

damages received by an individual under such action shall be reduced, in accordance with subsection (b), by any other payment that has been, or will be, made to an individual to compensate such individual for the injury that was the subject of such action.

(b) AMOUNT OF REDUCTION.—The amount by which an award of damages to an individual for an injury shall be reduced under subsection (a) shall be—

(1) the total amount of any payments (other than such award) that have been made or that will be made to such individual to pay costs of or compensate such individual for the injury that was the subject of the action; minus

(2) the amount paid by such individual (or by the spouse, parent, or legal guardian of such individual) to secure the payments described in paragraph (1).

(c) DETERMINATION OF AMOUNTS FROM COLLATERAL SERVICES.—The reductions required under subsection (b) shall be determined by the court in a pretrial proceeding. At the subsequent trial—

(1) no evidence shall be admitted as to the amount of any charge, payments, or damage for which a claimant—

(A) has received payment from a collateral source or the obligation for which has been assumed by a third party; or

(B) is, or with reasonable certainty, will be eligible to receive payment from a collateral source of the obligation which will, with reasonable certainty be assumed by a third party; and

(2) the jury, if any, shall be advised that—

(A) except for damages as to which the court permits the introduction of evidence, the claimant's medical expenses and lost income have been or will be paid by a collateral source or third party; and

(B) the claimant shall receive no award for any damages that have been or will be paid by a collateral source or third party.

SEC. 19. TREATMENT OF ATTORNEYS' FEES AND OTHER COSTS.

(a) LIMITATION ON AMOUNT OF CONTINGENCY FEES.—

(1) IN GENERAL.—An attorney who represents, on a contingency fee basis, a claimant in a health care liability action may not charge, demand, receive, or collect for services rendered in connection with such action in excess of the following amount recovered by judgment or settlement under such action:

(A) 33½ percent of the first \$150,000 (or portion thereof) recovered, based on after-tax recovery, plus

(B) 25 percent of any amount in excess of \$150,000 recovered, based on after-tax recovery.

(2) CALCULATION OF PERIODIC PAYMENTS.—In the event that a judgment or settlement includes periodic or future payments of damages, the amount recovered for purposes of computing the limitation on the contingency fee under paragraph (1) shall be based on the cost of the annuity or trust established to make the payments. In any case in which an annuity or trust is not established to make such payments, such amount shall be based on the present value of the payments.

(b) CONTINGENCY FEE DEFINED.—As used in this section, the term "contingency fee" means any fee for professional legal services which is, in whole or in part, contingent upon the recovery of any amount of damages, whether through judgment or settlement.

SEC. 20. STATE-BASED ALTERNATIVE DISPUTE RESOLUTION MECHANISMS.

(a) ESTABLISHMENT BY STATES.—Each State is encouraged to establish or maintain alternative dispute resolution mechanisms that promote the resolution of health care liability claims in a manner that—

(1) is affordable for the parties involved in the claims;

(2) provides for the timely resolution of claims; and

(3) provides the parties with convenient access to the dispute resolution process.

(b) GUIDELINES.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall develop guidelines with respect to alternative dispute resolution mechanisms that may be established by States for the resolution of health care liability claims. Such guidelines shall include procedures with respect to the following methods of alternative dispute resolution:

(1) ARBITRATION.—The use of arbitration, a nonjury adversarial dispute resolution process which may, subject to subsection (c), result in a final decision as to facts, law, liability or damages. The parties may elect binding arbitration.

(2) MEDIATION.—The use of mediation, a settlement process coordinated by a neutral third party without the ultimate rendering of a formal opinion as to factual or legal findings.

(3) EARLY NEUTRAL EVALUATION.—The use of early neutral evaluation, in which the parties make a presentation to a neutral attorney or other neutral evaluator for an assessment of the merits, to encourage settlement. If the parties do not settle as a result of assessment and proceed to trial, the neutral evaluator's opinion shall be kept confidential.

(4) EARLY OFFER AND RECOVERY MECHANISM.—The use of early offer and recovery mechanisms under which a health care provider, health care organization, or any other alleged responsible defendant may offer to compensate a claimant for his or her reasonable economic damages, including future economic damages, less amounts available from collateral sources.

(5) CERTIFICATE OF MERIT.—The requirement that a claimant in a health care liability action submit to the court before trial a written report by a qualified specialist that includes the specialist's determination that, after a review of the available medical record and other relevant material, there is a reasonable and meritorious cause for the filing of the action against the defendant.

(6) NO FAULT.—The use of a no-fault statute under which certain health care liability actions are barred and claimants are compensated for injuries through their health plans or through other appropriate mechanisms.

