

103^D CONGRESS
1ST SESSION

H. R. 1450

To promote the competitiveness of American businesses by reducing the national debt to lower the cost of capital, providing tax incentives to further enhance private capital formation, modernizing antitrust law to remove barriers to cooperative enterprise, instituting civil justice reform to reduce litigious burdens, and reviewing new Federal regulations to prevent unintended effects, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1993

Mr. WALKER (for himself, Mr. GINGRICH, Mr. ARMEY, Mr. MCCOLLUM, Mr. DELAY, Mr. HYDE, Mr. HUNTER, Mr. PAXON, Mr. BURTON of Indiana, Mr. LEWIS of Florida, Mr. SENSENBRENNER, Mr. HENRY, Mr. FAWELL, Mr. ROHRABACHER, Mr. BARTON of Texas, Mr. ZIMMER, Mr. SAM JOHNSON of Texas, Mr. CALVERT, Mr. HOKE, Mr. SMITH of Michigan, Mr. ROYCE, Mr. GRAMS, Mr. LINDER, Mr. BLUTE, Ms. DUNN, Mr. BAKER of California, and Mr. BARTLETT of Maryland) introduced the following bill; which was referred jointly to the Committees on Ways and Means, the Judiciary, Energy and Commerce, Science, Space, and Technology, Education and Labor, and Government Operations

A BILL

To promote the competitiveness of American businesses by reducing the national debt to lower the cost of capital, providing tax incentives to further enhance private capital formation, modernizing antitrust law to remove barriers to cooperative enterprise, instituting civil justice reform to reduce litigious burdens, and reviewing new Federal regulations to prevent unintended effects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Fundamental Competitiveness Act of 1993”.

6 (b) TABLE OF CONTENTS.—

Sec. 1. Short title.
Sec. 2. Findings.

TITLE I—PUBLIC DEBT REDUCTION

Sec. 101. Designation of amounts for reduction of public debt.
Sec. 102. Public debt reduction trust fund.
Sec. 103. Taxpayer-generated sequestration of Federal spending to reduce the
public debt.

TITLE II—CAPITAL FORMATION

Sec. 201. Findings.
Sec. 202. Research credit improvement.
Sec. 203. Variable capital gains.
Sec. 204. Capital gains exclusion for startup business stock.
Sec. 205. Indexing of certain capital assets.
Sec. 206. Corporate debt-equity equalization.
Sec. 207. Charitable deduction for corporate contributions of employee services
to educational organizations.
Sec. 208. Investment credit for new manufacturing and other production equip-
ment.
Sec. 209. Increase in limitation based on amount of tax.
Sec. 210. Special treatment for losses on investment in manufacturing facilities.
Sec. 211. Exemption of certain interest and dividend income from tax.
Sec. 212. Ordinary-loss treatment for losses on investments in startup compa-
nies.

TITLE III—COOPERATIVE ENTERPRISE

Sec. 301. Findings.
Sec. 302. Merger analysis.
Sec. 303. Joint production.

TITLE IV—BUSINESS LIABILITY REFORM

Subtitle A—Findings

Sec. 401. Findings.

Subtitle B—Professionals’ Liability Reform

Sec. 411. Short title.
Sec. 412. Purpose.
Sec. 413. Scope and preemption.

- Sec. 414. Description of professional liability standards.
- Sec. 415. Formation of risk management programs.
- Sec. 416. Definitions.

Subtitle C—Product Liability Fairness

PART I—GENERAL PROVISIONS

- Sec. 421. Short title.
- Sec. 422. Definitions.
- Sec. 423. Preemption.
- Sec. 424. Jurisdiction of Federal courts.
- Sec. 425. Effective date.

PART II—OUT OF COURT PROCEDURES

- Sec. 431. Expedited product liability settlements.
- Sec. 432. Alternative dispute resolution procedures.

PART III—COURT PROCEDURES

- Sec. 441. Civil actions.
- Sec. 442. Uniform standards of product seller liability.
- Sec. 443. Uniform standards for award of punitive damages.
- Sec. 444. Uniform time limitations on liability.
- Sec. 445. Uniform standards for offset of workers' compensation benefits.
- Sec. 446. Several liability for noneconomic damages.
- Sec. 447. Defenses involving intoxicating alcohol or drugs.

TITLE V—REGULATORY REVIEW

- Sec. 501. Findings.
- Sec. 502. Competitiveness risk assessment.

TITLE VI—TOTAL QUALITY MANAGEMENT

- Sec. 601. Formation and use of quality circles and joint production teams.

TITLE VII—LONG-TERM INVESTMENT

- Sec. 701. Short title.
- Sec. 702. Findings.
- Sec. 703. Elimination of quarterly reports.

TITLE VIII—AMENDMENTS TO THE STEVENSON-WYDLER TECHNOLOGY INNOVATION ACT OF 1980

- Sec. 801. Amendment to Stevenson-Wydler Technology Innovation Act of 1980.
- Sec. 802. Copyright for software.
- Sec. 803. Royalty payments to authors.
- Sec. 804. Technical and conforming amendments.

1 **SEC. 2. FINDINGS.**

2 The Congress finds that—

1 (1) the ability of United States companies to
2 develop, produce, and market new products and
3 services is second to none when on an equal footing
4 with the competition;

5 (2) however, United States companies are not
6 on such a footing due in large part to competitive
7 disadvantages imposed by government;

8 (3) therefore, the Federal Government should
9 fuel the engine of the United States private sector
10 by freeing it from the tax, regulatory, and other
11 legal burdens imposed on it;

12 (4) the Federal Government should focus on
13 long-term competitiveness and job creation by reex-
14 amining those provisions of law and regulation which
15 are anticompetitive in nature;

16 (5) the Federal Government can best promote
17 United States competitiveness by fostering a healthy
18 business climate and by reducing the Federal budget
19 deficit which will free up capital for private use and
20 reduce its cost;

21 (6) targeting large sums of taxpayer money to
22 aid specific United States industries will further
23 erode our competitiveness by increasing our national
24 debt and removing the inherent efficiency of the
25 marketplace; and

1 (7) our main economic competitors spend few
2 government resources to aid specific sectors of their
3 economies, but instead remove barriers and disincen-
4 tives to savings, investment, production, and eco-
5 nomic activity.

6 **TITLE I—PUBLIC DEBT**
7 **REDUCTION**

8 **SEC. 101. DESIGNATION OF AMOUNTS FOR REDUCTION OF**
9 **PUBLIC DEBT.**

10 (a) IN GENERAL.—Subchapter A of chapter 61 of the
11 Internal Revenue Code of 1986 (relating to returns and
12 records) is amended by adding at the end the following
13 new part:

14 **“PART IX—DESIGNATION FOR REDUCTION OF**
15 **PUBLIC DEBT.**

 “Sec. 6097. Designation.

16 **“SEC. 6097. DESIGNATION.**

17 “(a) IN GENERAL.—Every individual with adjusted
18 income tax liability for any taxable year may designate
19 that a portion of such liability (not to exceed 10 percent
20 thereof) shall be used to reduce the public debt.

