956 are intended to clarify congressional intent concerning claims for commercial loss. Commercial loss, as defined in section 101(5), means any loss or damage to a product itself, loss relating to a dispute over its value, or consequential economic loss. As further stated in the definition, any claim for any of these three types of loss is to be governed by the Uniform Commercial Code or State law versions of its provisions, or by contract law. This definitional requirement that all actions for commercial loss be governed by commercial or contract law is accompanied by the affirmative mandate in section 102(a)(2) that any civil action brought for commercial loss shall be governed only by applicable commercial or contract law. Congressional intent is to codify the historical approach that tort theories are not applicable to such claims, and may not be employed with respect to them.

The reforms contained in H.R. 956 are aimed predominantly at correcting certain abuses and providing some reasonable uniformity in the tort law of products liability. Claims for commercial loss traditionally do not fall in the tort realm, but are dealt with in accordance with the contractual agreement created by the parties themselves, or by the UCC. This economic loss rule is typified by the opinions of the California supreme court in Seely versus White Motor Company, and the U.S. Supreme Court in East River Steamship Corporation versus Transamerica Delavel. Despite limited judicial inroads by other courts that have sought inappropriately to engraft tort branches onto the commercial tree, the bill excludes commercial loss from the scope of its tort-related provisions. In so excluding commercial loss, Congress did not seek to carve out a category of loss undeserving of the bill's protections, but rather to recognize that there is a massive, extant body of commercial and contract law historically more suited to such claims. In order to assure that such claims are not subject to tort system abuses that the bill aims to rectify, the conference chose affirmatively to mandate that commercial loss claims be governed exclusively by commercial or contract law. Such a rule of law is necessary to promote uniformity and predictability, in the interests of interstate commerce and due process. This position is entirely consistent with the House Judiciary Committee report (H. Rept. 104–64), and codifies the common law rule.

This bill does not intend to disrupt or affect application of the economic loss doctrine. Congress fully supports the traditional rule that disputes that essentially involve failed commercial expectations, damage or loss to a product itself, or diminished product value, are not recoverable in tort. Exclusion of commercial loss from the bill is intended to protect the body of extant contract and commercial law, and while assuring that tort or other inappropriate causes of action are not engrafted onto that body of law.

DEFINITION OF PRODUCT

The definition of a product in section 101(14) of the conference agreement is not intended to include improvements to real property. A manufacturer is able to test its product and control quality in a way that is impossible on a construction site where a variety of systems are being coordinated to create a more complex structure. Each construction project is built from an extremely complicated and unique set of drawings and specifications involving interrelated systems and many individual products specified by a design professional and over which the constructor has little control. Forty-seven States have recognized this distinction between a product and an improvement to real property by enacting specific statutes of repose for improvements to real property. It was the intent of the conferees that the definition of product in H.R. 956 honor this distinction.

Mr. Speaker, after nearly two decades of effort to fashion a comprehensive set of product liability reforms, we have crafted a bipartisan consensus package of bottom-up reforms. These reforms are desperately needed to restore some fairness to our present system and to remove roadblocks to our country's economic growth and job creation. I urge my colleagues to join me in supporting the conference report to accompany H.R. 956.

Mr. CONYERS. Mr. Speaker, I yield myself such time as I may consume.

(Mr. CONYERS asked and was given permission to revise and extend his remarks.)

Mr. CONYERS. Mr. Speaker, this is a continuation of the war on public safety. We have before us a conference measure which would not only cap and limit the amount of damages an injured victim can recover, but would, in instances, completely cut off our consumers' and workers' rights to seek compensation, even in uncontested cases of negligence.

Mr. Speaker, this bill, the conference measure before us, in every conceivable way has been designed to disadvantage American consumers and benefit negligent corporations. The question that hangs over this discussion is why.

Remember, the Conyers amendment to get tough with foreign corporations,

which we voted twice, was dropped in conference, to require the foreign corporations to subject themselves to the discovery and jurisdiction in the U.S. courts as a condition of doing business in this country, just like everybody else. What is wrong with this, and why did the conference committee specifically refute the judgment of the majority of Members, Democratic and Republican, about this provision?

To make matters worse, Mr. Speaker, we are considering the bill at the same time the majority leader of the House, the gentleman from Texas, Mr. ARMEY, is proposing to completely eliminate safety agencies like the Consumer Product Safety Commission, while simultaneously slashing and eliminating safety regulations. Why?

If Members do not think that the threat of private lawsuits can help keep dangerous products off the market, which is what we hope to continue to do in our legal system, just ask the parents of children who have been killed by flammable pajamas, or the women who have been maimed by the Dalkon shield. Both these products are now off the market, thanks to the threat of punitive damages.

Mr. Speaker, this bill will not reduce litigation, but will stack jury awards in favor of those with large incomes or that can afford powerful legal counsel, and it would remove the most important deterrence that stopped dangerous products from coming into our homes and communities. So the bill will not reduce litigation, Mr. Speaker, because, contrary to the myth, product liability suits represent a minute portion of litigation in the United States.

Is there a law student in any school in America that is not aware that product liability suits represent less than 2 percent of the litigation carried on in the U.S. courts? Is there anybody that does not know that? This is not a partisan fact, it is not a factoid: Less than 2 percent of all the suits in the country involve product liability; and also, that product liability premiums are going down.

Punitive damages is also a myth that must be addressed among lawyers and Members of Congress. There are only an average of 14 awards a year in punitive damages. Please, 14 awards a year in punitive damages. When they are awarded, they prevent against deadly dangers in the marketplace, asbestos cases, dangerous intrauterine devices. The cap of $250,000 on punitive damages is tragic. No Fortune 500 company, or some not even Fortune 500, will be deterred from placing dangerous products on the market because of a quarter of a million dollar threat of punitive damages. It will be factored into the pricing.

Mr. Speaker, I think more and more of us are aware of that, and are going to oppose this measure for those reasons.

Mr. Speaker, in this measure before us, a conference bill, we limit the victim's rights to recover what are known as noneconomic damages when they are joint tort feasors. So if a dangerous product induces a loss of reproductive capacity in a housewife, say, she may likely be limited in her recovery where there are joint tort feasors; but if a corporate executive of some expense is injured by the same product or a different one and loses his large salary, the bill ensures that he will be fully compensated.

Mr. Speaker, I appeal to Members on the sense of fairness, this is a one-way street of Federalism: Return power to the States, as long as it disadvantages consumers and working people.

Finally, do not forget about the special interest favors lurking in the bill. Gun sellers and bar owners have obtained special language limiting their potential liability for careless sales to third parties. Did Members know that was there? It is. Electricity, water, and gas utilities corporations have obtained a provision overruling liability laws in States which hold them strictly liable for utility disasters. Do Members know that is in the bill?

Like ministers, Congressmen can preach through little babies' cries. It does not bother me a bit.

There are other hidden favors. Mothers Against Drunk Drivers are opposed to the bill. Special interests have poured $26 million into it to see these special things occur. Mr. Speaker, this bill is of special interests, by special interests, and for special interests. The administration has indicated that it will veto it. It is going nowhere, again, so vote against this extremely damaging, discriminatory piece of legislation.

The following is a more detailed description of the final conference report, outlining my concerns with the bill.

*Section 1. Short Title and Table of Contents*

*Sec. 2. Findings and Purposes.*—Sets forth a number of findings, most notably that our nation is experiencing a litigation explosion which harms our competitiveness. What the conference report fails to note is that the most recent study by the Bureau of Justice Statistics found that product liability cases represent a mere 1.67 percent of civil cases. And the clear trend of product liability filings as well as damages awarded has been decreasing: according to the National Association of Insurance Commissioners, product liability insurance premiums have dropped more than 28 percent between 1989 and 1994. The incidence of punitive damages in product liability cases is far rarer yet: a study by Professor Michael Rustad, termed by the U.S. Supreme Court as the ''most exhaustive study'' ever, found an average of only 14 such cases per year from 1965–1990. The conference report also fails to note that the bill will have very little effect on American competitiveness, since the total of all product liability costs represent a mere one cent per five dollar purchase (according to a comprehensive study completed by the Consumer Federation of America). The one provision in the House bill which would have helped U.S. firms compete—by making it easier for American consumers to sue negligent foreign manufacturers on the same terms as American firms—was quietly dropped in conference, even though the Conyers Amendment on this matter passed by a bipartisan vote of 285–166, and the House later approved a motion instructing conferees to retain the provision by a vote of 256–142.

*Section 101. Definitions.*—The term ''product'' is defined to include (i) electricity, water and gas utilities which are ordinarily subject to a strict liability in tort, and (ii) human tissue, organs, and blood products (both categories of items which were specifically excluded from the House-passed bill). The utility provision has the effect of granting utilities in 44 States the benefit of the various damage caps and limitations in the bill. No rationale has been proffered for treating utilities in these states more beneficially than others.

*Sec. 102. Applicability and Preemption.*—The conference report preempts product liability law in all 50 states and the District of Columbia to the extent they are inconsistent with the report. This represents one of the most significant shifts ever in power from the states to the federal government. Despite the fact that 47 states have altered their product liability laws in the last decade, states will no longer be free to promulgate laws which protect their citizens from dangerous and harmful products (although the bill generally does not preempt states from having more restrictive anti-consumer laws). The bill does not apply to limit the product liability rights of businesses suing manufacturers because it includes a ''commercial loss'' exception. In other words, the bill only applies to limit the rights of workers and individual citizens, not corporations.

*Sec. 103. Seller and Lessor Liability.*—Provides that a seller or lessor may only be sued for breach of an express warranty, failure to exercise reasonable care, or intentional wrongdoing, unless the court determines the victim would be unable to enforce a judgment against the manufacturer in any state court. This could force victims to bring actions in out-of-state venues against outside manufacturers, rather than being able to bring suit against their instate seller who could then bring the manufacturer into the action. This section could also have the effect of eliminating a seller's common law liability for failure to warn a consumer about its unsafe characteristics and eliminate the doctrine of implied product warranties by sellers. Although this section does not apply to ''negligent entrustment'' actions, such as those relating to careless sale of liquor or guns, the provision is drafted in a manner so that such liquor and gun sellers would benefit from the other sections of the bill (e.g., relating to limits on punitive damages and joint and several liability). The definition of ''manufacturer'' is so narrowly written that the entity who assembled the product may in some instances not be included within its scope (*e.g.*, the assembler used the preexisting design of another party). In such an event there may be no responsible party for the injured victim to sue—the seller is relieved of liability and there is no ''manufacturer.''

*Sec. 104. Defense Based on Claimant's use of Alcohol or Drugs.*—Alters the common law rule of contributory negligence (under which a victim's damages are limited to the extent that his or her own negligence contributed to the accident in question) by specifying that it shall be a complete defense to a product liability action if the victim was intoxicated and was more than 50% responsible for the accident. Since the section provides for no exceptions, it can result in a number of unfair results. For example manufacturers of devices designed to protect against using a product while intoxicated—such as breathalyzers now installed on some cars—would appear to be fully immunized from liability.

*Sec. 105. Misuse or Alteration.*—Defendants may have their liability lessened by the percentage of liability attributable to any alteration or misuse of the product. This would

even apply in cases where a third party (other than an employer) was responsible for the alteration.

*Sec. 106. Time Limitations of Liability.*—Section 106(a) provides for a nationwide two-year statute of limitations, preempting longer statutes in 25 states and the District of Columbia. Section 106(b) creates a new federal ''statute of repose,'' barring *any* product liability action for certain goods not brought within fifteen years of the date of delivery. The statute of repose applies not only to business goods (such as machinery), but to consumer goods (such as bicycles and microwaves) having a life expectancy of three or more years. The statute of repose provision would result in many occasions where a defective product leads to harm that is totally non-compensable. The one-sided nature of the statute of repose provision is highlighted by the fact that it does not preempt state laws providing for a shorter statute of repose.

*Sec. 107. Alternative Dispute Resolution Procedures.*—Parties are encouraged to pursue alternative dispute resolution under applicable state law, but there are no penalties for parties who refuse to participate.

*Sec. 108. Punitive Damages.*—Would arbitrarily limit the maximum amount of punitive damages which may be awarded to the greater of two times compensatory damages or $250,000 (although the judge would have very limited discretion to allow an increased award based on a variety of very narrow extenuating factors). Lawsuits against individuals whose net worth does not exceed $500,000 and businesses with less than 25 full-time employees would be subject to a reduced punitive damages cap equal to the *lesser* of $250,000 or two times compensatory damages. The bill would also limit the award of punitive damages to only those cases where the victim had established by ''clear and convincing evidence'' that the injury was the ''proximate cause'' of conduct specifically intended to cause harm manifesting a ''conscious, flagrant indifference to the rights and safety of others.'' Finally, the section would permit any party to request a separate proceeding to determine whether punitive damages should be awarded and the extent of such damages. Again, the punitive damages cap is written so it only preempts states with no punitive damage caps or higher caps, it does not preempt states with lower caps. (This could create confusion to the extent a state's cap is more lenient in some respects, and more restrictive in other respects than the federal standard.)

These changes would in large part eliminate the role of punitive damages in the product liability system, thereby reducing the system's overall deterrent effect. For a civil case, these proposed evidentiary and substantive standards come close to ''criminalizing'' tort law for purposes of punitive damages: in other words, an injured victim would almost have to show that a manufacturer acted with ''criminal intent''—and not gross negligence. Moreover, the legislation creates a standard of ''conscious indifference'' which appears to be so narrow as to be mutually exclusive. Permitting parties to bifurcate proceedings concerning the award of punitive damages will lead to far more costly and time consuming proceedings, generally working to the disadvantage of harmed victims. The proposed caps largely eliminate incentives for manufacturers to remove life-threatening products from the market place, and instead allow defendants to substitute ''cost-benefit'' analyses based on the estimated value of lives. The exception for ''small businesses'' would insulate more than ⅔ of American businesses from significant punitive damages (according to Census Bureau data), and create perverse new incentives to avoid expanding employment opportunities. The ''additur'' procedure allowing the court to increase punitive damages above the statutory cap may well be held to be an unconstitutional violation of the defendant's right to a jury trial in federal court. *See Dimick* v. *Schiedt,* 293 U.S. 474 (1935).

*Sec. 109. Liability for Certain Claims Related to Death.*—This incorporates provisions from the Senate bill so that the punitive damages cap does not apply to a particular action brought in Alabama.

*Sec. 110. Joint and Several Liability*—Would supersede traditional state common law by eliminating joint and several liability for non-economic damages, such as pain and suffering. (The justification for the common law rule is that it is better that a wrongdoer who can afford to do so pay more than its share, rather than an innocent victim obtain less than full recovery; also, a defendant who pays more than its share of damages can seek contribution from the other defendants.) The provision has the effect of discriminating against groups less likely to be able to establish significant economic damages, such as women, minorities, seniors and the poor. Moreover, the elimination of joint and several liability would actually increase courts' caseloads and increase litigation costs, by discouraging settlements and requiring injured consumers to initiate multiple claims.

*Sec. 111. Workers Compensation Subrogation*—In addition to codifying certain state laws permitting employers to seek subrogation from their employees, this provision allows a responsible manufacturer to seek contribution from a negligent employer up to the amount of workers compensation benefits paid by the employer. (The provision also provides for reimbursement of the employer's legal fees by the manufacturer if the employer is wrongfully brought into an action.) Legal aspects of workers compensation are new issues that the House has never considered or debated before.

*Title II—Limitation on Liability relating to Medical Implants*—Suppliers of raw material and component parts used to assemble medical implants (such as breast implants) would only be liable under State law if a victim establishes the supplier failed to meet the contract requirements or specifications for the implant. The bill also specifies new rules for bringing suits against biomaterials manufacturers and sellers, provides for an expedited removal procedure for the biomaterials suits and provides for reimbursement of the defendant's legal fees if the victim's claim against it is found to be meritless. (No reimbursement mechanism is provided for the victim if the suit is successful, however.)