(c) FURTHER REDRESS.—The extent to which any party may seek further redress (subsequent to a decision of an alternative dispute resolution method) concerning a health care liability claim in a Federal or State court shall be dependent upon the methods of alternative dispute resolution adopted by the State.

(d) TECHNICAL ASSISTANCE AND EVALUATIONS.—

(1) TECHNICAL ASSISTANCE.—The Attorney General may provide States with technical assistance in establishing or maintaining alternative dispute resolution mechanisms under this section.

(2) EVALUATIONS.—The Attorney General, in consultation with the Secretary and the Administrative Conference of the United States, shall monitor and evaluate the effectiveness of State alternative dispute resolution mechanisms established or maintained under this section.

SEC. 21. APPLICABILITY.

This title shall apply to all civil actions covered under this title that are commenced on or after the date of enactment of this title, including any such action with respect

to which the harm asserted in the action or the conduct that caused the injury occurred before the date of enactment of this title.

Subtitle B—Protection of the Health and Safety of Patients

SEC. 31. ADDITIONAL RESOURCES FOR STATE HEALTH CARE QUALITY ASSURANCE AND ACCESS ACTIVITIES.

Each State shall require that not less than 50 percent of all awards of punitive damages resulting from all health care liability actions in that State, if punitive damages are otherwise permitted by applicable law, be used for activities relating to—

(1) the licensing, investigating, disciplining, and certification of health care professionals in the State; and

(2) the reduction of malpractice-related costs for health care providers volunteering to provide health care services in medically underserved areas.

Subtitle C—Obstetric Services

SEC. 41. SPECIAL PROVISION FOR CERTAIN OBSTETRIC SERVICES.

(a) IN GENERAL.—In the case of a health care liability action relating to services provided during labor or the delivery of a baby, if the health care professional or health care provider against whom the action is brought did not previously treat the claimant for the pregnancy, the trier of the fact may not find that such professional or provider committed malpractice and may not assess damages against such professional or provider unless the malpractice is proven by clear and convincing evidence.

(b) APPLICABILITY TO GROUP PRACTICES OR AGREEMENTS AMONG PROVIDERS.—For purposes of subsection (a), a health care professional shall be considered to have previously treated an individual for a pregnancy if the professional is a member of a group practice in which any of whose members previously treated the individual for the pregnancy or is providing services to the individual during labor or the delivery of a baby pursuant to an agreement with another professional.

Subtitle D—Severability

SEC. 51. SEVERABILITY.

If any provision of this title, an amendment made by this title, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this title, the amendments made by this title, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

NOTICES OF HEARINGS/MEETINGS

COMMITTEE ON ENERGY AND NATURAL RESOURCES

Mr. BINGAMAN. Mr. President, I would like to announce for the information of the Senate and the public that a field hearing has been scheduled before the Committee on Energy and Natural Resources.

The hearing will take place on Thursday, August 8, from 9:00 a.m. until 11:00 a.m. It will be held at the Albuquerque City Council Chambers, Albuquerque, NM.

The purpose of the hearing is to receive testimony on recent developments in advanced fuel cell and lighting technology, and for other purposes.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit testimony for the hearing record should send two copies

of their testimony to the Committee on Energy and Natural Resources, United States Senate, 312 Dirksen Senate Office Building, Washington, DC 20510, or to Senator BINGAMAN's office in Albuquerque, Suite 130, 625 Silver, SW, Albuquerque, NM 87102.

For further information please contact John Kotek at 202-224-6385, Jonathan Epstein at 202-224-3357, or Amanda Goldman at 202-224-6836.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED FORCES

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on July 26, 2002, at 9:30 a.m., in both open and executive sessions to consider the nominations of Lieutenant General James T. Hill, USA for appointment to the grade of General and assignment as Commander in Chief, United States Southern Command; and Vice Admiral Edmund P. Giambastiani, Jr., USN for appointment to the grade of Admiral and assignment as Commander in Chief, United States Joint Forces Command.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR, AND PENSIONS

Mr. REID. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions, Subcommittee on Children and Families, be authorized to meet for a hearing on Birth Defects: Strategies for Prevention and Ensuring Quality of Life during the session of the Senate on Friday, July 26, 2002, at 9:30 a.m.

The PRESIDING OFFICER. Without objection, it is so ordered.

MEASURE PLACED ON THE CALENDAR—H.R. 4965

Mr. REID. Mr. President, it is my understanding that H.R. 4965 is at the desk and due for its second reading.

The PRESIDING OFFICER. As in legislative session, the clerk will read the bill by title for the second time.