21 “(b) MANNER AND TIME OF DESIGNATION.—A des-
22 ignation under subsection (a) may be made with respect
23 to any taxable year only at the time of filing the return
24 of tax imposed by chapter 1 for the taxable year. The des-

1 igation shall be made on the first page of the return or
2 on the page bearing the taxpayer's signature.

3 “(c) ADJUSTED INCOME TAX LIABILITY.—For pur-
4 poses of this section, the term ‘adjusted income tax liabil-
5 ity’ means income tax liability (as defined in section
6 6096(b)) reduced by any amount designated under section
7 6096 (relating to designation of income tax payments to
8 Presidential Election Campaign Fund).”

9 (b) CLERICAL AMENDMENT.—The table of parts for
10 such subchapter A is amended by adding at the end the
11 following new item:

“Part IX. Designation for reduction of public debt.”

12 (c) EFFECTIVE DATE.—The amendments made by
13 this section shall apply to taxable years ending after the
14 date of the enactment of this Act.

15 **SEC. 102. PUBLIC DEBT REDUCTION TRUST FUND.**

16 (a) IN GENERAL.—Subchapter A of chapter 98 of the
17 Internal Revenue Code of 1986 (relating to trust fund
18 code) is amended by adding at the end the following
19 section:

20 **“SEC. 9512. PUBLIC DEBT REDUCTION TRUST FUND.**

21 “(a) CREATION OF TRUST FUND.—There is estab-
22 lished in the Treasury of the United States a trust fund
23 to be known as the ‘Public Debt Reduction Trust Fund’,
24 consisting of any amount appropriated or credited to the
25 Trust Fund as provided in this section or section 9602(b).

1 “(b) TRANSFERS TO TRUST FUND.—There are here-
2 by appropriated to the Public Debt Reduction Trust Fund
3 amounts equivalent to the amounts designated under sec-
4 tion 6097 (relating to designation for public debt reduc-
5 tion).

6 “(c) EXPENDITURES.—Amounts in the Public Debt
7 Reduction Trust Fund shall be available only for purposes
8 of paying at maturity, or to redeem or buy before matu-
9 rity, any obligation of the Federal Government included
10 in the public debt. Any obligation which is paid, redeemed,
11 or bought with amounts from such Trust Fund shall be
12 canceled and retired and may not be reissued.”

13 (b) CLERICAL AMENDMENT.—The table of sections
14 for such subchapter is amended by adding at the end the
15 following new item:

“Sec. 9512. Public Debt Reduction Trust Fund.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to amounts received after the date
18 of the enactment of this Act.

19 **SEC. 103. TAXPAYER-GENERATED SEQUESTRATION OF FED-**
20 **ERAL SPENDING TO REDUCE THE PUBLIC**
21 **DEBT.**

22 (a) SEQUESTRATION TO REDUCE THE PUBLIC
23 DEBT.—Part C of the Balanced Budget and Emergency
24 Deficit Control Act of 1985 is amended by adding after
25 section 253 the following new section:

1 **“SEC. 253A. SEQUESTRATION TO REDUCE THE PUBLIC**
2 **DEBT.**

3 “(a) SEQUESTRATION.—Notwithstanding sections
4 255 and 256, within 15 days after Congress adjourns to
5 end a session, and on the same day as sequestration (if
6 any) under sections 251, 252, and 253, but after any se-
7 questration required by those sections, there shall be a se-
8 questration equivalent to the estimated aggregate amount
9 designated under section 6097 of the Internal Revenue
10 Code of 1986 for the last taxable year ending before the
11 beginning of that session of Congress, as estimated by the
12 Department of the Treasury on May 1 and as modified
13 by the total of (1) any amounts by which net discretionary
14 spending is reduced by legislation below the discretionary
15 spending limits (or, in the absence of such limits, any net
16 deficit change from the baseline amount calculated under
17 section 257, except that such baseline for fiscal year 1996
18 and thereafter shall be based upon fiscal year 1995 en-
19 acted appropriations less any 1995 sequesters) and (2) the
20 net deficit change that has resulted from direct spending
21 legislation.

22 “(b) APPLICABILITY.—

23 “(1) IN GENERAL.—Except as provided by
24 paragraph (2), each account of the United States
25 shall be reduced by a dollar amount calculated by
26 multiplying the level of budgetary resources in that

1 account at that time by the uniform percentage nec-
2 essary to carry out subsection (a). All obligational
3 authority reduced under this section shall be done in
4 a manner that makes such reductions permanent.

5 “(2) EXEMPT ACCOUNTS.—No order issued
6 under this part may—

7 “(A) reduce benefits payable the old-age,
8 survivors, and disability insurance program es-
9 tablished under title II of the Social Security
10 Act;

11 “(B) reduce payments for net interest (all
12 of major functional category 900); or

13 “(C) make any reduction in the following
14 accounts:

15 “Federal Deposit Insurance Corpora-
16 tion, Bank Insurance Fund;

17 “Federal Deposit Insurance Corpora-
18 tion, FSLIC Resolution Fund;

19 “Federal Deposit Insurance Corpora-
20 tion, Savings Association Insurance Fund;

21 “National Credit Union Administra-
22 tion, credit union share insurance fund; or

23 “Resolution Trust Corporation.”.

24 (b) REPORTS.—Section 254 of the Balanced Budget
25 and Emergency Deficit Control Act of 1985 is amended—

1 (1) in subsection (a), by inserting before the
2 item relating to August 10 the following:

3 “May 1. . . Department of Treasury report to Con-
4 gress estimating amount of income tax designated pursu-
5 ant to section 6097 of the Internal Revenue Code of
6 1986.”;

7 (2) in subsection (d)(1), by inserting “, and se-
8 questration to reduce the public debt,”;

9 (3) in subsection (d), by redesignating para-
10 graph (5) as paragraph (6) and by inserting after
11 paragraph (4) the following new paragraph:

12 “(5) SEQUESTRATION TO REDUCE THE PUBLIC
13 DEBT REPORTS.—The preview reports shall set forth
14 for the budget year estimates for each of the follow-
15 ing:

16 “(A) The aggregate amount designated
17 under section 6097 of the Internal Revenue
18 Code of 1986 for the last taxable year ending
19 before the budget year.

20 “(B) The amount of reductions required
21 under section 253A and the deficit remaining
22 after those reductions have been made.

23 “(C) The sequestration percentage nec-
24 essary to achieve the required reduction in ac-
25 counts under section 253A(b).”; and

1 (4) in subsection (g), by redesignating para-
2 graphs (4) and (5) as paragraphs (5) and (6), re-
3 spectively, and by inserting after paragraph (3) the
4 following new paragraph:

5 “(4) SEQUESTRATION TO REDUCE THE PUBLIC
6 DEBT REPORTS.—The final reports shall contain all
7 of the information contained in the public debt tax-
8 ation designation report required on May 1.”.

9 (c) EFFECTIVE DATE.—Notwithstanding section
10 275(b) of the Balanced Budget and Emergency Deficit
11 Control Act of 1985, the expiration date set forth in that
12 section shall not apply to the amendments made by this
13 section. The amendments made by this section shall cease
14 to have any effect after the first fiscal year during which
15 there is no public debt.