*Title III—Limits on Application; Effective Date*—Specifies that federal appellate court decisions supersede other court interpretations and the Act applies to lawsuits brought after the date of enactment.

Mr. Speaker, I reserve the balance of my time.

Mr. BLILEY. Mr. Speaker, I yield myself 3 minutes.

(Mr. BLILEY asked and was given permission to revise and extend his remarks.)

Mr. BLILEY. Mr. Speaker, I rise in support of the conference report on H.R. 956, the Commonsense Product Liability and legal Reform Act of 1995. This is a projobs, procompetitiveness bill that will help to bring fairness and accountability back into our legal system.

Almost two decades ago, the Commerce Committee began a bipartisan effort to reform our product liability laws. Over the years, we have held dozens of hearings, receiving written and oral testimony from hundreds of witnesses. Early last year, the committee reported legislation which is incorporated into the conference report before us now. And today, as part of the Contract with America, and with the leadership of the distinguished chairman of the Judiciary Committee, we stand ready to put some historic changes into place.

I regret that the conference report falls somewhat short of the reforms included in our earlier House bill, which passed the House by a wide, bipartisan margin. Nonetheless, the conference report contains a number of reforms which the Commerce Committee has worked on, and which will clearly help to relieve the burden of excessive litigation.

For example, the conference report still contains critical protections for biomaterials suppliers developed in our committee to ensure that consumers will have continued access to lifesaving and lifeenhancing medical devices. It also still contains provisions for reasonableness and balance in product liability punitive damage awards, and sets forth enumerated guidelines which should be considered before such awards are made. In addition, it includes important exceptions for environmental claims, and allows for reasonable limits on the life expectancy for products in the workplace.

These reforms are essential to the long-term competitiveness of the American economy, as we established in our work in the Commerce Committee over the past number of years.

Mr. Speaker, I include for the RECORD, relevant portions of the Commerce's Committee's report on H.R. 917, legislation which was incorporated in significant part into H.R. 956, the bill before us today.

EXCERPTS FROM HOUSE REPORT 104–63, PART 1

BACKGROUND AND NEED FOR LEGISLATION

For two decades, the Committee on Commerce has grappled with the issue of product liability reform. After developing an extensive record on the subject of product liability law, the Committee has concluded that the present system places an enormous burden on interstate commerce, inflates prices, stifles innovation, and subjects manufacturers and sellers to a capricious lottery where sanctions can exceed any found in criminal law. In light of these facts, Congressional action is long overdue.

Historically, injury caused by a defective product gave rise to a tort action in State courts. As transportation and communications systems developed, more products crossed State boundaries, increasing the volume of interstate commerce exponentially, creating more interstate product liability. From 1973 to 1988, product liability suits in Federal courts increased 1000%; in State courts the increase was between 300% and 500%. Meanwhile, tort doctrine in State courts evolved from fault-based standards to strict liability for manufacturers and sellers.

Tort costs have risen significantly as well, reaching an estimated $132 billion in 1991. (Tillinghast. (1992) tort Cost Trends: An International Perspective. New York:

Tillinghast.) Products manufactured in one State are now sold in another and cause injury in yet others. Because each State has different rules governing recovery in tort, forum shopping is encouraged, common law is developed unevenly, and manufacturers are found liable for conduct in one State that would fail to give rise to a cause of action in another.

American manufacturers and sellers have found that, given the multiplicity of evidentiary standards in State tort law, products may be found defective even after full compliance with all applicable regulations. The vast majority of product liability cases are filed in State courts. This leaves manufacturers and sellers without the benefit of uniform standards on which to base conduct in the design, manufacture and sale of goods. Manufacturers are told that their products must be ''safe,'' without being told what constitutes safety.

In many jurisdictions, liability on the part of a manufacturer for economic and punitive damages is found in the absence of negligence or malice. The doctrine of joint and several liability often compels a defendant to pay damages far in excess of his proportionate responsibility for the injury, and the plaintiff's Bar has become remarkably skilled at identifying and joining defendants with deep pockets who, despite limited responsibility for injury, would rather settle a case than face the costs and publicity associated with litigation.

Because over 70% of products manufactured in any one State cross State borders before the point of final sale, American manufacturers must contend with the uncertainty created by 51 different product liability jurisdictions in their own domestic market. The result is a de facto ''liability tax'' which chills interstate commerce and deprives consumers of product choice available to consumers in other nations throughout the world. Unfortunately, instead of encouraging the development of safer products, the present system often forces manufacturers to increase product prices or withdraw products from the market altogether. According to surveys reported to the committee by Pace University Professor of Law M. Stuart Madden, because of liability costs, 36% of American manufacturers have withdrawn products from the world market, 47% have withdrawn products from the domestic market, 39% have decided not to introduce new products, and 25% have discontinued new product research.

The case of Bendectin is illustrative: Bendectin is the only prescription drug in the United States ever approved for combating nausea and vomiting in pregnancy. Introduced in 1956, the drug was used in over 30 million pregnancies. In 1969, allegations that Bendectin could cause birth defects appeared in some scientific journals. Despite the fact that no causal relationship between Bendectin and birth defects was ever established (the Food and Drug Administration affirmed the drug's safety), nearly 1,700 product liability suits were brought against the manufacturer.

Almost all cases that went to court were decided in favor of the manufacturer, yet annual revenues from the sale of the drug barely exceeded legal fees and insurance premiums. The manufacturer voluntarily withdrew Bendectin from the market in 1983. While the rate of birth defects has not declined since Bendectin was withdrawn, the cost in the U.S. for treatment of severe nausea during pregnancy is now nearly $40 million per year.

Another example comes from the sporting goods industry. In a 1988 Forbes magazine article, author Peter Huber noted that product liability legal fees and insurance premiums accounted for 55% of the price of a football helmet. (Peter Huber. (Oct. 1988) Forbes ''The Litigation Scandal.'') In 1988, Rawlings Sporting Goods announced that it would no longer manufacture, distribute, or sell football helmets. Rawlings was the 18th company in 18 years to abandon the football helmet business due to liability exposure, joining Spaulding, MacGregor, Medalist, Hutch, and other manufacturers. As one commentator observed:

''This situation is not what the crafters of product liability law intended. Product liability law was created to improve product safety and compensate victims of unsafe products. It was not meant to penalize conscientious companies that provide products and services vital to the U.S. economy.''

(Frederick B. Sontag. (1994) Product Liability and Innovation. ''Indirect Effects of Product Liability on a Corporation.'' National Academy of Engineering.)

In addition to driving products from the marketplace, raising prices, and draining capital, the patchwork of liability standards throughout the nation severely inhibits the competitiveness of U.S. industry. While it is true that a foreign company doing business in the United States is subject to the same liability laws as a U.S. company, most U.S. companies have had products in the marketplace for longer than their foreign competitors.

Since many states have no statute of repose, products which have been in use for 15 or more years can still expose a manufacturer to liability. The costs of insuring against product liability and legal fees spent in liability lawsuits are built into the cost of such products, creating a price disadvantage for domestic producers facing well financed foreign competition with far less liability exposure.

American industry's chief foreign competitors face no such handicap in their domestic markets. Both the European Community (EC) and Japan have uniform product liability regulations. The EC Directive establishing product liability standards was published in 1985, and differs significantly from product liability law in the United States in the following ways: first, a single definition of product ''defect'' applies; second, if a product complies with mandatory regulations issued by public authorities, the manufacturer has no liability exposure; third, noneconomic damages (pain and suffering) are limited; fourth, punitive damages are generally not allowed; fifth, most EC countries limit liability to known technical knowledge; and sixth, a 10-year statute of repose begins when the manufacturer puts a product into the stream of commerce. Operating under the provisions of this Directive, European manufacturers and sellers pay, on average, twenty times less for liability coverage than their American competitors.

The status quo also retards the ability of American firms to create jobs. A memorandum dated November 30, 1990, from the Office of Vice President Quayle to Members of Congressional Committees considering product liability reform legislation states that 40% of chief executive said product liability has had a major impact on their business; 36% stopped some manufacturing as a result; 15% laid off workers, and 8% closed plants. Almost 90% of American companies will be defendants in a product liability claim at least once according to a 1988 Rand Institute study. In the study, of 19,500 companies surveyed, 17,000 were lead defendants in at least one product liability suit.

In summarizing the background and need for H.R. 917, the Committee finds itself in agreement with the observations of Francois Castaing:

''It is well understood that product liability laws have a purpose. They are supposed to compensate for injury, promote safety, and penalize gross negligence. If a corporation is irresponsible, it should be held accountable. But in the United States, the situation has gone beyond punishing gross negligence. Now punishment is meted out for many risks that simply cannot be avoided when a product is produced and sold to a public that has wide discretion in how it chooses to use that product. When no distinctions are made in assigning responsibility for risk and companies are held responsible (and penalized) for all risk—from those attributable to the vagaries of human nature to those truly within a company's aegis—the ability to innovate, engineer, and compete is compromised.''

Francois J. Castaing. (1994) Product Liability and Innovation. ''Automotive Engineering and Product Liability,'' National Academy of Engineering.

The present product liability system in the United States unfairly denies consumers the right of free choice in the marketplace and inflates prices for available products. For manufacturers and sellers, the system discourages innovation, retards capital formation, and creates a distinct competitive disadvantage in the world market.

The Committee has developed an extensive record on the negative impact of product liability on commerce in the United States, and has concluded that Congressional action is long overdue. Support for product liability reform within the Commerce Committee has always been bipartisan, and legislation has been reported from the Committee to the House under both Republican and Democratic Chairmen.

HEARINGS

During the 104th Congress, the Subcommittee on Commerce, Trade, and Hazardous Materials held one day of hearings on H.R. 917, the Common Sense Product Liability Reform Act, and related legislation, including section 103 of H.R. 10, the Common Sense Legal Reform Act. Additionally, since the 99th Congress, the Committee has held 12 days of hearings on the subject of product liability reform and that record contributed significantly to the Committee's consideration of H.R. 917.

On February 21, 1995, the Subcommittee on Commerce, Trade, and Hazardous Materials held a hearing on H.R. 917, the Common Sense Product Liability Reform Act and Related legislation. Testimony was received from Mr. Paul R. Huard, Senior Vice President, National Association of Manufacturers; Mr. Larry S. Stewart, President, Association of Trial Lawyers of America; Mr. Victor E. Schwartz, Esq., General Counsel, Product Liability Coordinating Committee; Mr. Daniel E. Richardson, Administrator, Latta Road Nursing Home, (testifying on behalf of the National Federation of Independent Business); Mr. Jeffery J. Teitz, Executive Committee, Vice-Chair, Assembly on Federal Issues of the National Conference of State Legislators; and Mr. James A. Anderson, Jr., Vice President of Government Relations, National Association of Wholesaler-Distributors.

During the 103rd Congress, the Subcommittee on Commerce, Consumer Protection and Competitiveness held three days of hearings on H.R. 1910, the Fairness in Product Liability Act, whose language is closely tracked by H.R. 917. The first hearing was held on February 2, 1994 and focused on the impact of product liability reform on the health care industry. The Subcommittee received testimony from Ms. Stephanie Kanarek; Mr. Ted R. Mannen, Executive Vice-President, Health Industry Manufacturers Association; Mr.

Calvin A. Campbell, Jr., President and CEO, Goodman Equipment Corporation (testifying on behalf of the American Mining Congress); Ms. Lucinda Finley, Professor, State University of New York at Buffalo Law School; Mr. Victor E. Schwartz, Esq., General Counsel, Product Liability Coordinating Committee; and Mr. Bruce Finzen, Robins, Kaplan, Miller & Ciresi.

The second hearing sought a broad spectrum of opinion on the bill from consumers, manufacturers, and academics and was held on April 21, 1994. The Subcommittee received testimony from Mr. Marcus Griffith, President, The Hairlox Company (testifying on behalf of the National Association of Manufacturers); Ms. Dianne Weaver, Weaver, Weaver & Lipton; Ms. Norma Wallis, President, Livernois Engineering (testifying on behalf of the Association of Manufacturing Technology); Mr. Robert Creamer, Executive Director, Illinois Public Action; Professor Stuart Madden, Pace University School of Law; and Professor Andrew Popper, Deputy Dean, Washington College of Law, The American University.

The Subcommittee received testimony from victims of defective products and other interested parties on May 3, 1994, from Janey and Lawrence Fair; Amy Goldrich for Sybil Goldrich, Command Trust Network; Charles Ruhi (accompanied by Don Singer, Attorney); James L. Martin, Director, State & Federal Affairs, National Governors Association; Emmett W. McCarthy, Dreis and Krump Manufacturing Company; James Oliphant, President, Defense Research Institute; Liberty Magarian (testifying on behalf of the Product liability Coordinating Committee); and Larry R. Rogers, Power, Rogers, & Smith.

In the 100th Congress, the Subcommittee on Commerce, Consumer Protection, and Competitiveness held seven hearings on Federal product liability reform covering punitive damages reform, joint and several liability, workplace safety, the impact of product liability reform on the general aviation industry, state-of-the-art and government standards defenses, the effect of product liability reform on the affordability and availability of product liability insurance, and the issue of product liability reform in general.

Witnesses included: Representatives Jim Slattery and Al Swift; the Honorable Malcolm Baldrige, Secretary of Commerce; The Honorable Harry L. Carrico, Chief Justice, Supreme Court of Virginia; Mr. Robert H. Mallot, Chairman and CEO, FMC Corporation; Mr. Victor E. Schwartz, Esq., Crowell & Moring; Mr. John B. Curico, Chairman, President, and CEO, Mack Trucks, Inc.; Mr. Marcus M. Griffith, Hairlox Company; Mr. Joseph Goffman, Public Citizen; Ms. Pamela Gilbert, United States Public Interest Research Group; Mr. Gene Kimmelman, Legislative Director, Consumer Federation of America; Robert L. Habush, President, Association of Trial Lawyers of America; Mr. John T. Subak, Action Commission to Improve the Tort Liability System, American Bar Association; Mr. Stephen Daniels, Project Director, Punitive Damage Project, American Bar Foundation; Professor David G. Owen, University of South Carolina School of Law; Mr. Malcolm Wheeler, Esq., Skadden, Arps, Slate, Meagher & Flom; Mr. Bill Wagner, Esq., Wagner, Cunningham; Mr. George S. Frazza Esq., General Counsel, Johnson and Johnson Products, Inc.; Professor David Randolph Smith, Vanderbilt University School of Law; Professor Aaron Twerski, Brooklyn Law School; Senator Robert Frey, National Conference of State Legislators; Mr. Alfred W. Cortese, Jr., Esq., Kirkland & Ellis (representing Lawyers for Civil Justice); Mr. Robert Martin, Esq., Martin, Pringle, Oliver, Tripplett & Wallace (representing Beech Aircraft Corporation); Mr. Charles T. Hvass, Jr.; Mr. Frederick B. Sontag, President, Unison Industries; Mr. C.O. Miller, Safety Systems, Inc.; Mr. John S. Yodice, Esq., General Counsel, Aircraft Owners and Pilots Association; Mr. Jonathan Howe, President, National Business Aircraft Association; Mr. David M. Silberman, Associate General Counsel, AFL–CIO; Mr. John Mottley III, Director of Federal Government Relations, National Federation of Independent Business; Mr. Richard Duffy Director, Department of Occupational Health and Safety, International Association of Firefighters (accompanied by Cheryl Gannon, Legislative Assistant); Mr. Kent Martin, Chairman of Government Affairs Committee, National Printing Equipment and Supply Association (accompanied by Mr. Mark J. Nuzzaco, NPES Government Affairs Director); Mr. James A. Mack, Public Affairs Director, National Machine Tool Builders Association; Mr. Jonathan Reynolds, Esq., Cosco, Inc.; Mr. Clarence Ditlow, Executive Director, Center for Auto Safety; Mr. Geoffry R.W. Smith, Esq., McCutchen, Doyle, Brown, and Enerson; Dr. Sidney Wolfe, Health Research Group; Mr. R. David Pittle, Technical Director, Consumers Union; Professor Nicolas A. Ashford, Associate Professor of Technology and Policy, Massachusetts Institute of Technology; Mr. Howard M. Acosta, Esq., Rahdert, Acosta, and Dickson, P.A.; Professor Jerry Phillips, University of Tennessee School of Law; Richard A. Bowman, Esq., Bowman and Brook; Mr. Frank S. Swain, Chief Counsel for Advocacy, United States Small Business Administration; Professor Joseph A. Page, Georgetown University Law Center; Mr. Edward H. Southton, Deputy Commissioner for Company Supervision, Office of the Insurance Commissioner; Ms. Linda Matson, State Director, National Federation of Independent Business (accompanied by Ms. Mary Jane Norville, National Federal of Independent Business); Ms. Jean Stinson, Vice President, R.W. Summers Railroad Contractor, Inc.; Ms. Debra Ballen, Vice President for Policy Development and Research, American Insurance Association; and Mr. Thomas A. O'Day, Associate Vice President, Alliance of American Insurers (accompanied by Mavis A. Walters, Senior Vice President, Insurance Services Office).