The legislative clerk read as follows:

A bill (H.R. 4965) to prohibit the procedure commonly known as partial-birth abortion.

Mr. REID. I object to any further proceedings at this time.

The PRESIDING OFFICER. The objection having been heard, the bill will be placed on the calendar.

MEETING OF CONGRESS IN NEW YORK, NEW YORK, ON FRIDAY, SEPTEMBER 6, 2002

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of H. Con. Res. 448, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A resolution (H. Con. Res. 448) providing for a special meeting for the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. I ask unanimous consent the resolution and preamble be agreed to en bloc and the motion to reconsider be laid upon the table without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 448) was agreed to.

The preamble was agreed to.

PROVIDING REPRESENTATION BY CONGRESS AT MEETING IN NEW YORK, NEW YORK

Mr. REID. I ask unanimous consent the Senate now proceed to the consideration of H. Con. Res. 449, received from the House and now at the desk.

The PRESIDING OFFICER. The clerk will report the concurrent resolution by title.

The legislative clerk read as follows:

A bill (H. Con. Res. 449) providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002.

There being no objection, the Senate proceeded to consider the concurrent resolution.

Mr. REID. Mr. President, I ask unanimous consent the resolution be agreed to and the motion to reconsider be laid upon the table, without any intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.

The concurrent resolution (H. Con. Res. 449) was agreed to.

HONORING JUSTIN W. DART, JR.

Mr. REID. I ask unanimous consent the Senate proceed to the consideration of S. Res. 310, submitted earlier today by Senators HARKIN, HATCH, KENNEDY, and GREGG.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A bill (S. Res. 310) honoring Justin W. Dart, as a champion of the rights of individuals with disabilities.

There being no objection, the Senate proceeded to consider the resolution.

Mr. HARKIN. Mr. President, on Saturday, June 22, our Nation lost one of its great heroes: My good friend, Justin Dart, Jr. Today, my colleagues Senator KENNEDY, Senator HATCH, and Senator GREGG, and I are introducing a bipartisan resolution to honor Justin Dart. His memorial service will occur tomorrow, July 26, the 12th anniversary of the Americans with Disabilities Act.

Justin Dart was the godfather of the disability rights movement. For 30

years he fought to end prejudice against people with disabilities, to strengthen the disabilities right movement, to protect the rights of people with disabilities. Millions of Americans with disabilities never knew his name but they owe him so much.

Justin was instrumental to the passage of the ADA and many other policies of interest to individuals with disabilities. When President Bush signed the Americans With Disabilities Act, he gave the first pen to Justin Dart. He truly was the one who brought us together and give the inspiration and guidance to get this wonderful, magnificent bill through. I was proud to be at his side when he received the Medal of Freedom from President Clinton. Today we are proud to introduce this resolution to honor him and commemorate his tremendous contribution to the lives of Americans with disabilities across this country.

Mr. REID. Mr. President, I ask unanimous consent the resolution and preamble be agreed to en bloc, the motion to reconsider be laid upon the table, and any statements related thereto be printed in the RECORD at the appropriate place.

The PRESIDING OFFICER. Without objection, it is so ordered.

The resolution (S. Res. 310) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. RES. 310

Whereas Justin W. Dart, Jr. was born in Chicago, Illinois in 1930;

Whereas Justin Dart, Jr. has been recognized as a pioneer and leader in the disability rights movement;

Whereas Justin Dart, Jr. operated successful businesses in the United States and Japan;

Whereas 5 Presidents, 5 Governors, and Congress have seen fit to appoint Justin Dart, Jr. to leadership positions within the area of disability policy, including Vice Chairman of the National Council on Disability, Commissioner of the Rehabilitation Services Administration, Chairperson of the President's Committee on Employment of People with Disabilities, and Chairperson of the Congressional Task Force on the Rights and Empowerment of Americans with Disabilities;

Whereas Justin Dart, Jr. was a civil rights activist for individuals with disabilities since he was stricken with polio in 1948 and played a leadership role in numerous civil rights marches across the country;

Whereas Justin Dart, Jr. worked tirelessly to secure passage of the Americans with Disabilities Act of 1990, which was signed into law by President Bush, and is often recognized as a major driving force behind the disability rights movement and that landmark legislation;

Whereas on January 15, 1998, President Clinton awarded the Presidential Medal of Freedom, our Nation's highest civilian award, to Justin Dart, Jr.

Whereas Justin Dart, Jr. has left a powerful legacy as a civil rights advocate and his actions have benefited the people of the United States;

Whereas Justin Dart, Jr. is not only remembered for his advocacy efforts on the behalf of individuals with disabilities, but also