16 **TITLE II—CAPITAL FORMATION**

17 **SEC. 201. FINDINGS.**

18 The Congress finds that—

19 (1) competitiveness studies consistently show
20 that the United States business sector needs to have
21 access to greater amounts of capital at low cost;

22 (2) capital formation is a goal that should be
23 fostered by the United States Government;

1 (3) our main economic competitors encourage
2 capital formation by low rates of taxation on capital
3 gains and savings and investment; and

4 (4) lowering tax rates in the United States on
5 capital gains and savings and investment will make
6 our country more competitive internationally.

7 **SEC. 202. RESEARCH CREDIT IMPROVEMENT.**

8 (a) ALTERNATIVE CREDIT CALCULATION BASED ON
9 AGGREGATE RESEARCH EXPENSES.—

10 (1) IN GENERAL.—Subsection (a) of section 41
11 of the Internal Revenue Code of 1986 (relating to
12 general rule) is amended to read as follows:

13 “(a) GENERAL RULE.—For purposes of section 38,
14 the research credit determined under this section for the
15 taxable year shall be an amount equal to 1 of the following
16 amounts (as elected by the taxpayer for the taxable year):

17 “(1) 25 PERCENT OF INCREASED RESEARCH
18 EXPENSES.—The sum of—

19 “(A) 25 percent of the excess (if any) of—

20 “(i) the qualified research expenses,
21 over

22 “(ii) the base amount, and

23 “(B) 25 percent of the basic research pay-
24 ments, determined under subsection (e)(1)(A).

1 “(2) 5 PERCENT OF AGGREGATE RESEARCH EX-
2 PENSES.—The sum of—

3 “(A) 5 percent of the qualified research ex-
4 penses, determined by substituting ‘100 per-
5 cent’ for ‘65 percent’ in subsection (b)(3)(A),
6 and

7 “(B) 5 percent of the basic research pay-
8 ments, determined under subsection (e)(2).”

9 (2) CONFORMING AMENDMENTS.—

10 (A) Paragraph (1) of section 41(e) of such
11 Code (relating to basic research credit) is
12 amended—

13 (i) by striking “subsection (a)(2)” and
14 inserting “subsection (a)(1)(B)”, and

15 (ii) by striking “subsection (a)(1)”
16 and inserting “subsection (a)(1)(A)”.

17 (B) Subparagraph (C) of section 41(e)(7)
18 of such Code (relating to definitions and special
19 rules) is amended—

20 (i) by striking “INCREMENTAL” in the
21 subparagraph caption and inserting
22 “OTHER”,

23 (ii) by striking “subsection (a)(1)”
24 and inserting “paragraph (1)(A) or (2)(A)
25 of subsection (a)”,

1 (iii) by striking “subsection (a)(2)”
2 and inserting “paragraph (1)(B) or (2)(B)
3 of such subsection”,

4 (iv) by striking “subsection (a)(1)(A)”
5 and inserting “paragraph (1)(A)(i) or
6 (2)(A) of such subsection”, and

7 (v) by striking “subsection (a)(1)(B)”
8 and inserting “paragraph (1)(A)(ii) of
9 such subsection”.

10 (C) Subparagraph (A) of section
11 280C(c)(2) of such Code (relating to disallow-
12 ance of deduction for expenses for which re-
13 search credit taken) is amended by striking
14 “section 41(a)(1)” and inserting “paragraph
15 (1)(A) or (2)(A) of section 41(a)”.

16 (3) EFFECTIVE DATE.—The amendments made
17 by this subsection shall apply to taxable years begin-
18 ning after the date of the enactment of this Act.

19 (b) PERMANENT EXTENSION OF CREDIT.—

20 (1) IN GENERAL.—Section 41 of such Code is
21 amended by striking subsection (h) (relating to ter-
22 mination).

23 (2) CONFORMING AMENDMENT.—Paragraph (1)
24 of section 28(b) of such Code (relating to qualified

1 clinical testing expenses) is amended by striking sub-
2 paragraph (D).

3 **SEC. 203. VARIABLE CAPITAL GAINS.**

4 (a) IN GENERAL.—Part I of subchapter P of chapter
5 1 of the Internal Revenue Code of 1986 (relating to treat-
6 ment of capital gains) is amended by adding at the end
7 thereof the following new section:

8 **“SEC. 1202. VARIABLE CAPITAL GAINS DEDUCTION.**

9 “(a) DEDUCTION ALLOWED.—If for any taxable year
10 a taxpayer other than a corporation has a net capital gain,
11 there shall be allowed as a deduction from gross income
12 an amount equal to the sum of—

13 “(1) 100 percent of the qualified 10-year net
14 capital gain,

15 “(2) 90 percent of the qualified 9-year net cap-
16 ital gain,

17 “(3) 80 percent of the qualified 8-year net cap-
18 ital gain,

19 “(4) 70 percent of the qualified 7-year net cap-
20 ital gain,

21 “(5) 60 percent of the qualified 6-year net cap-
22 ital gain,

23 “(6) 50 percent of the qualified 5-year net cap-
24 ital gain,

1 “(7) 40 percent of the qualified 4-year net cap-
2 ital gain,

3 “(8) 30 percent of the qualified 3-year net cap-
4 ital gain,

5 “(9) 20 percent of the qualified 2-year net cap-
6 ital gain, plus

7 “(10) 10 percent of the qualified 1-year net
8 capital gain.

9 “(b) QUALIFIED NET CAPITAL GAIN.—For purposes
10 of subsection (a)—

11 “(1) QUALIFIED 10-YEAR NET CAPITAL GAIN.—

12 The term ‘qualified 10-year net capital gain’ means
13 the amount of net long-term capital gain which
14 would be computed for the taxable year if only cap-
15 ital assets held by the taxpayer for at least 10 years
16 at the time of the sale or exchange were taken into
17 account. Such term shall not exceed the amount of
18 the net capital gain for such taxable year.

19 “(2) QUALIFIED 9-YEAR NET CAPITAL GAIN.—

20 The term ‘qualified 9-year net capital gain’ means
21 the amount of net long-term capital gain which
22 would be computed for the taxable year if only cap-
23 ital assets held by the taxpayer for at least 9 years
24 but less than 10 years at the time of the sale or ex-
25 change were taken into account. Such term shall not

1 exceed the amount of the net capital gain for such
2 taxable year reduced by the amount of the qualified
3 10-year net capital gain.

4 “(3) OTHER DEFINITIONS.—The amount of the
5 qualified 8-year net capital gain, 7-year net capital
6 gain, 6-year net capital gain, 5-year net capital gain,
7 4-year net capital gain, 3-year net capital gain,
8 qualified 2-year net capital gain, and qualified 1-
9 year net capital gain shall be determined under the
10 principles of paragraphs (1) and (2).