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

*Section 1. Short Title; Table of Contents.*

This section provides the title of the Act and a table of contents.

*Section 2. Preemption.*

This section establishes the scope of the Common Sense Product Liability Reform Act, governing any product liability action in any State or Federal court brought against a manufacturer or product seller, on any theory, for harm caused by a product. It does not include actions for commercial loss. State law is only superseded to the extent that State law applies to the same issue. The Act does not affect the sovereign immunity of the States, choice-of-law rules, venue, or environmental laws.

*Section 3. Product Seller Liability.*

This section sets forth the standard of liability for product sellers. A product seller is only liable for harm caused by its product where (1) the claimant establishes that the product was sold by the seller, that the seller failed to exercise reasonable care regarding the product, and that such failure was a proximate cause of the claimant's harm; (2) the seller made an independent express warranty, the product failed to conform to the warranty, and such failure caused the claimant's harm; or (3) the seller was engaged in intentional wrongdoing as determined under State law, and such wrongdoing was the proximate cause of the claimant's harm. Sellers are not required to inspect a product where there is no reasonable opportunity to inspect such product in a manner which would reasonably have revealed the aspect of the product which caused the claimant's harm. A seller would become liable, however, by stepping into the shoes of the manufacturer if the State where the action is filed would not be able to serve process against the manufacturer, or if the State determines that the claimant would be unable to enforce a judgment against the manufacturer.

*Section 4. Alcohol and Drug Defense.*

This section provides a defense to a liability action where a claimant is more than 50% responsible for the accident causing harm as a result of being under the influence of intoxicating alcohol or illegal drug. The determination of intoxication or whether the claimant is under the influence of alcohol or drugs shall be made according to the relevant State law. Illegal drugs include any controlled substances according to federal law.

*Section 5. Misuse or Alteration.*

This section allows a manufacturer or product seller to establish that a percentage of a claimant's harm was proximately caused by the misuse or alteration of a product in violation of an express warning or instructions, or by the misuse or alteration of a product involving a risk of harm which would be known by the typical consumer. The award of damages against the manufacturer or product seller would be reduced by such percentage of claimant's misuse or alteration. The manufacturer's or product seller's liability shall not, however, be reduced by the percentage of responsibility for the harm attributable to the misuse or alteration of a product by the claimant's employer or coemployees who are immune from suit by the claimant pursuant to State law applicable to workplace injuries. These provisions only supersede State law to the extent that State laws are inconsistent.

*Section 6. Statute of Repose.*

This section bars liability for a product liability action unless the complaint is served and filed within 15 years of the time of first retail purchase. This bar will only apply, however, if the claimant is eligible for workers' compensation for the harm, if the harm did not cause a chronic illness, and if the manufacturer or seller did not include an express written warranty as to the useful safe life of the product which was longer than 15 years.

*Section 7. Punitive Damagers.*

This section provides that where states allow punitive damages, such damages may be awarded where a claimant establishes by clear and convincing evidence that the harm suffered was the result of conduct manifesting a conscious, flagrant indifference to the safety of those persons who might be harmed by the product. The punitive damages awarded shall not exceed the greater of $250,000 or three times the economic injury.

A failure to exercise reasonable care in selecting among alternative product designs or warnings shall not by itself constitute conduct meriting punitive damages, and punitive damages may not be awarded unless compensatory damages have been awarded which are not merely nominal damages. A defendant may request a separate proceeding to determine an award of punitive damages, in which case evidence related only to the claim of punitive damages shall not be admissible in the proceedings to determine compensatory damages.

The trier of fact shall consider all relevant evidence in determining a punitive damage

award, including the severity of harm, the duration, concealment, or profitability of the defendant's conduct, the number of products sold by the defendant which can cause such harm, previous punitive awards to similar claimants, prospective compensatory awards to other claimants, the criminal or civil penalties imposed on the defendant for the complained of conduct, and whether any of the foregoing have been presented in a prior proceeding involving the defendant.

Punitive damages shall not be awarded against a manufacturer or seller of a drug or device which caused the claimant's harm where such product was preapproved by the Food and Drug Administration (FDA) with respect to its formulation, performance, or adequacy of packaging or labeling, or where it is generally recognized as safe and effective pursuant to conditions established by the FDA. This bar on punitive damages shall not apply where the defendant, before or after FDA approval, intentionally and wrongfully withheld from or misrepresented to the FDA information which is required to be submitted concerning the drug or device, or if any illegal payment to FDA employees were made for the purpose of securing or maintaining drug or device approval.

The manufacturer and seller of a drug shall not be held liable for punitive damages for a product liability action for harm relating to the adequacy of the drug packaging or labeling, where the drug is required to have tamper-resistance packaging (and labeling) under regulations of the Secretary of Health and Human Services, unless the claimant establishes by clear and convincing evidence that the drug product is substantially out of compliance with such regulations.

*Section 8. Several Liability for Noneconomic Damages.*

This section provides that joint liability for noneconomic damages shall not be recognized. A separate judgment shall be rendered against each defendant for their several liability for noneconomic damages, which shall be in direct proportion to their individual percentage of responsibility for the claimant's harm, as determined by the trier of fact.

*Section 9. Federal Cause of Action Precluded.*

This section precludes any new Federal cause of action pursuant to a Federal question or Act Congress regulating commerce. It is intended to ensure that no additional jurisdiction is granted under this Act to the Federal courts.

*Section 10. Frivolous Pleadings.*

This section provides that the signing or verification of a pleading in a product liability action shall be considered a certification that to the signor's or verifor's best knowledge, information, and belief, formed after reasonable inquiry, the pleading is not frivolous. A pleading is defined as frivolous if the pleading is groundless and brought in bad faith or for the purpose of harassment or other improper purpose such as to cause unnecessary delay or needless increase in the cost of litigation. Groundless is defined as having no basis in fact or unwarranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

Within 60 days after a pleading in a product action is filed, a party may petition the court to determine the pleading is frivolous. In making this determination, the court shall consider the multiplicity of parties, the complexity of the claims and defenses, the length of time available to the party to investigate and conduct discovery, and the affidavits, depositions, and other relevant matters. If the court determines that a pleading is indeed frivolous, the court shall impose an appropriate sanction on the signatory or verifier of the pleading, which may include the striking of the offending portion or the entire pleading, the dismissal of a party, or an order to pay the reasonable expenses of an opposition party incurred because of the filing of the pleading, including costs, fees of attorneys, witnesses and experts, and deposition expenses. A general denial and the amount requested for damages shall not constitute a frivolous pleading.

*Section 11. Liability of Biomaterials Suppliers.*

This section provides that a biomaterials supplier is liable for harm caused by a medical device only if the claimant establishes that the biomaterials supplier's failure to meet contract specifications as set forth below was an actual and proximate cause of harm to the plaintiff. The biomaterials supplier is deemed to have failed to meet contract specifications if the raw materials or component parts delivered by the biomaterials supplier did not constitute the product described in the contract between the biomaterials supplier and purchaser, or they fail to meet any specifications that were provided to the biomaterials supplier and not expressly repudiated prior to acceptance of delivery of the supplies, or that were provided to the biomaterials supplier or to the manufacturer by the biomaterials supplier, or which are contained in a master file submitted by the biomaterials supplier to the Secretary of Health and Human Services (HHS) that is currently maintained by the biomaterials supplier for the purposes of premarket approval of medical devices, or specifications that were included in the submissions of the purposes of premarket approval or review by the Secretary of HHS and which have received such clearance and were not expressly repudiated by the biomaterials supplier prior to acceptance.

*Section 12. Definitions.*

This section provides definitions for the following terms: ''biomaterials supplier,'' ''claimant,'' ''commercial loss,'' ''harm,'' ''manufacturer,'' ''product,'' ''product liability action,'' ''product seller,'' and ''State.''

*Section 13. Effective Date.*

This section provides that the Act shall apply to actions which are commenced after the date of its enactment.

Mr. Speaker, I believe this information will help to establish the need for a number of the reforms contained in the pending conference report.

Mr. Speaker, we need commonsense legal reform that will put more power into the hands of the American people to make their own consumer choices, and bring some sanity back to our legal system. We need reforms that recognize responsible behavior, and put an end to the legal jackpot mentality. We need commonsense legal reforms today.

I urge support of this bill.

□ 1215

Mr. DINGELL. Mr. Speaker, I yield myself 4 minutes.

(Mr. DINGELL asked and was given permission to revise and extend his remarks.)

Mr. DINGELL. Mr. Speaker, I will vote for the conference report today for three reasons. The first is that the context is relatively balanced and sound. The second, it is consistent with similar legislation which I have supported over the years. Third, it represents a complete and utter repudiation of the extremist Republican agenda, which included tacking on to the original House bill a host of special interest amendments stripping average Americans of the traditional legal rights for the benefits of the wealthy and the powerful few.

I take some measure of pride, Mr. Speaker, in having launched the original product liability reform movement in the Congress back in the late 1970's. So it is as one who is no John-Dingell-come-lately to this issue. I am pleased today for those people in America's manufacturing community who have worked with me for many years on this issue. I particularly want to single out one individual for special thanks, Dr. Victor Schwarz, an attorney, professor, casebook editor, and nationally renowned expert on tort law who, for nearly 20 years has helped guide this movement and its supporters in the Congress with sound advice, good judgment, and personal integrity.

But I have trouble mustering any great enthusiasm for today's events. The reason is simple. The process leading up to our having this legislation on the floor today has been an utter disgrace. The conference on this bill was a complete sham. At the one and only meeting which the conferees held in December, we were told that the conference would be open and bipartisan. Nothing was further from the truth. Instead, precisely the opposite occurred. The House Republicans proceeded to cut a secret deal in closed meetings with no participation by anybody else. There was no discussion, no consultation, and no conference meeting after that time.

Our staffs were presented with the final conference report on a take-it-or-leave-it basis late one evening after the Members had gone home. We were not even given the courtesy of being able to review the documents overnight. This is apparently the Republican definition of open and bipartisan. It may be open and bipartisan on the other side of the aisle, but it is not open and bipartisan, nor is it a process which follows the traditions of this House or which takes into consideration the concerns of the American people that the matters of this Congress should be done in an open and honorable fashion.

The House Republicans not only excluded Democratic conferees from all discussions and decisions, but they ignored the will of the House on one very important issue. Last year the House voted to include a provision ensuring that foreign companies that sell defective products to American consumers are treated the same way as American corporations. That amendment was adopted under the leadership of the distinguished gentleman from Michigan [Mr. CONYERS]. The House recently reaffirmed that commonsense position by voting to instruct the House conferees to insist on this provision in the conference. Despite two overwhelming and bipartisan votes, I note, the Republican conferees dropped the provision

entirely. To my knowledge, the Republican Members never even raised this issue in the secret backroom discussions on this legislation.

I note that all eight House Republican conferees voted against the original amendment on the motion to instruct. Those few Members are entitled to their views, but those views get preferential treatment to foreign corporations to the disadvantages of American corporations. But that should not empower them to so brazenly disregard the expressed will of the House, the expressed will of the American people as clearly expressed by this House. The Republicans say they want to reduce Federal power, yet last year they were busy sticking the Federal snout into dog bite cases, accidents, and slip and fall disputes.

The bill that passed last year as a part of the contract on America amounted to a wish list of all manner of scoundrels and wrongdoers. That legislation protected drunk drivers, sexual predators, scoundrels, and others who prey upon the weak, defenseless, and infirm, and those who intentionally inflict great harm and damage. They treated cases involving intentional and gross misconduct as though they were simple negligence cases.

Fortunately, they are not going to get their way. I do not believe that the Republican leadership ever wanted enactment of this bill as public law. If they did, they would not have allowed it to languish for the best part of a year before even asking for a conference. If they did, they would not have included in the process a system which systematically excluded House Democrats like me who have for years supported product liability reform, and they would not have conducted the overall matter in the way in which they did. Instead, this will get what they really want, not a law, but a campaign issue.

We have reached the bottom of the barrel when for pure partisan games, Republicans will not let Democrats who agree with them work with them or participate in the legislative process. Once again, we have seen, as it has happened so many times in this Republican Congress, the constituents who need real action are getting just promises and press conferences and not real action. They will be the losers.

Mr. Speaker, I reserve the balance of my time.

Mr. HYDE. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Pennsylvania [Mr. GEKAS].

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me this time.

I stand here today to plead for a special interest, I say to the gentleman from Michigan, who so quickly criticizes every manner and means of special interest. The special interest for which I make a plea are some 8 million Americans who this day contain in their bodies medical devices that have been implanted, which have saved their lives in many cases, and the supplies for which are being threatened by the massive lawsuits that have caused the suppliers of raw materials to withhold those materials from future medical devices, like heart transplants, brain shunts, heart valves, knee replacements, hip replacements.

That is a special interest, I say to the gentleman from Michigan, where we ought to be doing everything we can to make sure that those consumers who need replacements, who need heart valves, who need all of these medical devices for the sake of their health and their lives, we ought to give them the opportunity to have future medical devices available, access to them. And what title II does, of this piece of legislation, is to release a little bit of the raw material suppliers from that type of massive liability that makes no sense, that keeps them from supplying these raw materials to the manufacturers of these lifesaving medical devices.

When are we going to try to understand that special interests sometimes are those people who are victims of heart attacks, victims of disease that we can help if we simply relax a little bit on the restrictions on liability that some of the suppliers of these raw materials have to face.

I say it is time for us to encourage the President not to veto heart transplants, not to veto brain shunts, not to veto hip replacements, but rather to sign the bill into law that will acquire for the American people a balance and allow them to have access to all sorts of new and wonderful lifesaving medical devices.

Mr. CONYERS. Mr. Speaker, I yield myself 30 seconds to remind my friend from Pennsylvania, Mr. GEKAS, that title II of the products liability conference report would prohibit most women from recovering any damages from the supplier of silicone gel, despite evidence that the supplier misled women and many of their doctors about the safety of that product. It would also prohibit suits against suppliers of biomaterials used in the manufacture of medical implants.

Mr. Speaker, I yield 2 minutes to the gentleman from Virginia [Mr. SCOTT], a distinguished member of the Committee on the Judiciary.

Mr. SCOTT, Mr. Speaker, there is no explosion in punitive damage products cases. This chart shows the total number of civil cases that are filed, now many are products liability cases. The products liability cases get decided by trial, and then when you get down to punitive damage awards in liability cases, it is in the millions; 391 million of the cases filed are punitive damage cases involving products.

Mr. Speaker, one study in 1995 of cases decided in 1992 could only find three punitive damage cases in the entire United States.

This bill is not balanced. It helps corporate wrongdoings at the expense of innocent victims. One is the limitation on punitive damages. Although they are rare, they have a deterrent effect. Those pajamas that the ranking member pointed out, for 3 cents per set of pajamas, they could have made them inflammable pajamas, and yet they wanted to make that extra 3 cents for every set of pajamas. It is only the punitive damages that took them off the market.

Mr. Speaker, another benefit for wrongdoers is the issue of joint and several liability. Most States allow the wrongdoers to figure out who has to pay the total damages. This bill forces the innocent victim to chase all the insolvent, out of town, and uncooperative defendants in order to get their full cooperation.

Another little benefit for the corporate wrongdoers is that only overturned State laws can benefit the consumers. The State laws are free to provide additional protection for the corporate wrongdoers, but not allowed to provide any more protection for the consumers.

Mr. Speaker, this hurts the consumer, it helps the corporate wrongdoers, it eliminates the deterrent effect, it benefits the wrongdoers and forces the plaintiff to chase around for the defendants, and I think we should defeat this bill and keep the State laws as they are today.

□ 1230

Mr. BLILEY. Mr. Speaker, I yield 1½ minutes to the gentleman from Florida [Mr. STEARNS], a member of the committee.

Mr. STEARNS. Mr. Speaker, I thank my colleague for yielding time to me.

Mr. Speaker, I also rise in support of the conference report, and I was very glad to hear that the gentleman from Michigan [Mr. DINGELL], who is the former chairman of the Committee on Commerce, supports the bill. Also I want to recognize Victor Schwarz for all his long-term work on this project.

For almost two decades, Congress has been struggling to interject common sense into our product liability laws. I want to commend the conferees for their success in bringing balance and reasonableness to our legal system. Everyone has heard justice delayed is justice denied. Well, this legislation ensures legitimate plaintiffs finally have their day in court by ending the frivolous lawsuits that needlessly tie up our judicial system.

Mr. Speaker, these lawsuits have effectively prohibited individuals from pursuing legitimate grievances through the judicial system due to the fact that the dockets are overcrowded with meritless lawsuits. There are studies that indicate that fully half of the costs of our tort system are consumed in legal fees and expenses, while only one quarter goes to compensate actual economic losses. Attorneys are primarily the ones benefiting under the current system. This legislation encourages settlements out of court, thereby getting lawyers out of the way.

I urge all of my colleagues to support this conference report that emphasizes fairness and individual accountability while maintaining an injured party's fundamental right to restitution.

Mr. DINGELL. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from Texas [Mr. DOGGETT].

Mr. DOGGETT. Mr. Speaker, I thank the gentleman for yielding time to me.

In this very serious and weighty debate, I cannot help but be a little amused that some of the same forces that come here and complain about the litigation explosion, about how our courts are too crowded are the same folks that I read about this week in USA Today who are going around the country making it against the law to speak ill of vegetables. Yes, if you bad mouth brussels sprouts, the USA Today reports, it could cost you, if you are opposed to onions, if you diss a kiwi. Now in 12 States, it is against the law to do that and you can be hauled into court.

So the same folks that come here and say there are too many lawsuits in our courts are going around the country, in fact they are trying to do it this week in Maryland, enacting laws to get us in trouble for speaking ill of vegetables. But if they turn us into a vegetable because of their disregard for safety and health in this country, then our rights will be limited.

Mr. Speaker, this is not about the litigation explosion, it is about limiting the rights of individuals whose health and safety is affected. What about the effect on cost and on jobs that we have heard so much about? Well, the folks that put out Consumer Reports, that is the magazine that a lot of us turn to when we have got to buy a refrigerator or television or some kind of service and we want to find out what the most cost effective alternative is, they report that over 30 million Americans each year are injured by consumer products and 29,000 are killed. Only a small fraction of those result in lawsuits, but the total cost to us of having assurance that there is protection in the event that there is harm caused by a defective product comes to about one penny one of a $5 purchase.

That is a very small price to pay for the assurance that someone who is burned and who will face one painful skin graft after another, to a young family whose infant is going to require care for the rest of that child's life, to a young child who is scarred for life, why deny rights to those people when the cost to America is 1 cent for a $5 purchase?

But we are told, of course, that this is a jobs bill, that it means more jobs. It is only anecdotal evidence that tells us that, but why then if it is a jobs bill are we replacing the concept of personal responsibility with giving foreign manufacturers an advantage over American manufacturers? We say that if you build your project in Taiwan, in Singapore, in Germany, you are going to have under this piece of legislation advantages that are not available to American manufacturers. I think that has got it all backward.

Just as this reliance on something other than personal responsibility has got it all backwards, just as the argument of States' rights, of letting our States resolve these issues, rather than turning them all over to the Federal Government to resolve, has got it all backwards.

Mr. HYDE. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from South Carolina [Mr. INGLIS].

Mr. INGLIS of South Carolina. Mr. Speaker, I thank the chairman for yielding me the time.

I rise in strong support of this conference report and with some observations. We have heard a lot about how this is going to impair the ability of those that are legitimately injured to recover, so I think it is important just to go through an example. Let us assume, as I did recently when I had an opportunity to discuss this bill at the Wilson Equipment Co. in Spartanburg, SC, that one of their John Deere tractors injures somebody.

Let us assume this scenario. Mr. Jones is cutting grass with a riding lawnmower. A rock is thrown out of the lawnmower, hits Mrs. Jones who is nearby tending the flower garden or something. Mrs. Jones is hurt badly. Let us say she is hurt real badly. Let us see what happens in this case. Well, of course the Jones are going to sue for the medical bills that Mrs. Jones incurred. They are also going to probably sue for pain and suffering, and they are going to sue for punitive damages, everybody does. So let us see what happens.

Economic damages, let us say she had medical bills of $200,000. Again, I am assuming that Mrs. Jones is really hurt. If she is really, really hurt, it is more than $200,000. But I am intentionally choosing a relatively low number, $200,000 economic damages. Now, let us assume that the jury awards Mrs. Jones $200,000 for pain and suffering. Mind you, it is very important to note this is not limited in this bill. Pain and suffering will not be limited so the jury is free to decide whatever they want. Mrs. Jones is really hurt and they give her $200,000 pain and suffering. She has $200,000 economic damages, $200,000 pain and suffering.

Now we come to the only limit imposed in the bill and that is of course punitive damages. The jury is instructed and here is what they can do. They can give her 200 plus 200 times 2, would be the maximum that they could give in this case. So Mrs. Jones here will get $400,000 potentially in punitive damages. So she has gotten $200,000 economic damages, plus $200,000 pain and suffering, plus $400,000 punitive damages. I am sorry, plus $800,000. She has 200 plus 200 times 2, so that is $800,000 punitive damage amount. So Mrs. Jones can recover 200 plus 200 plus 800, which is $1.2 million.

Now, that is a fair amount of money, but it does not really put Mrs. Jones back where she was, and we have to admit that. If she is really badly hurt, it is just a bad situation. She has gotten $1.2 million, but she would really rather not have the money. She would really rather have her health back. But we cannot put her health back, so we give her $1.2 million. That is our system operating rationally, I believe; $1.2 million for this hurt Mrs. Jones.

Now mind you, there is still plenty of money for the trial lawyers, and I realize a lot of people in this body defend trial lawyers as though they are the greatest folks in America. There is still one-third for them, so in this case the trail lawyers get $400,000. There is still plenty of money in the system for adequate recovery.

Mr. HYDE. Mr. Speaker, I yield such time as he may consume to the gentleman from California. [Mr. CAMPBELL].

(Mr. CAMPBELL asked and was given permission to revise and extend his remarks.)

Mr. CAMPBELL. Mr. Speaker, I rise in support of this bill.

I would like to take this time to comment on the issue of tort reform, and its ramifications on our business community, and especially upon California's Silicon Valley.

For years, the debate has raged over whether our country engages in excessive litigation. Some have offered the argument that lawsuits are socially useful in defusing workplace tension, deterring dangerous means of production, and compensating those who have been harmed. Others have as strongly maintained that lawsuits have siphoned off scandalous amounts of time and energy, caused many good ideas never to be commercialized, dried up capital for investment, and crippled America in competition with the world. So, who is right?

I have concluded that our civil liability laws are indeed in need of reform to stem the flood of frivolous lawsuits that have detrimentally affected productivity and overall employment not only in California but across the Nation. My position is based upon a study that I participated in, which showed conclusively that the more a State reformed its civil liability laws, the greater its productivity and employment increased.

Here are a few facts and statistics:

Frivolous strike suits, which allege fraud when stocks take inevitable dips, have hit every one of Silicon Valley's top 10 companies and more than 60 percent of the valley's high-technology firms.

According to one estimate, shareholder suits are a $1.4 billion a year business, with settlements averaging $11 million.

A suit brought against 60 computer monitor manufacturers alleges fraud on behalf of the manufacturers because monitors labeled as 15 inches have—due to the dark border characteristic of computer technology—an actual viewing space of 14¾ inches.

The accounting firm of Tillinghast-Towers Perrin reports that the tort portion of our legal system cost $152 billion in 1994—two and half times the industrialized world average.

What we need are reforms that will stem this explosion of tort litigation; reforms like

placing caps on contingent fees and pain and suffering awards; allowing defendants to pay damages over time; constraining punitive damages; and modifying the joint-and-several-liability rule where a party only partly at fault can end up paying the entire damage award if the other parties at fault cannot.

I want to make clear that I seek only to bar frivolous lawsuits and not block those that have merit. A step in this direction was taken when Congress over-rode a Presidential veto and enacted the Securities and Litigation Reform Act of 1996. It reigns in frivolous class-action suits that victimize employers and investors across State lines. It provides, for example, protection to companies with solid records of rapid growth from lawsuits over a minor loss in a single quarter. And when legal costs can easily rise to the millions of dollars, mostly new, startup entrepreneurial high-technology firms are at greatest risk. This is especially true for Silicon Valley.

The litigation mess is not only affecting big business. It also prevents small businesses from expanding, causes new drugs and new products never to reach the market, and results in charities running short of volunteers.

Everyone today is a potential hostage to capricious and expensive lawsuits. National civil liability reform is needed to correct this broken system. I do not seek to sanction corporate irresponsibility, but merely to obtain reforms necessary to obtain fairness and common sense; with the result being more jobs and greater productivity in every State.

Finally, I was disturbed to learn that there is now an Internet web site which invites the public to invest in shares of lawsuit stock. Essentially what this outfit wants to do is publicly sell and trade stock based not on the performance of a corporation, but on the outcome of a lawsuit. I cannot view this approach in any other light than as another example of how out of control our tort system has become and how essential it is that we institute systemic reforms like the ones I have mentioned.

Mr. CONYERS. Mr. Speaker, I yield myself 10 seconds.

Mr. Speaker, I remind the distinguished gentleman from South Carolina [Mr. INGLIS] that in his hypothetical, he used up 1 of the 14 punitive damages cases that occur annually in the U.S. courts.

Mr. Speaker, I yield 3 minutes to the gentleman from Michigan [Mr. BONIOR], the minority whip.

Mr. BONIOR. Mr. Speaker, I thank the gentleman from Michigan [Mr. CONYERS] for yielding me the time.

Let us be clear what this bill does. Let me put this in another perspective from the example that was just given by my friend from South Carolina. If you are a corporate CEO and you make $1 million a year and God forbid you should have an accident because of a product malfunction, this bill says that you can receive full recovery of your economic losses. But if you are a working mom and you make $15,000 a year and you are struggling to put a little away for your child's education and you should be injured by that same accident and that accident involves more than one wrongdoer and God forbid you should lose your ability to have children, you may never be fully compensated for pain and loss. Now that is what this bill does.

This bill says the lives of corporate CEO's and Wall Street bankers and the economic elite are more important and more valuable than the lives of the working men and women, and I think it is shameful. Mr. Speaker, we do not need a bill that tilts the balance away from victims of defective products and toward the big corporations who make them.

We certainly do not need a bill that gives foreign manufacturers a leg up on American companies. Even though 82 of my Republican friends supported an amendment that put America first, it was dropped in the conference committee by the Republicans. That too is shameful. Mr. Speaker, if we live in a country where 98 percent of the growth in income since 1979 has gone to the top 20 percent, the other 80 percent has gotten 2 percent of real income growth in this country. What is going on here?

Mr. Speaker, yesterday the Republican leadership, in both this body and in the other body, blocked efforts to raise the minimum wage, and once again we are here today trying to write special rules for the wealthy one more time. Mr. Speaker, enough is enough. It is a tragedy when anybody is injured by a faulty product. Let us not make women and children and seniors pay a special price.

I urge my colleagues to vote ''no'' on this conference report. The President has indicated he will veto this bill because of the reasons and other reasons that have been given on this floor, the reasons that I gave and others have given, and we will need roughly 140-some votes to sustain his veto. So this is a very important vote this afternoon, and I urge my colleagues for economic justice for the people that we represent that we send this measure down to defeat this afternoon.

Mr. BLILEY. Mr. Speaker, could we get a report on how much time remains?

The SPEAKER pro tempore (Mr. GUNDERSON). The gentleman from Virginia [Mr. BLILEY] has 11 minutes remaining, the gentleman from Illinois [Mr. HYDE] has 8 minutes remaining, the gentleman from Michigan [Mr. CONYERS] has 1½ minutes remaining, and the gentleman from Michigan [Mr. DINGELL] has 7 minutes remaining.

Mr. BLILEY. Mr. Speaker, I yield 2½ minutes to the gentleman from Ohio [Mr. OXLEY].

Mr. OXLEY. Mr. Speaker, I rise in support of the conference report.

For almost two decades now, the House Committee on Commerce has grappled with the issue of product liability reform. After developing an extensive record on the subject of product liability law, the committee concluded that the present system places an enormous burden on interstate commerce, inflates prices, stifles innovation, and subjects manufacturers and sellers to a capricious lottery where sanctions can exceed any found in criminal law.

Last year, we worked with the Judiciary Committee to draft a joint legal reform bill to bring some common sense back into our legal system. We then worked with our Senate counterparts to help them move this critical legislation forward. While the final conference agreement falls somewhat short of the reforms passed in the House, it still represents a great achievement and far more than anyone might have hoped for just 2 years ago.

For the first time in our Nation's history, we will enjoy the protections of proportionality requirements for punitive damage awards. Damage awards for speculative noneconomic injuries will now be based directly on someone's actual responsibility for the harm, not on the depth of a defendant's financial pockets. Plaintiffs who harm themselves primarily through their own excessive use of drugs and alcohol will no longer be able to transfer the costs of their addiction to third parties, and frivolous claims against innocent product sellers and biomaterials suppliers will no longer be allowed.

These reforms will play a critical role in increasing the long-term competitiveness of American industry and thereby protecting American jobs. And they will create a renewed emphasis on fairness and accountability in our legal system, without undercutting the basic rights to restitution for consumers.

I recognize that the President has promised to veto this pro-jobs, pro-fairness bill. This is unfortunate. As Governor, President Clinton twice supported resolutions drafted and unanimously approved by the National Governors Association calling for Federal product liability reform.

Throughout the last year we have been working with Senator ROCKEFELLER's staff in the Senate to communicate with the President and modify the bill accordingly, deleting numerous stronger House reforms and adopting an extended additur provision for punitive damages which his own Cabinet helped to write. The administration's last minute bait-and-switch was subsequently decried by Senator ROCKEFELLER, who noted that ''Special interests and raw political considerations in the White House have overridden sound policy judgment.'' This sort of trial lawyer protectionism and turnstile politics, revealed earlier on securities litigation reform, is beginning to ring very hollow.

Part of the premise of the Contract With America was to put an end to politics as usual in Washington. This legislation is a consensus solution, built on decades of bipartisan efforts by my Democratic colleagues and fellow Republicans, for bringing some balance and reasonableness back into our legal system. I ask your support in helping us bring this commonsense reform back into our legal system.

Let us pass this with an overwhelming vote and send it to the President and hope he changes his mind.

□ 1245

Mr. DINGELL. Mr. Speaker, I yield 2 minutes to the distinguished gentlewoman from New York [Mrs. LOWEY].

(Mrs. LOWEY asked and was given permission to revise and extend her remarks.)