11 “(c) ESTATE AND TRUSTS.—In the case of an estate
12 or trust, the deduction shall be computed by excluding the
13 portion (if any) of the gains for the taxable year from sales
14 or exchanges of capital assets which, under sections 652
15 and 662 (relating to inclusions of amounts in gross income
16 of beneficiaries of trusts), is includible by the income bene-
17 ficiaries as gain derived from the sale or exchange of cap-
18 ital assets.”

19 (b) TREATMENT OF COLLECTIBLES.—

20 (1) IN GENERAL.—Section 1222 of such Code
21 is amended by inserting after paragraph (11) the
22 following new paragraph:

23 “(12) SPECIAL RULE FOR COLLECTIBLES.—

24 “(A) IN GENERAL.—Any gain or loss from
25 the sale or exchange of a collectible shall be

1 treated as a short-term capital gain or loss (as
2 the case may be), without regard to the period
3 such asset was held. The preceding sentence
4 shall apply only to the extent the gain or loss
5 is taken into account in computing taxable in-
6 come.

7 “(B) TREATMENT OF CERTAIN SALES OF
8 INTEREST IN PARTNERSHIP, ETC.—For pur-
9 poses of subparagraph (A), any gain from the
10 sale or exchange of an interest in a partnership,
11 S corporation, or trust which is attributable to
12 unrealized appreciation in the value of collect-
13 ibles held by such entity shall be treated as gain
14 from the sale or exchange of a collectible. Rules
15 similar to the rules of section 751(f) shall apply
16 for purposes of the preceding sentence.

17 “(C) COLLECTIBLE.—For purposes of this
18 paragraph, the term ‘collectible’ means any cap-
19 ital asset which is a collectible (as defined in
20 section 408(m) without regard to paragraph (3)
21 thereof).”

22 (2) CHARITABLE DEDUCTION NOT AF-
23 FECTED.—

24 (A) Paragraph (1) of section 170(e) of
25 such Code is amended by adding at the end

1 thereof the following new sentence: “For pur-
2 poses of this paragraph, section 1222 shall be
3 applied without regard to paragraph (12) there-
4 of (relating to special rule for collectibles).”

5 (B) Clause (iv) of section 170(b)(1)(C) of
6 such Code is amended by inserting before the
7 period at the end thereof the following: “and
8 section 1222 shall be applied without regard to
9 paragraph (12) thereof (relating to special rule
10 for collectibles)”.

11 (c) CONFORMING AMENDMENTS.—

12 (1) Section 1 of such Code is amended by strik-
13 ing subsection (h).

14 (2) Subsection (a) of section 62 of such Code
15 is amended by inserting after paragraph (13) the
16 following new paragraph:

17 “(14) LONG-TERM CAPITAL GAINS.—In the case
18 of a taxpayer other than a corporation, the deduc-
19 tion allowed by section 1202.”

20 (d) EFFECTIVE DATE.—The amendments made by
21 this section shall apply to taxable years beginning after
22 the date of the enactment of this Act.

1 **SEC. 204. CAPITAL GAINS EXCLUSION FOR STARTUP BUSI-**
2 **NESS STOCK.**

3 (a) TAXPAYERS OTHER THAN CORPORATIONS.—
4 Part I of subchapter P of chapter 1 of the Internal Reve-
5 nue Code of 1986 (relating to treatment of capital gains)
6 is amended by adding at the end the following new section:

7 **“SEC. 1203. DEDUCTION FOR CAPITAL GAINS ON CERTAIN**
8 **BUSINESS STOCK HELD FOR MORE THAN 2**
9 **YEARS.**

10 “(a) GENERAL RULE.—If for any taxable year a tax-
11 payer other than a corporation has a qualified business
12 net capital gain, there shall be allowed as a deduction from
13 gross income an amount equal to 50 percent of the quali-
14 fied business net capital gain.

15 “(b) QUALIFIED BUSINESS NET CAPITAL GAIN.—
16 For purposes of this section—

17 “(1) IN GENERAL.—The term ‘qualified busi-
18 ness net capital gain’ means the lesser of—

19 “(A) the net capital gain for the taxable
20 year, or

21 “(B) the net capital gain for the taxable
22 year determined by taking into account only
23 gain or loss from qualified business stock with
24 a holding period of at least 2 years at the time
25 of the disposition.

26 “(2) QUALIFIED BUSINESS STOCK.—

1 “(A) IN GENERAL.—The term ‘qualified
2 business stock’ means stock which—

3 “(i) is first acquired (whether directly
4 or through an underwriter) from the issuer
5 by the taxpayer, and

6 “(ii) is not issued in redemption of (or
7 otherwise exchanged for) stock.

8 “(B) EXCEPTION FOR PERSONAL SERVICE
9 CORPORATIONS.—The term ‘qualified business
10 stock’ does not include stock issued by a per-
11 sonal service corporation (within the meaning of
12 section 269A(b)(1)).

13 “(c) ESTATES AND TRUSTS.—In the case of an estate
14 or trust, the deduction under subsection (a) shall be com-
15 puted by excluding the portion (if any) of the gains for
16 the taxable year from sales or exchanges of capital assets
17 which, under sections 652 and 662 (relating to inclusions
18 of amounts in gross income of beneficiaries of trusts), is
19 includible by the income beneficiaries as gain derived from
20 the sale or exchange of capital assets.”

21 (b) CORPORATIONS.—Section 1201 of such Code (re-
22 lating to alternative tax for corporations) is amended by
23 redesignating subsection (b) as subsection (c) and by in-
24 serting after subsection (a) the following new subsection:

1 “(b) DEDUCTION FOR GAIN ON QUALIFIED BUSI-
2 NESS STOCK.—

3 “(1) IN GENERAL.—If for any taxable year a
4 corporation has a qualified business net capital gain,
5 there shall be allowed as a deduction from gross in-
6 come an amount equal to 50 percent of the qualified
7 business net capital gain.

8 “(2) QUALIFIED BUSINESS NET CAPITAL
9 GAIN.—For purposes of this subsection, the term
10 ‘qualified business net capital gain’ has the meaning
11 given such term in section 1203(b).”

12 (c) CONFORMING AMENDMENTS.—

13 (1) Subsection (a) of section 1201 of such Code
14 is amended by inserting after “net capital gain”
15 each place it appears the following: “(other than
16 qualified business net capital gain (within the mean-
17 ing of section 1203(b))”.

18 (2) Subsection (a) of section 62 of such Code
19 is amended by adding at the end the following new
20 paragraph:

21 “(15) QUALIFIED BUSINESS STOCK CAPITAL
22 GAINS.—The deduction allowed by section 1203.”

23 (3)(A) The heading for section 1201 of such
24 Code is amended to read as follows:

1 **“SEC. 1201. ALTERNATIVE TAX FOR CORPORATIONS; DE-**
2 **DUCTION FOR GAIN ON QUALIFIED BUSINESS**
3 **STOCK.”**

4 (B) The item relating to section 1201 in the
5 table of sections for part I of subchapter P of chap-
6 ter 1 of such Code is amended to read as follows:

“Sec. 1201. Alternative tax for corporations; deduction for gain
on qualified business stock.”