Mrs. LOWEY. Mr. Speaker, I rise in opposition to the conference report on the product liability reform. This bill benefits those who place profits above the health and safety of the American public, and it should be defeated.

Let's look at some of the real-life consequences that this ill-considered legislation would have.

Currently, there are approximately 1 million women who have silicone breast implants. To date 100,000 of them have suffered real harm from these devices. Although these women were told that the implants were safe, many began to leak and break—exposing the women to the silicone inside. If this bill is passed, implant manufacturers will be exempted from liability, and thousands of the women who are ill will be prevented from recovering damages.

This bill will hurt American women in other ways. The legislation eliminates joint and several liability for noneconomic losses—which means that if a housewife from my district and Donald Trump are both injured by the same defective product, Donald Trump will be able to recover much more money for injuries. That's wrong Mr. Speaker—we must not make it more difficult for women to recover damages from the companies of defective products.

I would also like to bring to my colleagues' attention a very shocking unintended result of this bill. Mothers Against Drunk Driving opposes this bill because it will cap punitive damages that can be enforced against those who serve alcoholic beverages to obviously intoxicated persons and minors.

Last year, this House passed a measure that I introduced that will finally get tough on underage drunk driving. That measure is now the law of the land and States that do not have zero tolerance policies for teens who drink and drive are in the process of adopting them. We must not now take away one of the biggest disincentives bar owners have to serving minors by passing this bill. We must not send a mixed message to Americans about drunk driving.

My colleagues, this bill says to companies that making defective products is just another cost of doing business. We must demand that companies take responsibility for their actions—just as we demand that individuals do. Those who put profits ahead of their fellow human beings do not deserve our protection.

Mr. HYDE. Mr. Speaker, I yield myself 30 seconds simply to say I have heard so many things about this bill that just are not so. There is nothing in the world inhibiting a woman who has a faulty breast implant from suing and getting full recovery, economic, noneconomic, and, if the case warrants, punitive damages, twice whatever the economic and noneconomic total up to. And if it is an egregious case, the judge can add more to it.

So I just do not know what I am hearing here. They are talking about some other bill that has not been written.

Mr. Speaker, I yield 3½ minutes to the distinguished gentleman from Tennessee [Mr. BRYANT].

(Mr. BRYANT of Tennessee asked and was given permission to revise and extend his remarks.)

Mr. BRYANT of Tennessee. Mr. Speaker, I thank the gentleman for yielding me this time.

I, too, rise in strong support of this bill, this conference report, and think it is a very modest bit of reform.

As an attorney who practiced in the civil litigation area for a number of years, it is interesting to hear the debate on this floor. It is very different being in the courtroom where you can respond directly to statements that are made, sometimes outrageous statements that are made, sometimes misstatements that are made. And in the arena on this floor it is difficult to sit here and listen to some of these examples that are being thrown out as why this very good reform should not occur.

Let me tell you what, let me respond, I guess, in the best way I can to some of the allegations being made about this bill. The chart goes up and says, well, punitive damages cases are not that significant in number, very few are filed in a year, even less awarded.

Let me tell you in the real world how punitive damage cases affect you and I that cause a huge litigation tax on the average American citizen that is in the thousands of dollars each year that we all pay for in some way or another in direct or indirect costs of product liability lawsuits.

Every case that comes in that has punitive damages claims has to be assessed and has to be judged as to whether or not what that case is worth in terms of actual compensatory damages and what it is worth from a punitive damages standpoint. Many of these cases are settled before they even result in lawsuits. They are settled before a case is even filed. Those cases are not going to show up on this chart. Most cases are settled, once they are filed, out of court before they go to judgment. As you settle these cases wherever it is in the process, you have to take into account what is this case worth from a punitive damage standpoint. It affects very dramatically the cost of litigation. Cases that should be settled early should be settled quickly, that do not have to go through the long extensive litigation that costs everyone, are not settled because of this. If we place a cap, a reasonable cap, on punitive damages, it will help the consumer, it will help the injured plaintiff get quicker disposition of their lawsuit, quicker settlement, quicker money in their hands, quicker compensation. And I suggest to you it would be more fair to all concerned. It completely allows full recovery for compensatory damages. This bill is no way affects a person's right to recover for pain and suffering, permanent disability, lost time from work, future income, earning capacity diminished, medical bills. It affects that in no way. All it affects are punitive damages, and its gets some correlation, some relationship between this case and not a pie-in-the-sky figure that that particular jury feels like awarding that day, whether it is a McDonald's case or the BMW case or whatever. It makes the person responsible pay for the negligence they caused, their portion of the injury. If a defendant is found liable for 20 percent of the injury, they do not have to pay 100 percent of the damages. That is only fair. You only pay what you are responsible for causing. And we are hearing complaints about that.

We have heard about the special-interest groups here, and we are not really, I guess I should say that this debate really may even be moot because we have already been told by our President that he is going to veto this bill. He says he is for small business and for doing things to stimulate the economy and helping out the small people. But yet he is already saying he is going to veto this very modest bill that is supported by people on both sides.

This is not a Republican-Democrat issue.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the gentleman from California [Mr. BERMAN], a distinguished member of the Committee on the Judiciary.

(Mr. BERMAN asked and was given permission to revise and extend his remarks.)

Mr. BERMAN. Mr. Speaker, I rise in opposition to the conference report on what I would view as the Victim Compensation Depriving and Deterrence Weakening Product Liability Report.

I do not oppose this bill in the belief that American law on product liability is perfect. But like many other Members of this body, I found that my efforts, in committee and on the floor, to moderate the excesses of this legislation, and in so doing, to articulate the sorts of reforms I can support, were entirely shut out by a majority hell-bent on moving an industry agenda at the expense of American consumers.

Nor is it the notion of uniform Federal law on the subject of product liability which I oppose, even though this subject has traditionally been viewed as a matter for State law. States' rights is not my watchword, though I thought it was the operating principle for my colleagues in the majority, a principle they seem to set aside when expedience dictates.

But what we find in this conference report is not uniformity. Instead, what we have is Federal standards except where a State's law is worse in terms of consumer protection. So let there be no mistake about what this legislation is about. Uniform national standards? Hogwash. This is lowest common denominator justice for consumers.

I also want to express my very strong support for solving the problems faced by biomaterials suppliers. I am dismayed that their interests have been sacrificed to advance an extreme agenda I cannot support. If this bill is indeed vetoed, and that veto is sustained, I hope that we can move the biomaterials access reforms to solve that particular industry's problems for the benefit of all Americans.

Mr. Speaker, I cannot support legislation that deprives injured victims of fair compensation, and eliminates important deterrents to the design and manufacture of unsafe products in the first place. I oppose this conference report, and I urge my colleagues to do so as well.

Mr. CONYERS. Mr. Speaker, I yield such time as he may consume to the distinguished gentleman from North Carolina [Mr. WATT], a member of the Committee on the Judiciary.

(Mr. WATT of North Carolina asked and was given permission to revise and extend his remarks.)

Mr. WATT of North Carolina. Mr. Speaker, I rise today in opposition to House conference bill H.R. 956, the conference report on the Products Liability Reform Act.

Folks are on the floor today blaming lawyers for all the ills in America today. And this conference report is suppose to protect America from these greedy trial lawyers. Well, for the record I want you all to know that prior to coming to this place, I practiced law for 22 years and I'm proud of that and I'm proud of the contributions of the bar in shaping America and making it a better place for all of us.

People often quote the line from Shakespeare's ''Henry VI,'' ''First thing we do, let's kill all the lawyers.'' Sounds funny out of context. But they don't tell you about the scene. It's a scene where a corrupt king and his followers are trying to figure out how to suspend everybody's freedoms and rights and the only folks who could possibly stand in their way—you got it, the lawyers. Think about that the next time you're tempted to use this quote.

Calling someone a hypocrite might be funny too, if it's taken out of context. And yesterday, we spent an hour debating whether it was proper debate for one of my Republican colleagues to call Democrats hypocrites. Well, I want to be careful not to call any one or any party a hypocrite, even though the ruling of the Chair yesterday confirmed that I would be within my rights to do so. I would, however, like to pose the question in the context of this debate on product liability reform: Exactly who is being hypocritical?

Who is being hypocritical when they claim they want to stop the explosion of individual product liability claims so that you can alleviate the backlog on civil court dockets when, in fact, the backlog has been cased by an explosion of civil claims filed by big businesses against other big businesses over commercial disputes? My 22 years of practicing law showed me, and the statistics confirm it, that antitrust and commercial litigation is getting longer and longer, more and more complex and taking up more and more court time. At the same time, individuals are being squeezed out and priced out of courts. Courts are no longer for the people. They can't afford them.

Who is being hypocritical when they preach about personal responsibility for individual citizens but then absolve corporate citizens from responsibility for injuries they cause, even when the corporations make a calculated business decision to do so?

Who is being hypocritical when they claim to be champions of States' rights and a limited Federal Government on one hand, but then fight for this legislation, which would preempt the laws of 50 States which have developed over hundreds of years on the other hand?

Finally, who is being hypocritical when they claim to support individual rights even though they're supporting a bill that will severely limit an individual's access to justice? That's what this bill does.

Vote ''no'' on this bill. Fight hypocrisy.

Mr. CONYERS. Mr. Speaker, I yield 1 minute and 20 seconds to the gentleman from Massachusetts [Mr. FRANK], the ranking member of the Subcommittee on the Constitution of the Committee on the Judiciary.

Mr. FRANK of Massachusetts. Mr. Speaker, I had been undecided on this bill. I am now going to vote against it. It is a far better bill than the one the House previously did. I still have concerns about the unequal effects on women.

But I must tell you that I am very unprepared at this point to vote for one more piece of legislation that the corporate leadership of the country wants at a time when it has unfortunately been so resistant and unyielding to the cries many of us have made for some fairness and for some social justice.

A company in the city I represent, New Bedford, we just learned, has been bought up by a larger entity and a profitable company will be shut down, jobs will be lost, and it will be moved away. In the right overall mix, I am prepared to support product liability. But at a time when the minimum wage is stonewalled, when unions are, in effect, dismantled by the misuse of the law by employers, when corporate salaries go up and up and up and we get no sympathy whatsoever for the plight of workers, I am not prepared to provide one more thing on the shopping list of those who are already doing well.

On the merits, as part of an overall package, I could support this. I would hope it would be somewhat better drafted. But I will not at this point contribute, will not be part of furthering a public policy imbalance which says that those who own do better and better and those who work, unfortunately, are treated less and less fairly.

As part of an overall approach to fairness in America, I would be supportive of this, but not as simply one more gift to those who are already gifted.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from Iowa [Mr. GANSKE], a member of the committee.

(Mr. GANSKE asked and was given permission to revise and extend his remarks.)

Mr. GANSKE. Mr. Speaker, I would just like to address the gentleman from Massachusetts for a moment and ask that he strongly consider supporting this bill. I am going to deviate from my notes and speak to a prior speaker who had concerns about breast implants.

My mother had breast cancer when she was 24 years old. I can remember as a child her external implant falling out of her swimming suit. She has had a breast implant since then, and this has been a great thing for her.

As a physician, I have been involved with medical devices. I am concerned about the availability of these products for our patients. My wife had a sister who was born with a condition called hydrocephalus. This is where the cerebral spinal fluid does not get absorbed, and if there is not a cerebral spinal fluid shot, the head rapidly expands. Had that product been available to my wife's sister, she would still be alive today.

If we do not get a handle on product liability, we will not have the type of medical devices that will be necessary to protect the lives and health of our brothers, our sisters, our parents. This is a very reasonable and modest bill. I am glad that my colleague from Michigan [Mr. DINGELL], the ranking member of the Committee on Commerce, supports this bill.

I would urge the President to sign this bill. This is a bipartisan bill. This is not about politics. This should not be about politics. This bill is about providing products for people's health and their lives.

Mr. GANSKE. Mr. Speaker, this do-something Congress is working hard for the American people. Yesterday, we passed legislation to make health insurance more affordable. We passed a bill to allow senior citizens to retain more of their earnings if they remain in the work force. We passed a bill to give regulatory relief to businesses. We passed the line-item veto. And we gave final approval to legislation to modernize our Depression-era farm programs.

Today, we will send to the President product liability legislation to restore common sense in this area; to protect consumers and prevent abuse that unnecessarily raises the price of practically everything we buy. Amazingly, President Clinton has threatened to veto this modest bill that Mr. DINGELL supports.

Mr. Speaker, if the President vetoes this bill, the losers will be the American people, victims of a hidden lawsuit tax. They pay more for goods and services because businesses are forced to spend hundreds of millions of dollars in defending frivolous lawsuits.

Mr. Speaker, this is not partisan politics. A leading Democrat in the other body said ''Unfortunately, special interests and raw political considerations in the White House have overridden sound policy judgment.'' That's a Member of the President's own party speaking.

I urge my colleagues to vote for this limited legal reform bill and to give it the votes necessary to override a threatened veto.

This bill isn't everything I think is important, nor is it everything my colleague from Michigan wants. But in the spirit of cooperation in order to move to a better solution, we are both supporting this bill. I urge Members of both sides to put aside partisan politics and support this bill.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentlewoman from California [Ms. WATERS].

Ms. WATERS. Mr. Speaker, I rise in strenuous opposition to this conference report.

Remember the famous Pinto automobile recall, the exploding gas tanks. Remember the fact that the manufacturer knew the gas tank in the back of the car would explode if hit in an accident. Remember the in-house memo that the manufacturer sent that admitted they knew the gas tank would explode, but made the cold-blooded decision it would not be cost-effective to recall the car? They said it would cost them too much money. Lives were lost. People were harmed.

How dare anybody suggest we dismantle our current product liability laws? Greedy corporations will increase their profits at the expense of the American people if we, as public policymakers, do not have enough backbone to stand up for the protections for our citizens. We do not deserve to be here if we cannot protect them. As many as 6,000 American lives were saved each year due to the current deterrent of product liability laws.

Mr. Speaker, this bill is a sham. It must be defeated.

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Mr. HYDE. Mr. Speaker, I am pleased to yield 1 minute to the gentleman from Virginia [Mr. GOODLATTE], a distinguished member of the Committee on the Judiciary.

(Mr. GOODLATTE asked and was given permission to revise and extend his remarks.)

Mr. GOODLATTE. Mr. Speaker, I thank the chairman of the committee for yielding me this time.

Mr. Speaker, the other side and the President have a number of times said that this is an anticonsumer bill. Mr. Speaker, this is a proconsumer bill. This bill is very fair to those who may experience harm as a result of a defective product, but at the same time taking away from juries the opportunity to give unlimited amounts of awards that affect every consumer in this country by taking product off the market, as the previous speaker, the gentleman from Iowa [Mr. GANSKE], just indicated, and by increasing the cost of insurance and, as every corporation in this country does, spreading that increased cost to every consumer in this country with increased prices. This is a very fair bill. Juries should not be legislators. They are unelected. They should have the opportunity to determine the compensatory damages, to determine the pain and suffering award, and a reasonable amount of punitive damages in cases where they find it appropriate, but it should not be unlimited.

Mr. Speaker, I urge support of this report.

Mr. CONYERS. Mr. Speaker, how much time do I have remaining?

The SPEAKER pro tempore (Mr. GUNDERSON). The gentleman from Michigan has 10 seconds remaining.

Mr. CONYERS. Mr. Speaker, I yield the balance of my time to the gentleman from Michigan [Mr. DINGELL], the dean of the House, and ask unanimous consent that he be allowed to allocate that time.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Michigan?

There was no objection.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the gentleman from California [Mr. BECERRA].

Mr. BECERRA. Mr. Speaker, I thank the gentleman for yielding me the time.

Mr. Speaker, on balance, this conference report is transparently unbalanced. It is bad where State laws would otherwise benefit consumers and victims, and it is good where State laws would benefit manufacturers. The problems for States, this law preempts States that wish to take action at the State level against product liability abuse.

Who does this conference report exclude the Conyers provision that would have held foreign manufacturers liable for damaging, injuring, killing American citizens?

Why does this conference report on the manufacturer of a defective elevator that might be 14 years, 364 days old, let that victim sue that manufacturer of that defective elevator, but the next day that same victim would not be able to sue because of a statute of limitations that would not allow that to occur?

Why does a victim of a manufacturer's product have to prove, through a higher burden of proof, the damage occurred or the injury occurred?

This is an unbalanced conference report. It does not deserve the support of this conference, because it does not support the American consumer. I urge a ''no'' vote.

Mr. BLILEY. Mr. Speaker, I yield 2 minutes to the gentleman from Washington [Mr. WHITE], a member of the committee.

Mr. WHITE. Mr. Speaker, until about a year and a half ago, for 15 years I practiced law in the city of Seattle. I have to tell you that anybody who has been involved in our legal system and has taken a fair and objective look at it knows that, unfortunately, our legal system is broken and badly needs to be fixed.

It does not have so much to do with the number of cases that are filed, the number of product liability cases that we have. It is the fact that every week we hear a new ruling that offends our fundamental sense of justice about what our system is supposed to produce. Every week we hear about the cup of coffee is spilled on someone when they are driving in their car and all of a sudden they can collect $2 or $3 million for that. We hear about the paint job that was not quite right on the BMW, and somehow that results in a judgment of multimillions of dollars.

Ordinary people and lawyers and all of us who hear these things get the impression that, unfortunately, it is becoming true that our legal system has turned into an elaborate game of chance, where if you play the game right, you have the right lawyers, you can hit the jackpot and make a lot of money.

That is the most pernicious thing about the developments we have seen in our legal system over the last several years. It is a tragedy when a child is killed or someone is injured because of using a product. But the fact is, no matter how much money we compensate that person for, we cannot bring back the child, we cannot bring back the arm that is cut off, or we cannot fully solve the damages. Unfortunately, our system seems to equate paying money to solving that problem. It is something we just cannot do.

This bill is a modest bill. This bill does not go far enough. There are many additional things that we should do to solve the problems in our legal system. But it is a modest step that we need to take.

Mr. Speaker, I urge my colleagues to vote for this, and I hope very much the White House will change its mind and sign this bill when we pass it in this Congress.

Mr. DINGELL. Mr. Speaker, I yield 1 minute to the distinguished gentleman from Missouri [Mr. SKELTON].

Mr. SKELTON. Mr. Speaker, the sad part of this whole debate is the fact that it attacks the confidence and credibility of an institution that has served Great Britain and the United States and our various States now for some 700 years, and that is the jury trial. Sure, juries are composed of humans, and you are going to find some cases that many people will disagree with the outcome of. Jessie James' brother, Frank James, for instance, was acquitted, even though there was hard evidence that he held up those banks. Many people disagreed with the outcome of the O.J. Simpson case. But overall, Mr. Speaker, the jury trial is a very basic institution. What this does is this takes it out of balance.

I had the opportunity through the years to participate in the American justice system by trying cases, by defending people accused in civil cases, by representing others. So I think we should do our very best maybe to look at this again in light of the fact that we have a very sound institution called the jury system.

Mr. HYDE. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I was shocked to learn that the jury system is somehow no longer applicable. That is news to me.

Mr. BLILEY. Mr. Speaker, it gives me pleasure to yield 2 minutes to the gentleman from Louisiana [Mr. TAUZIN], a member of the committee.

Mr. TAUZIN. Mr. Speaker, I thank the chairman for yielding me time.

Mr. Speaker, let me first make a confession: I am a former trial lawyer. I still hold a law degree.

Let me also disabuse you all of a notion: This House is not composed of a majority of lawyers. Only 170 Members of this House admit or believe they

have a law degree; 435 Members, 170, that means three-fifths of this House are not lawyers. That surprises most people. They think it is the other way around.

Many of the lawyers in this House rise as I do today in support of these commonsense legal reforms, and it is to the lawyers in the House I want to speak for a minute.

We have a responsibility to the legal profession. We were educated in it. Many of us practiced in it. Our obligation is to make sure that it is a good profession, that it works well, that justice arises out of it. And when the law and when the practice of the law is such that it encourages frivolous lawsuits, that it encourages the pursuit of deep-pocket defendants instead of responsible parties, when it does not make people personally responsible for their own actions, as this bill does when it says if you are drunk or on drugs and you have an accident and that is the real cause of the injury you ought not be able to sue someone and collect, when we in this body are prepared to write comonsense legal reform, lawyers ought to be the first ones to rise and say we are prepared to do it.

We did that on security litigation reform. We passed that bill by a two-thirds vote of this House and the other body. The President vetoed it. We overrode his veto. We passed good commonsense medical reform, malpractice reform yesterday in this House. I hope we see that through to finish.

If we pass this bill today and send it to the President, I hope he will do something very important. If lawyers in this House can say yes to commonsense legal reform, then the President ought to be able to say no to some of his trial lawyer friends, and he ought to sign this good bill when it hits his desk.

Mr. BLILEY. Mr. Speaker, it is a great pleasure to yield the balance of my time to the gentleman from Colorado [Mr. SCHAEFER], the chairman of the subcommittee.

The SPEAKER pro tempore. The gentleman from Colorado is recognized for 2½ minutes.

(Mr. SCHAEFER asked and was given permission to revise and extend his remarks.)

Mr. SCHAEFER. Mr. Speaker, I thank the chairman of the committee for yielding time to me. I commend the work of the House conferees on this important legislation. This plan will bring some commonsense to our country's product liability laws.

Sadly, frivolous litigation has become a fact of American life. Too often, bringing people to court has taken the place of personal responsibility. People treat liability damages like a lottery. Urged on by attorneys with huge financial stakes, many people no longer look at themselves first for blame, but instead search out the easiest way for a big court settlement.

Frivolous suits cost our economy up to $80 billion every year. Thus, American companies have become hesitant to pursue technological innovation and product development for fear that their actions may result in never-ending court battles and financial ruin. This well-founded fear is costing jobs, consumer benefits and, if continued unchecked, it will cost America its competitive edge.

I would like to address one particular section, the biomaterials access provision. One of America's leading industries is the biomaterial device field. These products literally save and enhance lives every day. From pacemakers to artificial heart valves to cataract replacements, the products afford miraculous opportunities for recovery, allowing people to continue their lives.

The suppliers of base materials oftentimes provide the manufacturer with elements of the device that are too costly to produce except in mass quantities, but alone have no implant value or purpose.

Unfortunately, in recent years, these suppliers have been named as codefendants in lawsuits against actual device manufacturers. In almost every case, they are cleared of any wrongdoing or negligence. Nevertheless, in the process, they are forced to spend vast financial resources to achieve exoneration.

This litigation risk has caused many supply companies to, quite simply, stop providing base materials for these lifesavings devices. Consequently, the inability of device manufacturers to obtain the needed base supplies is causing the death of the biomaterials industry in America.

The biomaterials section addresses this tragic consequence of overzealous litigation. This language will assure that, quite simply, unless the supplier is negligent in the design specifications requested by the device manufacturer or if the supplier is also a party in the overall manufacture or marketing of the device, the supplier is cleared from liability.

This commonsense legal reform bill goes a long way toward ending this litigation madness, while preserving each individual's right to pursue just compensation for actual harm. I urge my colleagues to support this long overdue reform.

Mr. DINGELL. Mr. Speaker, I yield such time as he may consume to the gentleman from Texas, Mr. PETE GEREN.

(Mr. PETE GEREN of Texas asked and was given permission to revise and extend his remarks.)

Mr. PETE GEREN of Texas. Mr. Speaker, I rise in support of this conference report.

I believe the Commonsense Product Liability Act has become necessary to deal with our increasingly litigious society and the arbitrary and capricious nature of many punitive damage awards.

Today, in 1996, product liability unquestionably has become a major factor in interstate commerce. Less so 20 years ago, but today product liability determines what goods are available in what States and at what price. Further, liability laws have had the impact of sending the manufacture of goods overseas, taking American jobs with them, for example, as we've seen in the private aircraft industry.

There can be no doubt that the measures in this legislation—punitive damage reform, joint and several liability reform, and a provision similar to an amendment that I offered to the original House bill—that limits the liability of rental and leasing agencies for the tortious acts of another—fall well within this category of appropriate and much needed reform. The changes proposed in this bill will rearrange the legal landscape, but they will further the cause of commerce and competitiveness, reduce costs for consumers and create jobs across America.

The problems we address in this bill are national problems. American citizens, businesses, municipalities, and other charities across our Nation pay $80 billion a year as a litigation tax. And these costs are paid by all of us through increased costs in our goods and services. Today 30 percent of the price of a stepladder and over 95 percent of the price of childhood vaccines go to cover the costs of tort liability. Each new private aircraft made by American workers has a $100,000 litigation tax added to its cost. The present system costs jobs, costs lives, and burdens every citizen in America with a litigation tax that is unaffordable.

The time has come for sensible product liability reform. This legislation will strengthen the economy and the free market by removing the impediments to interstate commerce and encouraging innovation. His legislation provides a national solution to a national problem, and I hope my colleagues will join me in supporting it.

Mr. DINGELL. Mr. Speaker, I yield the balance of my time to the gentlewoman from Texas [Ms. JACKSON-LEE].

The SPEAKER pro tempore (Mr. GUNDERSON). The gentlewoman from Texas [Ms. JACKSON-LEE] is recognized for 2 minutes and 10 seconds.

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Speaker, I am here to talk about people. I think that is what we have missed in this whole debate. Thirty million Americans are injured by consumer products, not including automobiles; 29,000 people are killed in tragedies that involve everything from medical devices to chain saws.

It is important that my colleagues realize that we should not draw the line in the sand amongst ourselves. This is in fact the people's House. Most do not care what side we are on. They only ask that we remedy a problem that exists for the American people.

I have heard my colleagues talk about frivolous lawsuits and moneys that are expended.

Mr. Speaker, may I share with my colleagues that the Department of Justice said that product liability cases represent only 1.6 percent of civil cases. May I say to my colleagues that we have only had 14 injury awards of punitive damages annually for the last 2 years. But allow me to tell Members

a story of an American worker who may be injured by a product older than 15 years old. That injured worker may be injured by a product that explodes while he is trying to work for his family. That individual has no rights under this law. But yet his corporation or his factory could still go to court and charge that the product maker interfered with his business. But that injured employee can no longer go to the court under this legislation. Thirty million Americans are injured by devices.

I heard my colleague talk about breast implants. Let me respect his expertise and the acknowledgment of the progress that has been made in breast implants. But there are many, many women who have suffered under the present design. I want to make sure that the sons and daughters in the future will not suffer the pain of these women who are involved in present-day breast implant litigation.

That is what this House is here for. The people's House is here to ensure the people's rights. And this products liability bill is, in fact, what the New York Times said, it is the ''Anticonsumer bill for 1996.''

Remember the 30 million, remember the 29,000. Vote against this legislation.

Mr. Speaker, I rise today to express my concerns regarding the conference report on H.R. 956, the product liability reform bill. The proponents of H.R. 956 may have intended for this bill to level the playing field among consumers and manufacturers but it does not achieve this goal. The bill eliminates joint liability for noneconomic damages and caps punitive damages at $250,000 or two times compensatory damages, whichever is greater.

While most interested observers agree that some elements of the current product liability system need to be reformed, they do not believe that such reform is necessary because of a great explosion of product liability lawsuits. The Justice Department's Bureau of Justice Statistics indicates that product liability cases represent only 1.6 percent of civil cases. Another influential study on product liability lawsuits indicates that there have been only an average of 14 jury awards of punitive damages annually for the last two decades.

Contrary to arguments made by proponents of the bill, the current system is not discouraging capital investment or increasing the costs of developing new products. In fact, the General Accounting Office reports that insurance costs to businesses represent less than 1 percent of most businesses' gross annual receipts. Moreover, the National Association of Insurance Commissioners indicate that product liability insurance premiums have dropped by nearly 30 percent over the last 6 years.

President Clinton has already announced that he will veto this bill because it preempts State law when such law favor consumers and defers to State law when such provisions favor the manufacturers. I am surprised that many members of the majority party in the House support this bill's uniform, Federal product liability standards since these Members strongly favor granting more authority to State governments.

Specifically, I am concerned about the elimination of joint and several liability for noneconomic losses because of its potentially disproportionate impact on women, children, and the elderly. The bill retains joint and several liability for economic losses such as lost wages. Noneconomic losses such as disfigurement or loss of fertility deserve similar treatment by the legal system as economic losses such as lost wages. This particularly impacts the number of breast implant cases affecting women across America.

The provisions of the bill relating to punitive damages must be carefully examined because punitive damages provide a powerful incentive for manufacturers to make strong efforts to ensure that their products are safe. A cap of $250,000 on punitive damages would mean that some large companies may incorporate this figure as a cost of doing business as they implement their quality control procedures for manufacturing products. Moreover, a provision in the bill permits judges to award punitive damages exceeding $250,000 in egregious circumstances. The intent of the bill however, is that a judge would rarely exercise this discretion.

Additionally, I am concerned about the statute of repose provision that prohibits courts from awarding damages for injuries caused by durable goods that are 15 years or older. The definition of durable goods is narrow and excludes various consumer products.

During the recent elections in California, the voters of that State rejected various referenda that would have changed the tort liability system by restricting the rights of consumers.

Mr. Speaker, I urge the Members of the House to carefully review the provisions of this bill and consider its potential impact on millions of American consumers.

Mr. HYDE. Mr. Speaker, I yield the balance of my time to the gentleman from Illinois [Mr. MANZULLO].

The SPEAKER pro tempore. The gentleman from Illinois [Mr. MANZULLO] is recognized for 3 minutes.

(Mr. MANZULLO asked and was given permission to revise and extend his remarks.)

Mr. MANZULLO. Mr. Speaker, today we have a great opportunity to move America forward by passing this conference report on products liability reform. This is not a perfect bill, but it is a fair bill. It is fair to the consumers in America, and it is fair to the companies that make the products.

One of the companies is Mattison Technologies of Rockford, IL. This is a company facing liability lawsuits involving products that are as old as the company itself. Madison is celebrating its 100th year of operation. That is correct, Mr. Speaker, Mattison Technologies have been manufacturing tools for one century.

Recently they were sued by a plaintiff in Ohio for a machine that was built in 1917. That is right, 1917, the same year Americans went to fight in the First World War, the same year the Bolsheviks were turning out Czar Nicholas. That is a long time for a machine tool to be functioning and too long for a company to be held liable for one of its products. Mattison has 150 employees and yet every 3 months the sheriff shows up with a brandnew summons bringing a brandnew lawsuit against the company.

I have a letter from Robert Jennings, the general manager. Listen to what he said: ''The present product liability situation in this country has had a tremendous impact on our ability to successfully compete in the marketplace.''

We are continuously defending lawsuits concerning machines built 30, 60, and even 70 years ago. ''We are being penalized for building quality and longevity into our equipment, yet we believe this is what made in America is all about.''

And what a bitter irony it is that current law keeps manufacturers from making better equipment or modifying it because that modification could be used to prove the initial design may not have been safe enough.

This bill would help rectify the problem. A 15-year statute of repose would stop such lawsuits on old products.

Mr. Speaker, a company being sued for a machine they manufactured in 1917. This is outrageous. This bill provides a balance. It protects the consumers. It protects the employers. And it also protects employees. Why are the 150 employees of Mattison Technologies the beneficiaries of this legislation? It is easy. Because if Mattison did not have to defend against these lawsuits, they could pour more into productivity, more into investment, more employees would be hired. They would become more competitive overseas.

Mr. Speaker, this is a good bill. It is a tough bill. It is a bill that is good for the economy of America. It is a bill that relates to one of the 1,800 companies in the district that I represent. I would encourage the Members of this body to vote in favor of the conference report.

MATTISON TECHNOLOGIES INC.,
*Rockford, IL, March 28, 1996.*

Re Common Sense Product Liability Legal Reform Act.