7 (4) The table of sections for part I of sub-
8 chapter P of chapter 1 of such Code is amended by
9 adding at the end the following new item:

“Sec. 1203. Deduction for capital gains on certain business stock
held for more than 2 years.”

10 (d) EFFECTIVE DATE.—The amendments made by
11 this section shall apply to stock issued after the date of
12 the enactment of this Act.

13 **SEC. 205. INDEXING OF CERTAIN CAPITAL ASSETS.**

14 (a) IN GENERAL.—Part II of subchapter O of chap-
15 ter 1 of the Internal Revenue Code of 1986 (relating to
16 basis rules of general application) is amended by inserting
17 after section 1021 the following new section:

18 **“SEC. 1022. INDEXING OF CERTAIN ASSETS FOR PURPOSES**
19 **OF DETERMINING GAIN OR LOSS.**

20 “(a) GENERAL RULE.—

21 “(1) INDEXED BASIS SUBSTITUTED FOR AD-
22 JUSTED BASIS.—Except as provided in paragraph
23 (2), if an indexed asset which has been held for

1 more than 1 year is sold or otherwise disposed of,
2 for purposes of this title the indexed basis of the
3 asset shall be substituted for its adjusted basis.

4 “(2) EXCEPTION FOR DEPRECIATION, ETC.—

5 The deduction for depreciation, depletion, and amor-
6 tization shall be determined without regard to the
7 application of paragraph (1) to the taxpayer or any
8 other person.

9 “(b) INDEXED ASSET.—

10 “(1) IN GENERAL.—For purposes of this sec-
11 tion, the term ‘indexed asset’ means—

12 “(A) stock in a corporation, and

13 “(B) tangible property (or any interest
14 therein), which is a capital asset or property
15 used in the trade or business (as defined in sec-
16 tion 1231(b)).

17 “(2) CERTAIN PROPERTY EXCLUDED.—For
18 purposes of this section, the term ‘indexed asset’
19 does not include stock in a foreign corporation.

20 “(c) INDEXED BASIS.—For purposes of this sec-
21 tion—

22 “(1) INDEXED BASIS.—The indexed basis for
23 any asset is—

24 “(A) the adjusted basis of the asset, multi-
25 plied by

1 “(B) the applicable inflation ratio.

2 “(2) APPLICABLE INFLATION RATIO.—The ap-
3 plicable inflation ratio for any asset is the percent-
4 age arrived at by dividing—

5 “(A) the gross national product deflator
6 the calendar quarter in which the disposition
7 takes place, by

8 “(B) the gross national product deflator
9 for the calendar quarter in which the asset was
10 acquired by the taxpayer (or, if later, the cal-
11 endar quarter ending December 31, 1991).

12 The applicable inflation ratio shall not be taken into
13 account unless it is greater than 1. The applicable
14 inflation ratio for any asset shall be rounded to the
15 nearest one-tenth of 1 percent.

16 “(3) GROSS NATIONAL PRODUCT DEFLATOR.—
17 The gross national product deflator for any calendar
18 quarter is the implicit price deflator for the gross
19 national product for such quarter (as shown in the
20 first revision thereof).

21 “(d) SPECIAL RULES.—For purposes of this sec-
22 tion—

23 “(1) TREATMENT AS SEPARATE ASSET.—In the
24 case of any asset, the following shall be treated as
25 a separate asset:

1 “(A) a substantial improvement to prop-
2 erty,

3 “(B) in the case of stock of a corporation,
4 a substantial contribution to capital, and

5 “(C) any other portion of an asset to the
6 extent that separate treatment of such portion
7 is appropriate to carry out the purposes of this
8 section.

9 “(2) ASSETS WHICH ARE NOT INDEXED ASSETS
10 THROUGHOUT HOLDING PERIOD.—

11 “(A) IN GENERAL.—The applicable infla-
12 tion ratio shall be appropriately reduced for cal-
13 endar months at any time during which the
14 asset was not an indexed asset.

15 “(B) CERTAIN SHORT SALES.—For pur-
16 poses of applying subparagraph (A), an asset
17 shall be treated as not an indexed asset for any
18 short sale period during which the taxpayer or
19 the taxpayer’s spouse sells short property sub-
20 stantially identical to the asset. For purposes of
21 the preceding sentence, the short sale period be-
22 gins on the day after the substantially identical
23 property is sold and ends on the closing date
24 for the sale.

1 “(3) ACQUISITION DATE WHERE THERE HAS
2 BEEN PRIOR APPLICATION OF SUBSECTION (a)(1)
3 WITH RESPECT TO THE TAXPAYER.—If there has
4 been a prior application of subsection (a)(1) to an
5 asset while such asset was held by the taxpayer, the
6 date of acquisition of such asset by the taxpayer
7 shall be treated as not earlier than the date of the
8 most recent such prior application.

9 “(e) CERTAIN CONDUIT ENTITIES.—

10 “(1) REGULATED INVESTMENT COMPANIES;
11 REAL ESTATE INVESTMENT TRUSTS; COMMON TRUST
12 FUNDS.—

13 “(A) IN GENERAL.—Stock in a qualified
14 investment entity shall be an indexed asset for
15 any calendar month in the same ratio as the
16 fair market value of the assets held by such en-
17 tity at the close of such month which are in-
18 dexed assets bears to the fair market value of
19 all assets of such entity at the close of such
20 month.

21 “(B) RATIO OF 90 PERCENT OR MORE.—If
22 the ratio for any calendar month determined
23 under subparagraph (A) would (but for this
24 subparagraph) be 90 percent or more, such
25 ratio for such month shall be 100 percent.

1 “(C) RATIO OF 10 PERCENT OR LESS.—If
2 the ratio for any calendar month determined
3 under subparagraph (A) would (but for this
4 subparagraph) be 10 percent or less, such ratio
5 for such month shall be zero.

6 “(D) VALUATION OF ASSETS IN CASE OF
7 REAL ESTATE INVESTMENT TRUSTS.—Nothing
8 in this paragraph shall require a real estate in-
9 vestment trust to value its assets more fre-
10 quently than once each 36 months (except
11 where such trust ceases to exist). The ratio
12 under subparagraph (A) for any calendar
13 month for which there is no valuation shall be
14 the trustee’s good faith judgment as to such
15 valuation.

16 “(E) QUALIFIED INVESTMENT ENTITY.—
17 For purposes of this paragraph, the term
18 ‘qualified investment entity’ means—

19 “(i) a regulated investment company
20 (within the meaning of section 851),

21 “(ii) a real estate investment trust
22 (within the meaning of section 856), and

23 “(iii) a common trust fund (within the
24 meaning of section 584).

1 “(2) PARTNERSHIPS.—In the case of a partner-
2 ship, the adjustment made under subsection (a) at
3 the partnership level shall be passed through to the
4 partners.

5 “(f) DISPOSITIONS BETWEEN RELATED PERSONS.—

6 “(1) IN GENERAL.—This section shall not apply
7 to any sale or other disposition of property between
8 related persons except to the extent that the basis
9 of such property in the hands of the transferee is a
10 substituted basis.