Hon. DONALD MANZULLO,
*House of Representatives,*
*Washington, DC.*

DEAR CONGRESSMAN MANZULLO: On behalf of Mattison Technologies, Inc. and its 150 employees, I ask that you support the above referenced legislation.

The present product liability situation in this country has had a tremendous impact on our ability to successfully compete in the marketplace.

We are required to defend product liability claims against equipment that we built 50, 60, and yes, even 70 years ago.

We recently received a Complaint on a woodworking machine we built and shipped in 1917; that's 79 years ago!

We are being penalized for building quality and longevity into our equipment, yet we believe this is what ''Made In America'' is all about.

Among other sensible uniform product liability changes, this Act addresses the ''forever liability problem'' with a 15 year Statute of Repose.

The machinery manufacturing community, so vital to Illinois and the nation's economy, needs this reform.

Thank you for your support.

Sincerely yours,

ROBERT K. JENNINGS.

Mr. CARDIN. Mr. Speaker, I rise to express my disappointment with the conference report on H.R. 956, the Product Liability Reform Act. I have long been a supporter of legal reform and in particular, product liability tort reform. Unfortunately, some of the measures in this bill are too extreme and therefore, I must vote ''no'' on final passage.

I support a number of the provisions in the conference report including the abolishment of joint and several liability for noneconomic damages and the encouragement of alternative dispute resolution. In addition, the FDA defense proposed in the original House-passed bill was lifted in conference. Under the House bill, plaintiffs would have been barred from winning punitive damages for harm caused by products approved by the Food and Drug Administration.

The conference agreement also contains a more workable legal standard for punitive damages. Under the House bill, plaintiffs would be required to prove that a product was specifically intended to cause harm. The conference languages, which sets a standard of clear and convincing evidence for punitive damages, is a much more reasonable standard.

While the conference report improves on the House-passed legislation on punitive damages restrictions, I believe the language is still unacceptable. I support reasonable caps on punitive damages. However, the conference report allows a large number of businesses to be subject to an unreasonably low cap on punitive damages. In addition, an overall limit on $250,000, or two times compensatory damages, is also too low. I and many of my colleagues had suggested a cap of $500,000. I regret that the Conference Committee did not accept that recommendation.

The additur language was a good attempt to ease the impact of the punitive damage cap. It would allow a judge to award punitive damages above the cap if the judge determines the defendant's conduct was egregious. Although this provision is an improvement, it is subject to constitutional challenge, and would not apply to small business.

As I have indicated, I support many provisions in the conference report. However, there is much that I cannot support, including the preemption of States' rights, the statue of limitations, and lawsuit limits placed on victims of firearms violence.

I find particularly offensive the inclusion of negligent entrustment cases under the limits of this legislation. Sensible product liability reform should not subject cases involving gun or alcohol sales to minors to these new lower punitive damage limits or higher standards of proof.

Mr. Speaker, we can reform the legal system while still ensuring consumer protection. As a supporter of legal reform, I urge a ''no'' vote on this conference report so that it can be sent back to conference for further consideration.

Mr. BILBRAY. Mr. Speaker, I rise in strong support of H.R. 956.

Because of unwarranted product litigation, medical device manufacturers are in danger of being denied access to essential raw materials for the production of life-saving technologies. An alarming number of suppliers are refusing to sell these raw products to the manufacturers, for fear of being joined in a liability suit against the manufacturer.

Mr. Speaker, a full 32 percent of the Nation's medical device manufacturers are headquartered in California. A great number of these are in my San Diego district. These companies make pacemakers, heart valves, and other implantable medical devices which improve the quality of life and ease the suffering of innumerable patients. These companies depend on patented alloys and synthetics, such as Teflon and synthetic polymers, to ensure that these devices will be compatible with the patients who need them.

Under current law, the suppliers of these raw materials can be liable in product liability actions brought against device manufacturers, even though they have no role in the production or sale of the finished devices. As a result, many suppliers have announced plans to limit or discontinue sales of these raw biomaterials to device companies. This would drastically restrict the ability to provide these innovative devices to people who desperately need them.

This bipartisan conference report will reform this tragic situation, by allowing suppliers to resume sales to cutting-edge California device manufacturers, and in turn ensure that patients nationwide retain access to state-of-the-art technologies. This is about people, Mr. Chairman, and doing what we can to make sure patients in need are provided relief from their afflictions and suffering.

Mr. Speaker, this is a fair and bipartisan reform package, and I urge my colleagues to support it. Let us send H.R. 956 to the President, with the knowledge that Californians who need this reform are watching, as is the entire Nation. A veto of this bill, as promised by the President and supported by the Trial Lawyers Association, would be tragic; however, it would clearly demonstrate to the American people where the priorities of this administration truly lie.

Mrs. MINK of Hawaii. Mr. Speaker, I rise today in opposition to the conference report on H.R. 956, the so-called Commonsense Product Liability Legal Reform Act. The only relation this bill has to common sense is that it takes just a little common sense to see that it is designed to protect big business at the expense of U.S. consumers.

It pulls the rug out from under U.S. consumers by applying unfair limitations on the means through which they can seek relief if hurt by a faulty product. It is puzzling that the party who has screamed about States' rights for the last year chooses to impose a Federal standard when it comes to limiting the rights of consumers. While this bill sets a Federal standard for product liability cases it allows States to retain their own laws only when it benefits big business. Specifically it requires States to adhere to the cap placed on punitive damages by this bill, but it does not require punitive damages in States that currently do not have punitive damages.

The arbitrary cap on punitive damages at $250,000 or two times actual damages, which ever is greater, is based on highly inflammatory rhetoric about the explosion of unreasonable jury awards in product liability cases. Product liability cases make up less than 0.5 percent of all lawsuits in the Nation. Cases in which punitive damages were awarded are even fewer. In 1994, punitive damages were awarded in only 15 cases nationwide. And nearly 80 percent of these cases resulted in the withdrawal of the product, improved product design, or strengthened warnings. Punitive damages are meant to punish wrongful actions of manufacturers and to deter the future production of similar faulty products. A cap of $250,000 is hardly a deterrent for a mega-corporation.

For smaller businesses the cap is the lesser of $250,000 or two times actual damages. Utilizing a different standard for small business establishes a precedent that a person harmed by a small business is entitled to less, even though the loss, disfigurement, or pain is equal to or greater than an injury incurred by a product of a larger business.

Furthermore, the bill imposes a more difficult burden of proof in order for punitive damages to be awarded, further reducing the effectiveness of punitive damages as a deterrent. Punitive damages are allowed to be awarded only if the plaintiff proves clear and convincing evidence that the conduct of the defendant was a conscious flagrant indifference to the rights and safety.

The most offensive provision to me personally is the provision which discriminates against women, children, and the elderly by barring joint and several liability for noneconomic damages. Treating economic and noneconomic damages differently establishes a two-tiered system which hurts women, children and the elderly, who typically have damages not related to lost wages. Their damages are injury related and go to pain and suffering, disability and physical losses. Under this bill a high-paid corporate executive would recoup all of his economic, income, damages while a woman who stays home with her children, a person with little or no economic loss, would not. Equal justice should not be dependent on age, employment, and economic status.

The intent of this bill is to discriminate against women, children, and the elderly. Since women have been subject to so many faulty products and drugs, like DES, silicone breast implants, IUD's, and the Dalkon Shield, it is grossly unfair.

I am a DES mother who took this harmful drug. If this law had been in effect at the time of my lawsuit, it would have been very upsetting. My losses would not have qualified for access to joint and several liability. Such a bar to fair and equitable recovery is unconscionable. This bill must be defeated.

If we are going to move toward a national standard on product liability, let it be a fair standard. One that treats men and women the same, one that recognizes the value of noneconomic damages, one that applies fairly to all businesses, and one that does not arbitrarily limit punitive measures needed to curb the production of faulty products.

Mr. Speaker, I urge my colleagues to vote down this conference report.

Mr. BEREUTER. Mr. Speaker, this Member rises in support of this measure and to express his pleasure that this legislation has advanced to this stage and is one step closer to becoming law.

This Member introduced the first product liability legislation in the Nebraska Unicameral Legislature in 1977. During this process this Member realized that this issue must be dealt with on the Federal level, because the vast majority of products and services move through interstate commerce. Addressing product liability at the State level is like patching 1 hole in a tire with 50 holes.

Mr. Speaker, all Americans are paying higher prices for consumer goods and services because this legislation has been delayed for so very long. The insurance costs incurred by companies protecting against and paying for outrageous product liability suits are passed along to the consumer each and every day, in each and every product and service purchased.

Perhaps even more outrageously, the current system unfairly imposes upon the American public product design standards, which are created in response to penalties awarded in a few States with the highest punitive and compensatory damages. Those States get to impose their juries' ideas of appropriate design and safety standards on the rest of the Nation. That is a perversion of federalism. National standards should be set by the national legislature. That is what this bill will do.

Mr. Speaker, this Member has been a longtime cosponsor of product liability reform, dating back to at least 1986 when this Member was an early cosponsor of registration introduced by his distinguished colleague, Mr. ROTH. This Member is pleased that this conference report is before the House for final approval and urges his colleagues to support it.

Mr. RAMSTAD. Mr. Speaker, as chair of the task force which crafted the legal reform plank of the Contract With America, I feel extremely gratified to see an important part of our efforts come so far in the process.

Although the reforms contained in the conference report are not as sweeping as those the House put forward last year, they are a vast improvement over the present legal system. Our present system results in higher prices for consumers, lost jobs, and stifled innovation.

I want to talk about a particular provision in this conference report which is more than just sound economic policy; it is sound health policy.

Over 11 million Americans rely on implanted medical technologies, ranging from artificial joints to complex mechanical devices such as cardiac defribrillators and drug infusion pumps.

Unfortunately, the spectre of product liability litigation has caused many raw material suppliers to restrict the use of their products in implanted medical devices. The lack of materials and components for these medical devices jeopardizes the well-being—and in some cases the very lives—of the millions of Americans who depend on these technologies.

The biomaterials access assurance provisions of H.R. 956 will help ensure that the threat of product liability litigation will not hurt patients who need access to implanted medical devices. H.R. 956 will prohibit claims against biomaterials supplier unless the company acted irresponsibly and its mistake actually caused the harm.

It is also important to note what the biomaterials access assurance provisions will not do. Nothing will reduce the amount of money to which a person injured by a defective implant is entitled. Device manufacturers will design suitability and performance specifications for the raw materials, certified by the FDA, and suppliers will continue to be liable when materials or components do not meet the specifications.

But suppliers will not be responsible when their products meet the manufacturer's specifications. In these circumstances, the manufacturers will be responsible for any product defect. This commonsense approach protects the rights of injured plaintiffs, but at the same time presents a biomaterials shortage our country just cannot afford.

I urge my colleagues to support this important bill.

Mr. BUYER. Mr. Speaker, I am pleased to support this legislation which will return common sense to our legal system as it applies to products. While these reforms do not go as far as I would like, they are essential to restoring balance to our legal system as we seek to protect consumers while providing predictability to manufacturers.

The bill establishes a 15-year limit on when a manufacturer may be held liable for its products. Product sellers will not be liable in cases where illegal drugs or alcohol contributed more than 50 percent toward the harm. In addition, producers will not be liable for the percentage of blame attributed to product misuse or alteration.

This measure makes clear that punitive damages should be awarded only in the most serious cases of egregious conduct. Punitive damage awards will be linked to the actual harm caused by allowing punitive damage awards of up to two times the compensatory damages or $250,000, whichever is greater. There are special rules for individuals of limited net worth and to small businesses.

Liability for noneconomic damages will be several, rather than joint, making defendants liable only for their proportionate share of the fault. This addresses the deep pocket syndrome.

The bill also addresses the unique difficulty faced by biomedical device manufacturers. Medical device manufacturers are quickly losing suppliers of materials due to litigation. Huge awards are often sought from suppliers even though they had no role in the design, manufacture, or sale of a device. The courts are not finding suppliers liable, yet millions of dollars and countless hours are spent on defense in court. This bill will provide expedited dismissal against suppliers in court and they cannot be sued unless they are a manufacturer or a seller of devices and as long as they have abided by the contract and supply specifications of the manufacturer. Biomedical device manufacturers in Warsaw, IN, BIOMET, Zimmer, DePuy, and Danek, are producing the needed devices, pacemakers, heart valves, artificial blood vessels, hip and knee joints, that add so much to the quality of life for countless individuals.

There are so many small businesses in the Fifth District of Indiana that will be helped by this legislation. These businesses will be able to concentrate on product development and expansion rather than fighting lawsuits. One such company is Whallon Machinery of Royal Center, IN, which manufacturers industrial material handling machines. In nearly 30 years of business, over 83 percent of all machines built are still in use. Prior to 1993, Whallon had no product liability claims. One customer had modified a Whallon machine. Had this legislation been in place then, Whallon Machinery may not have faced a fourfold increase in insurance premiums.

It is time to return a sense of reasonableness to ensure that injured parties are compensated in a manner that protects all consumers and America's competitiveness. This legislation is a very good start.

Mr. COSTELLO. Mr. Speaker, I rise today in strong opposition to the product liability conference report. This bill effectively condones egregious misconduct, carelessness, and greed of manufacturers which produce and sell defective products. This bill makes it cost-effective for some companies to put profits ahead of safe products. In my opinion, Mr. Speaker, this is wrong. The unfortunate victims of the repercussions of this legislation are the American consumers.

I object to the provisions in this bill which arbitrarily limit the amount of punitive damages injured person may recoup when harmed by faulty or dangerous products. Punitive damages should serve as a deterrent to manufacturers who knowingly build and sell dangerous products. Punitive damages force companies to fix dangerous products. For example, punitive damages have been effective in making safer children's pajamas and baby cribs, automobiles, and medical devices. Without the threat of these large damage awards, manufacturers have an incentive to settle with individuals hurt by dangerous products rather than correcting their wrongs. We cannot actively condone and promote such unconscionable business practice.

Proponents of this legislation argue for the need to limit punitive damages to $250,000 because without such caps juries have awarded ridiculously high punitive damage awards. This is simply not true. The National Center for State Courts reports that only 600 of the 1 million tort actions filed each year result in punitive damages. It should further be noted that most of those are reduced on appeal. It is easy to talk about the outrageous $2.7 million award to the woman who was burned by the hot coffee at McDonald's. However, let us examine the facts. This grandmother had to undergo extensive skin grafts for her burns. McDonald's had ignored 700 prior complaints about too-hot coffee and, in fact, the judge reduced the punitive damage award to $400,000. How many burns must it take to have a company change its harmful ways? The unfortunate fact remains that business usually comes down to dollars. Mr. Speaker, it cannot pay to make dangerous products. I urge my colleagues to defeat this bill.

Mrs. MEEK of Florida. Mr. Speaker, I ask unanimous consent to revise and extend my remarks.

Mr. Speaker, I strongly oppose the so-called Common Sense Product Liability Legal Reform Act.

There is no common sense in it.

What is the common sense of having Washington dictate to juries in each of the 50 States how to decide a case where someone has been injured by a dangerous product?

What is the common sense of having Washington dictate to the voters and State legislatures in each of the 50 States? The States are

acting. For example, in 1988 Florida's voters rejected, by a vote of 57 percent to 43 percent, an amendment to the constitution that would have arbitrarily capped noneconomic damages in all tort cases at $100,000. Since 1986, 31 State legislatures have altered their product liability laws.

The Republican majority preaches federalism and returning power to the people. But its actions speak louder than its words. The Republican leadership wants to override what the States are doing because it does not like what the citizens of each State are deciding.

The Republican leadership preaches that individuals should be accountable for their actions. Why not apply the same standard to corporations that make and sell dangerous products?

Title II of this bill will prevent women who needlessly suffered from faulty breast implants from suing the company that negligently supplied the silicone gel. That is wrong.