11 “(2) RELATED PERSONS DEFINED.—For pur-
12 poses of this section, the term ‘related persons’
13 means—

14 “(A) persons bearing a relationship set
15 forth in section 267(b), and

16 “(B) persons treated as single employer
17 under subsection (b) or (c) of section 414.

18 “(g) TRANSFERS TO INCREASE INDEXING ADJUST-
19 MENT.—If any person transfers cash, debt, or any other
20 property to another person and the principal purpose of
21 such transfer is to secure or increase an adjustment under
22 subsection (a), the Secretary may disallow part or all of
23 such adjustment or increase.

24 “(h) DEFINITION OF STOCK.—For purposes of this
25 section, the term ‘stock in a corporation’ includes any in-

1 terest in a common trust fund (as defined in section
2 584(a)).

3 “(i) REGULATIONS.—The Secretary shall prescribe
4 such regulations as may be necessary or appropriate to
5 carry out the purposes of this section.”

6 (b) CONFORMING AMENDMENTS.—

7 (1) Subsection (f) of section 312 of such Code
8 is amended by adding at the end the following new
9 paragraph:

10 “(3) EFFECT ON EARNINGS AND PROFITS OF
11 INDEXED BASIS.—

**For substitution of indexed basis for adjusted
basis in the case of the disposition of certain assets,
see section 1022(a)(1).”**

12 (2) The table of sections for part II of sub-
13 chapter O of chapter 1 of such Code is amended by
14 inserting after the item relating to section 1021 the
15 following new item:

“Sec. 1022. Indexing of certain assets for purposes of determining
gain or loss.”

16 (c) EFFECTIVE DATE.—The amendments made by
17 this section shall apply to dispositions after the date of
18 the enactment of this Act.

19 **SEC. 206. CORPORATE DEBT-EQUITY EQUALIZATION.**

20 (a) IN GENERAL.—Section 243 of the Internal Reve-
21 nue Code of 1986 (relating to dividends received by cor-
22 porations) is amended to read as follows:

1 **“SEC. 243. DIVIDENDS PAID BY DOMESTIC CORPORATIONS.**

2 “(a) GENERAL RULE.—In the case of a domestic cor-
3 poration which is subject to taxation under this chapter,
4 there shall be allowed as a deduction for the taxable year
5 an amount equal to the dividends paid by such corporation
6 during the taxable year.

7 “(b) DIVIDENDS.—For purposes of this section, the
8 term ‘dividend’ means any dividend (as defined in section
9 316) to which section 301 applies.

10 “(c) CERTAIN CORPORATIONS NOT ELIGIBLE.—No
11 deduction shall be allowed under this section with respect
12 to dividends paid by any corporation which is—

13 “(1) an S corporation (as defined in section
14 1361(a)(1)),

15 “(2) a regulated investment company (as de-
16 fined in section 851(a)),

17 “(3) a real estate investment trust (as defined
18 in section 856(a)), or

19 “(4) a personal holding company (as defined in
20 section 542).

21 “(d) SPECIAL RULES FOR CERTAIN DISTRIBUTIONS
22 OF MUTUAL SAVINGS BANKS, ETC.—For purposes of this
23 section, any amount allowed as a deduction under section
24 591 (relating to deduction for dividends paid by mutual
25 savings banks, etc.) shall not be treated as a dividend.”

1 (b) REPEAL OF CERTAIN DEDUCTIONS FOR DIVI-
2 DENDS RECEIVED.—Sections 244 (relating to dividends
3 received on certain preferred stock) and 247 (relating to
4 dividends paid on certain preferred stock of public utili-
5 ties) of such Code are hereby repealed.

6 (c) CONFORMING AMENDMENTS.—

7 (1) Paragraph (5) of section 172(d) of such
8 Code is amended to read as follows:

9 “(5) COMPUTATION OF DEDUCTION FOR DIVI-
10 DENDS RECEIVED FROM CERTAIN FOREIGN COR-
11 PORATIONS.—The deduction allowed by section 245
12 (relating to dividends received from certain foreign
13 corporations) shall be computed without regard to
14 section 246(b) (relating to limitation on aggregate
15 amount of deductions).”

16 (2) The table of sections for part VIII of sub-
17 chapter B of chapter 1 of such Code is amended by
18 striking the items relating to sections 243, 244, and
19 247 and inserting after the item relating to section
20 241 the following:

“Sec. 243. Dividends paid by domestic corporations.”

21 (3) Paragraph (1) of section 245(a) of such
22 Code (relating generally to dividends received from
23 10-percent owned foreign corporations) is amended
24 by striking “the percent (specified in section 243 for
25 the taxable year)” and inserting “85 percent (100

1 percent in the case of a small business investment
2 company operating under the Small Business Invest-
3 ment Act of 1958 (15 U.S.C. 661 et seq.)”.

4 (4)(A) Subsection (a) of section 246 of such
5 Code (relating to disallowance of deduction for divi-
6 dends from certain corporations) is amended—

7 (i) in paragraph (1), by striking “sections
8 243, 244, and 245” and inserting “section
9 245”, and

10 (ii) by striking paragraph (2).

11 (B) Subsection (b) of section 246 of such Code
12 (relating to limitation on aggregate amount of de-
13 ductions) is amended to read as follows:

14 “(b) LIMITATION ON AGGREGATE AMOUNT OF DE-
15 DUCTION.—

16 “(1) IN GENERAL.—Except as provided by
17 paragraph (2), the aggregate amount of the deduc-
18 tions allowed by subsections (a) and (b) of section
19 245 shall not exceed 80 percent of the taxable in-
20 come computed without regard to—

21 “(A) the deductions allowed by section
22 172,

23 “(B) any adjustment under section 1059,
24 and

1 “(C) any capital loss carryback to the tax-
2 able year under section 1212(a)(1).

3 “(2) EFFECT OF NET OPERATING LOSS.—Para-
4 graph (1) shall not apply for any taxable year for
5 which there is a net operating loss (as determined
6 under section 172).”

7 (C) Paragraph (1) of section 246(c) of such
8 Code (relating to exclusion of certain dividends) is
9 amended by striking “243, 244, or”.

10 (D) Section 246 of such Code (relating to rules
11 applying to deductions for dividends received) is
12 amended by striking subsections (d) and (e).

13 (5)(A) Subsection (a) of section 246A of such
14 Code (relating to general rule) is amended—

15 (i) in the matter preceding paragraph
16 (1), by striking “243, 244, or”, and

17 (ii) in paragraph (1), by striking “(80
18 percent in the case of any dividend from a
19 20-percent owned corporation as defined in
20 section 243(c)(2)”.

21 (B) Subsection (b) of section 246A of such
22 Code (relating to inapplicability to dividends for
23 which 100 percent dividends received deduction al-
24 lowable) is amended to read as follows:

1 “(b) SECTION NOT TO APPLY TO DIVIDENDS FOR
2 WHICH 100 PERCENT DIVIDENDS RECEIVED DEDUCTION
3 ALLOWABLE.—Subsection (a) shall not apply to dividends
4 received by a small business investment company operat-
5 ing under the Small Business Investment Act of 1958.”

6 (C) Subsection (e) of section 246A of such
7 Code (relating to reduction in dividends received de-
8 duction not to exceed allowable interest) is amended
9 by striking “243, 244, or”.

10 (6) Section 596 of such Code (relating to limi-
11 tation on dividends received deduction) is amended
12 by striking “sections 243, 244, and 245” and insert-
13 ing “section 245”.

14 (d) EFFECTIVE DATE.—The amendments made by
15 this section shall apply to distributions made after the
16 date of the enactment of this Act.

17 **SEC. 207. CHARITABLE DEDUCTION FOR CORPORATE CON-**
18 **TRIBUTIONS OF EMPLOYEE SERVICES TO**
19 **EDUCATIONAL ORGANIZATIONS.**

20 (a) IN GENERAL.—Section 170 of the Internal Reve-
21 nue Code of 1986 (relating to deduction for charitable
22 contributions) is amended by redesignating subsection (m)
23 as subsection (n) and by inserting after subsection (l) the
24 following new subsection:

1 “(m) CORPORATE CONTRIBUTIONS OF EMPLOYEE
2 SERVICES TO EDUCATIONAL ORGANIZATIONS.—

3 “(1) IN GENERAL.—There shall be allowed as a
4 deduction under this section any charitable contribu-
5 tion by a corporation of employee volunteer services
6 to an educational organization (within the meaning
7 of subsection (b)(1)(A)(ii)).

8 “(2) VALUATION.—The value of a contribution
9 under paragraph (1) shall be 50 percent of the
10 amount paid or incurred by the corporation for sal-
11 ary, wages, and benefits for the employee for the
12 time during which the employee provides employee
13 volunteer services.

14 “(3) EMPLOYEE VOLUNTEER SERVICES.—For
15 purposes of this subsection, the term ‘employee vol-
16 unteer services’ means teaching, tutoring, or other
17 assistance provided without charge or reimburse-
18 ment by an employee during the regular working
19 hours of the employer.

20 “(4) COORDINATION WITH DEDUCTION FOR
21 BUSINESS EXPENSES.—A deduction allowed under
22 this subsection for any expense shall be in addition
23 to any deduction allowed for the same expense under
24 section 162.”

1 (b) EFFECTIVE DATE.—The amendment made by
2 this section shall apply to contributions made after the
3 date of the enactment of this Act.

4 **SEC. 208. INVESTMENT CREDIT FOR NEW MANUFACTURING**
5 **AND OTHER PRODUCTION EQUIPMENT.**

6 (a) ALLOWANCE OF CREDIT.—Section 46 of the In-
7 ternal Revenue Code of 1986 (relating to amount of in-
8 vestment credit) is amended by striking “and” at the end
9 of paragraph (2), by striking the period at the end of para-
10 graph (3) and inserting “, and”, and by adding at the
11 end thereof the following new paragraph:

12 “(4) the manufacturing and other productive
13 equipment credit.”

14 (b) AMOUNT OF CREDIT.—Section 48 of such Code
15 is amended by adding at the end thereof the following new
16 subsection:

17 “(c) MANUFACTURING AND OTHER PRODUCTIVE
18 EQUIPMENT CREDIT.—

19 “(1) IN GENERAL.—For purposes of section 46,
20 the manufacturing and other productive equipment
21 credit for any taxable year is the applicable percent-
22 age of the basis of each qualified manufacturing and
23 productive equipment property placed in service dur-
24 ing such taxable year.

1 “(2) QUALIFIED MANUFACTURING AND PRO-
2 DUCTIVE EQUIPMENT PROPERTY.—For purposes of
3 this subsection—

4 “(A) IN GENERAL.—The term ‘qualified
5 manufacturing and productive equipment prop-
6 erty’ means any property—

7 “(i) which is used as an integral part
8 of the manufacture or production of tan-
9 gible personal property,

10 “(ii) which is tangible property to
11 which section 168 applies,

12 “(iii) which is section 1245 property
13 (as defined in section 1245(a)(3)), and

14 “(iv)(I) the construction, reconstruc-
15 tion, or erection of which is completed by
16 the taxpayer, or

17 “(II) which is acquired by the tax-
18 payer if the original use of such property
19 commences with the taxpayer.

20 “(B) TREATMENT OF CERTAIN SOFT-
21 WARE.—In the case of any computer software
22 which is used to control or monitor a manufac-
23 turing or production process and with respect
24 to which depreciation (or amortization in lieu of
25 depreciation) is allowable—

1 “(i) such software shall be treated as
2 qualified manufacturing and productive
3 equipment property, and

4 “(ii) paragraph (3)(C) shall not apply.

5 “(3) APPLICABLE PERCENTAGE.—For purposes
6 of this subsection—

7 “(A) IN GENERAL.—In the case of quali-
8 fied manufacturing and productive equipment
9 property, the applicable percentage is the sum
10 of—

11 “(i) 10 percent, plus

12 “(ii) 1/10th of the efficiency improve-
13 ment percentage (if any) determined with
14 respect to such property.

15 In no event shall the applicable percentage ex-
16 ceed 20 percent.

17 “(B) EFFICIENCY IMPROVEMENT PER-
18 CENTAGE.—For purposes of subparagraph (A),
19 the term ‘efficiency improvement percentage’
20 means, with respect to any property, the per-
21 centage efficiency increase established by the
22 taxpayer as resulting from the use of such
23 property. For purposes of the preceding sen-
24 tence, percentage efficiency increase shall be de-
25 termined on the basis of the relationship of the

1 amount of goods manufactured or produced to
2 the cost of manufacture or production.

3 “(C) SPECIAL RULE FOR 3-YEAR PROP-
4 ERTY.—In the case of any qualified manufac-
5 turing and productive equipment property
6 which is 3-year property (within the meaning of
7 section 168(e)), the applicable percentage shall
8 be 60 percent of the amount otherwise deter-
9 mined under this paragraph.

10 “(4) COORDINATION WITH OTHER CREDITS.—
11 This subsection shall not apply to any property to
12 which the energy credit or rehabilitation credit
13 would apply unless the taxpayer elects to waive the
14 application of such credits to such property.

15 “(5) CERTAIN PROGRESS EXPENDITURE RULES
16 MADE APPLICABLE.—Rules similar to rules of sub-
17 section (c)(4) and (d) of section 46 (as in effect on
18 the day before the date of the enactment of the Rev-
19 enue Reconciliation Act of 1990) shall apply for pur-
20 poses of this subsection.”

21 (c) TECHNICAL AMENDMENTS.—

22 (1) Clause (ii) of section 49(a)(1)(C) of such
23 Code is amended by inserting “or qualified manufac-
24 turing and productive equipment property” after
25 “energy property”.

1 (2) Subparagraph (E) of section 50(a)(2) of
2 such Code is amended by inserting “or 48(c)(5)” be-
3 fore the period at the end thereof.