Mr. Speaker, President Clinton is right when he said he will veto this bill. This conference report favors corporate profits over the health and safety of our citizens, and I urge my colleagues to vote against it.

Mr. KLECZKA. Mr. Speaker, I rise in opposition to the conference report on H.R. 956, product liability reform.

Last March, I voted in favor of this legislation because I believed there were problems in our product liability system which needed to be addressed. We have all heard stories of excessive awards, or juries granting vastly different awards for similar injuries. However, the conference report before us today and recent congressional action radically shift the balance against the consumers.

To get a better understanding how this new version of product liability reform would affect the buying public, I met with Mary Griffin from Consumers Union. She discussed with me a number of the conference report's provisions which would adversely impact consumers, including the 15-year statute of repose, preemption of State laws more favorable to plaintiffs, the combined effect of the bill and other deregulatory efforts, and the 2-year statute of limitations on filing lawsuits.

This legislation contains a number of provisions which, in my judgment, would place unreasonable restrictions on individuals' ability to receive compensation for injuries caused by faulty products. Taken together, these provisions cause the product liability system to tilt dramatically against consumers.

The bill establishes a false and unfair distinction between individuals and corporations by limiting the ability of the individual to collect damages in product liability cases. For example, the statute of repose is set at 15 years for durable products like heavy machinery and elevators. If a defective product is more than 15 years old, an individual may not sue the manufacturer for injuries the product caused. Companies, however, could still go to court to recover damages. As a result, if a 16-year-old defective furnace explodes in a factory and kills a worker, that individual's family cannot sue the furnace manufacturer. The employer, however, is still permitted to take the furnace company to court to collect compensation for lost production, repairs, and so on.

The State pre-emption provisions of the conference report also trouble me deeply. State laws more favorable to consumers, such as higher or unlimited punitive damages, are pre-empted by this bill. At the same time, if the State standards are stricter, they are allowed to stand. This position is ironic to me given the current mood of Congress in returning authority to the States. Evidently, the congressional leadership is not confident that States will protect big business sufficiently. Under this legislation, companies would not have to go to the trouble of venue-shopping; Congress simply guarantees them the best possible deal. These pre-emption provisions have earned the bill the opposition of the National Conference of State Legislatures, the Conference of Chief Justices, Mothers Against Drunk Driving, and many other groups.

I am troubled by the apparent link between this product liability reform bill and the current congressional efforts toward deregulation. Congress is cutting the budgets of agencies like the Occupational Safety and Health Administration and the Consumer Product Safety Commission, which are responsible for overseeing the safety of products in the workplace and the home. It simply does not make sense to cut government safety oversight and, at the same time, slam the courthouse door on consumers who are injured by defective products.

Finally, I must object to the 2-year statute of limitations inserted by the conference committee. Under this provision, a person must file a lawsuit within 2 years of discovering their injury. Mr. Speaker, many of the ailments caused by these injuries are progressive in nature, developing over time. A person cannot possibly file a lawsuit when they have no idea how their condition may progress and what sort of medical treatment they may require in the future.

For these reasons, I cannot support the conference report on H.R. 956. I urge my colleagues to vote ''no'' on this legislation.

Mr. PALLONE. Mr. Speaker, I am strongly opposed to H.R. 956, the so-called Common Sense Product Liability Legal Reform Act.

H.R. 956 would pre-empt State law to require a $250,000 cap on punitive damage awards. Punitive damages are not compensation to a victim—through they serve that purpose—they are intended as punishment to businesses that are negligent. Punitive damage awards serve as a deterrent to bad actors in the market place who put explosive water heaters or automobiles on the market. It forces companies to be very careful and it forces them not to cut corners in an attempt to make a few dollars more.

It does not take a degree in math to realize that a $250,000 punitive damage award is hardly a deterrent to negligent Fortune 500 companies that rake in hundreds of millions or even billions of dollars each year. In fact, what this fixed figure does is allow companies to carefully calculate the costs and benefits of being negligent. Right now, because punitive damage awards are uncertain, the maker of a gas heater that has a faulty valve has no idea how much the company will lose as a result of successful suits against its faulty product. But under this bill, all that manufacturer would have to do is figure out how many of those heaters will explode, multiply by $250,000 and then compare that with expected profits. If profits outweigh damage awards, then you can bet that that deadly product will be out on the market.

This bill also does not contain language that I and 257 of my colleagues supported to hold foreign manufacturers to at least the same silly standards in this bill. So if you lose your sight, or your arms, or your children because of some negligent U.S. manufacturer, you can take some solace in the fact that you will get limited compensation, and the manufacturer will have to pay a little bit of money for being bad. But, if you lose a family member or your legs as a result of some faulty product from a foreign manufacturer, you get nothing. That company gets away scot-free, because H.R. 956 gives foreign manufacturers a free ride on the health, safety, and welfare of American consumers.

I also find it ironic that Republicans—who have harped on the issue of States rights for many years—have put together a bill that tramples on States rights. Currently, States enjoy the right to impose either ceilings or floors on punitive damages; however, this legislation would impose a ceiling while still allowing States to enact even lower damage caps. A similar situation exists with regard to the statute of repose which is capped at 15 years. In addition, a provision was recently added to the bill that would pre-empt the law in numerous States governing the liability of certain utilities, including gas pipelines.

The truth is time after time in this Congress, Republicans have put special corporate interests ahead of the needs of the average American. That is why I wrote to the President recently urging him to veto H.R. 956, and I ask that the text of my letter be made part of the RECORD.

This is just the latest in a series of efforts to undermine consumer protection at the expense of the health and safety of the average American. This undermining of American health and safety law represents a sea change from the consensus that reigned here for many years. But things have changed, and they have changed for the worse.

For example, early in the year, we passed a risk assessment bill that, if enacted, would have effectively repealed current statutory and regulatory standards designed to protect health, safety, and the environment. That bill contained language that in a mindless, sweeping way, would have wiped away decades of work done by Congress, and by State and Federal courts.

And just today, as we were considering H.R. 965, Republicans were telling us that the Consumer Product Safety Commission—which each year helps prevent millions of injuries due to negligent manufacturers or faulty products—had outlived its usefulness because the people were well protected by our Nation's product liability laws.

Mr. Speaker, we need to ensure public safety. We need to protect small children. But what we do not need is the H.R. 956 the corporate dollars and sense Product Liability Reform Act. I am sure the President will veto, and I hope my colleagues will sustain his veto and stop Republicans from gutting consumer protections for the benefit of corporate special interests.

HOUSE OF REPRESENTATIVES,
*Washington, DC, March 25, 1996.*

Hon. WILLIAM J. CLINTON,
*President of the United States,*
*Washington, DC.*

DEAR PRESIDENT CLINTON: I am writing in support of your announced intention to veto H.R. 956, the Common Sense Product Liability Legal Reform Act.

H.R. 956 would pre-empt state law to require a $250,000 cap on punitive damage

awards. Currently, states enjoy the right to impose either ceilings or floors on punitive damages; however, this legislation would impose a ceiling while still allowing states to enact even lower damage caps. A similar situation exists with regard to the statute of repose which is capped at 15 years. In addition, a provision was recently added to the bill that would pre-empt the law in numerous states governing the liability of certain utilities, including gas pipelines.

Also, it is clear that the threat of a $250,000 penalty is not a sufficient deterrent to irresponsible behavior in many instances. Nor is it adequate punishment for conduct that results in death or serious injury such as the loss of a limb. Coupled with the legislation's elimination of joint-and-several liability for noneconomic damages, this bill, if enacted, would definitively tip the balance against consumers and in favor of those who manufacture and market defective products.

Finally, it is important to note that this legislation is not being considered in a vacuum. The Republican majority in Congress continues to attack public health, safety and consumer protection laws both through the authorization process and by underfunding the agencies that enforce those laws. Enactment of extreme legislation, like H.R. 956, taken together with these other efforts will surely threaten the health, safety and well being of all Americans.

For these reasons, I urge you to veto H.R. 956.

Sincerely,

FRANK PALLONE, Jr.,
*Member of Congress.*

The SPEAKER pro tempore. Without objection, the previous question is ordered.

There was no objection.

The SPEAKER pro tempore. The question is on the conference report.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. HYDE. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 259, nays 158, not voting 14, as follows:

[Roll No. 110]

YEAS—259

Allard
Archer
Armey
Bachus
Baker (CA)
Baker (LA)
Ballenger
Barcia
Barr
Barrett (NE)
Bartlett
Barton
Bass
Bateman
Bereuter
Bilbray
Bilirakis
Bliley
Blute
Boehlert
Boehner
Bonilla
Bono
Boucher
Brewster
Browder
Brownback
Bryant (TN)
Bunn
Bunning
Burr
Burton
Buyer
Callahan
Calvert
Camp
Campbell
Canady
Castle
Chabot
Chambliss
Chenoweth
Christensen
Chrysler
Clement
Clinger
Coburn
Collins (GA)
Combest
Condit
Cooley
Cox
Cramer
Crane
Crapo
Cremeans
Cubin
Cunningham
Davis
Deal
DeLay
Dickey
Dingell
Dooley
Doolittle
Dornan
Dreier
Duncan
Dunn
Edwards
Ehlers
Ehrlich
Emerson
English
Ensign
Everett
Ewing
Fawell
Flanagan
Foley
Forbes
Fox
Franks (CT)
Franks (NJ)
Frelinghuysen
Frisa
Funderburk
Gallegly
Ganske
Gekas
Geren
Gilchrest
Gillmor
Goodlatte
Goodling
Gordon
Goss
Graham
Greenwood
Gunderson
Gutknecht
Hall (OH)
Hall (TX)
Hamilton
Hancock
Hansen
Harman
Hastert
Hastings (WA)
Hayworth
Hefley
Hefner
Heineman
Herger
Hilleary
Hobson
Hoekstra
Hoke
Holden
Horn
Hostettler
Houghton
Hunter
Hutchinson
Hyde
Inglis
Istook
Johnson (CT)
Johnson, Sam
Jones
Kaptur
Kasich
Kelly
Kennelly
Kim
Kingston
Klug
Knollenberg
Kolbe
LaHood
Largent
Latham
LaTourette
Laughlin
Lazio
Leach
Lewis (CA)
Lewis (KY)
Lightfoot
Lincoln
Linder
Livingston
LoBiondo
Longley
Lucas
Manzullo
McCollum
McCrery
McDade
McHugh
McInnis
McIntosh
McKeon
Metcalf
Meyers
Mica
Miller (FL)
Minge
Molinari
Montgomery
Moorhead
Moran
Morella
Myers
Myrick
Nethercutt
Neumann
Ney
Norwood
Nussle
Oxley
Packard
Parker
Paxon
Payne (VA)
Peterson (FL)
Peterson (MN)
Petri
Pombo
Porter
Portman
Pryce
Quillen
Quinn
Radanovich
Ramstad
Reed
Regula
Riggs
Roberts
Roemer
Rogers
Rohrabacher
Ros-Lehtinen
Roth
Roukema
Royce
Salmon
Sanford
Saxton
Scarborough
Schaefer
Schiff
Seastrand
Sensenbrenner
Shadegg
Shaw
Shays
Shuster
Sisisky
Skeen
Slaughter
Smith (MI)
Smith (NJ)
Smith (WA)
Solomon
Souder
Spence
Spratt
Stearns
Stenholm
Stockman
Stump
Talent
Tanner
Tate
Tauzin
Taylor (MS)
Taylor (NC)
Thomas
Thornberry
Tiahrt
Torkildsen
Upton
Vucanovich
Waldholtz
Walker
Walsh
Wamp
Watts (OK)
Weldon (FL)
White
Whitfield
Wicker
Wolf
Young (AK)
Young (FL)
Zeliff
Zimmer

NAYS—158

Abercrombie
Ackerman
Andrews
Baesler
Baldacci
Barrett (WI)
Becerra
Beilenson
Bentsen
Berman
Bevill
Bishop
Bonior
Borski
Brown (CA)
Brown (FL)
Brown (OH)
Cardin
Chapman
Clay
Clayton
Clyburn
Coble
Coleman
Collins (MI)
Conyers
Costello
Coyne
Danner
DeFazio
DeLauro
Dellums
Deutsch
Diaz-Balart
Dicks
Dixon
Doggett
Doyle
Durbin
Engel
Evans
Farr
Fattah
Fazio
Fields (LA)
Filner
Flake
Foglietta
Frank (MA)
Frost
Furse
Gejdenson
Gephardt
Gibbons
Gilman
Gonzalez
Green
Gutierrez
Hastings (FL)
Hilliard
Hinchey
Hoyer
Jackson (IL)
Jackson-Lee (TX)
Jacobs
Jefferson
Johnson (SD)
Johnson, E. B.
Johnston
Kanjorski
Kennedy (MA)
Kennedy (RI)
Kildee
King
Kleczka
Klink
LaFalce
Lantos
Levin
Lewis (GA)
Lipinski
Lofgren
Lowey
Luther
Maloney
Manton
Markey
Martinez
Martini
Mascara
Matsui
McCarthy
McDermott
McHale
McKinney
Meehan
Meek
Menendez
Miller (CA)
Mink
Moakley
Mollohan
Murtha
Nadler
Neal
Oberstar
Obey
Olver
Ortiz
Orton
Owens
Pallone
Pastor
Payne (NJ)
Pelosi
Pickett
Pomeroy
Poshard
Rahall
Rangel
Richardson
Rivers
Rose
Roybal-Allard
Rush
Sabo
Sanders
Sawyer
Schroeder
Schumer
Scott
Serrano
Skaggs
Skelton
Stark
Studds
Stupak
Tejeda
Thompson
Thornton
Thurman
Torricelli
Towns
Traficant
Velazquez
Vento
Visclosky
Volkmer
Ward
Waters
Watt (NC)
Waxman
Williams
Wilson
Wise
Woolsey
Wynn
Yates

NOT VOTING—14

Bryant (TX)
Collins (IL)
de la Garza
Eshoo
Fields (TX)
Ford
Fowler
Hayes
McNulty
Smith (TX)
Stokes
Torres
Weldon (PA)
Weller

☐ 1343

The Clerk announced the following pair:

On this vote:

Mrs. Fowler for, with Mrs. Collins of Illinois against.

Mr. EDWARDS changed his vote from ''nay'' to ''yea.''

## FURTHER CONTINUING APPROPRIATIONS, FISCAL YEAR 1996

Mr. LIVINGSTON. Mr. Speaker, pursuant to the order of the House, I call up the joint resolution (H.J. Res. 170) making further continuing appropriations for the fiscal year 1996, and for other purposes, and ask for its immediate consideration in the House.

The Clerk read the title of the joint resolution.

The text of the joint resolution is as follows:

H.J. RES. 170

*Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,* That Public Law 104–99 is further amended by striking out ''March 29, 1996'' in sections 106(c), 112, 126(c), 202(c) and 214 and inserting in lieu thereof ''April 24, 1996''; and that Public Law 104–92 is further amended by striking out ''April 3, 1996'' in section 106(c) and inserting in lieu thereof ''April 24, 1996'' and by inserting in Title IV in the matter before section 401 ''out of any money in the Treasury not otherwise appropriated, and'' before ''out of the general fund''; and that section 347(b)(3) of Public Law 104–50 is amended to read as follows:

''(3) chapter 71, relating to labor-management relations;''; and that section 204(a) of the Auburn Indian Restoration Act (25 U.S.C. 1300*l*–2(a)) is amended by striking ''shall'' in the first sentence and inserting in lieu thereof ''may''.

SEC. 2. That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 1996, and for other purposes, namely:

FOREIGN OPERATIONS, EXPORT FINANCING, AND RELATED PROGRAMS

FUNDS APPROPRIATED TO THE PRESIDENT, AGENCY FOR INTERNATIONAL DEVELOPMENT

*Assistance for Eastern Europe and the Baltic States*

*(Including Transfers of Funds)*

For an additional amount for ''Assistance for Eastern Europe and the Baltic States'' for Bosnia and Herzegovina, including demining assistance, $198,000,000: Provided,