4 (3) Paragraph (5) of section 50(a) of such Code
5 is amended by adding at the end thereof the follow-
6 ing new subparagraph:

7 “(D) SPECIAL RULES FOR CERTAIN PROP-
8 ERTY.—In the case of any qualified manufac-
9 turing and productive equipment property
10 which is 3-year property (within the meaning of
11 section 168(e))—

12 “(i) the percentage set forth in clause
13 (ii) of the table contained in paragraph
14 (1)(B) shall be 66 percent,

15 “(ii) the percentage set forth in clause
16 (iii) of such table shall be 33 percent, and

17 “(iii) clauses (iv) and (v) of such table
18 shall not apply.”

19 (4)(A) The section heading for section 48 of
20 such Code is amended to read as follows:

21 **“SEC. 48. OTHER CREDITS.”**

22 (B) The table of sections for subpart E of part
23 IV of subchapter A of chapter 1 of such Code is
24 amended by striking the item relating to section 45
25 and inserting the following:

“Sec. 45. Other credits.”

1 (d) EFFECTIVE DATE.—The amendments made by
2 this section shall apply to—

3 (1) property acquired by the taxpayer after the
4 date of the enactment of this Act, and

5 (2) property the construction, reconstruction, or
6 erection of which is completed by the taxpayer after
7 the date of the enactment of this Act, but to the ex-
8 tent of the basis thereof attributable to construction,
9 reconstruction, or erection after such date.

10 **SEC. 209. INCREASE IN LIMITATION BASED ON AMOUNT OF**
11 **TAX.**

12 (a) IN GENERAL.—Subparagraph (B) of section
13 38(c)(1) of the Internal Revenue Code of 1986 is amended
14 by striking “\$25,000” and inserting “\$50,000”.

15 (b) CONFORMING AMENDMENTS.—Paragraph (2) of
16 section 38(c) of such Code is amended—

17 (1) by striking “\$25,000” each place it appears
18 and inserting “\$50,000”, and

19 (2) by inserting “\$12,500” in subparagraph (A)
20 and inserting “\$25,000”.

21 (c) EFFECTIVE DATE.—The amendments made by
22 this section shall apply to taxable years beginning after
23 the date of the enactment of this Act.

1 **SEC. 210. SPECIAL TREATMENT FOR LOSSES ON INVEST-**
2 **MENT IN MANUFACTURING FACILITIES.**

3 (a) IN GENERAL.—Subsection (a) of section 1244 of
4 the Internal Revenue Code of 1986 is amended to read
5 as follows:

6 “(a) GENERAL RULE.—In the case of an individual,
7 any loss on—

8 “(1) section 1244 stock issued to such individ-
9 ual or to a partnership, or

10 “(2) qualified manufacturing stock,
11 which would (but for this section) be treated as a loss from
12 the sale or exchange of a capital asset shall, to the extent
13 provided in this section, be treated as an ordinary loss.”

14 (b) QUALIFIED MANUFACTURING STOCK.—Sub-
15 section (c) of section 1244 of such Code is amended by
16 adding at the end thereof the following new paragraph:

17 “(4) QUALIFIED MANUFACTURING STOCK.—For
18 purposes of this section, the term ‘qualified manu-
19 facturing stock’ means stock in any domestic cor-
20 poration if, as of the time such stock was acquired
21 by the taxpayer, substantially all of the activities of
22 such corporation involved the manufacture of tan-
23 gible personal property in the United States. For
24 purposes of this paragraph, the term ‘manufacture’
25 shall not include importation. Rules similar to the

1 rules of paragraphs (1) and (2) of subsection (d)
2 shall apply to qualified manufacturing stock.”

3 (c) CLERICAL AMENDMENTS.—

4 (1) The section heading for section 1244 of
5 such Code is amended by inserting before the period
6 at the end thereof the following: “**OR STOCK IN**
7 **MANUFACTURING COMPANIES**”.

8 (2) The table of sections for part IV of sub-
9 chapter P of chapter 1 of such Code is amended by
10 inserting before the period at the end of the item re-
11 lating to section 1244 the following: “or stock in
12 manufacturing companies”.

13 (d) EFFECTIVE DATE.—The amendments made by
14 this section shall apply to stock acquired after the date
15 of the enactment of this Act.

16 **SEC. 211. EXEMPTION OF CERTAIN INTEREST AND DIVI-**
17 **DEND INCOME FROM TAX.**

18 (a) IN GENERAL.—Part III of subchapter B of chap-
19 ter 1 of the Internal Revenue Code of 1986 (relating to
20 amounts specifically excluded from gross income) is
21 amended by inserting after section 115 the following new
22 section:

1 **“SEC. 116. PARTIAL EXCLUSION OF DIVIDENDS AND INTER-**
2 **EST RECEIVED BY INDIVIDUALS.**

3 “(a) EXCLUSION FROM GROSS INCOME.—Gross in-
4 come does not include the sum of the amounts received
5 during the taxable year by an individual as—

6 “(1) dividends from domestic corporations, or

7 “(2) interest.

8 “(b) LIMITATIONS.—

9 “(1) MAXIMUM AMOUNT.—The aggregate
10 amount excluded under subsection (a) for any tax-
11 able year shall not exceed \$2,500 (\$5,000 in the
12 case of a joint return under section 6013).

13 “(2) CERTAIN DIVIDENDS EXCLUDED.—Sub-
14 section (a)(1) shall not apply to any dividend from
15 a corporation which, for the taxable year of the cor-
16 poration in which the distribution is made, or for the
17 next preceding taxable year of the corporation, is a
18 corporation exempt from tax under section 501 (re-
19 lating to certain charitable, etc., organizations) or
20 section 521 (relating to farmers’ cooperative associa-
21 tions).

22 “(c) SPECIAL RULES.—For purposes of this sec-
23 tion—

24 “(1) DISTRIBUTIONS FROM REGULATED IN-
25 VESTMENT COMPANIES AND REAL ESTATE INVEST-

1 MENT TRUSTS.—Subsection (a) shall apply with re-
2 spect to distributions by—

3 “(A) regulated investment companies to
4 the extent provided in section 854(c), and

5 “(B) real estate investment trusts to the
6 extent provided in section 857(c).

7 “(2) DISTRIBUTIONS BY A TRUST.—For pur-
8 poses of subsection (a), the amount of dividends and
9 interest properly allocable to a beneficiary under sec-
10 tion 652 or 662 shall be deemed to have been re-
11 ceived by the beneficiary ratably on the same date
12 that the dividends and interest were received by the
13 estate or trust.

14 “(3) CERTAIN NONRESIDENT ALIENS INELI-
15 GIBLE FOR EXCLUSION.—In the case of a non-
16 resident alien individual, subsection (a) shall apply
17 only—

18 “(A) in determining the tax imposed for
19 the taxable year pursuant to section 871(b)(1)
20 and only in respect of dividends and interest
21 which are effectively connected with the conduct
22 of a trade or business within the United States,
23 or

24 “(B) in determining the tax imposed for
25 the taxable year pursuant to section 877(b).”

1 (b) CLERICAL AND CONFORMING AMENDMENTS.—

2 (1) The table of sections for part III of sub-
3 chapter B of chapter 1 of such Code is amended by
4 inserting after the item relating to section 115 the
5 following new item:

“Sec. 116. Partial exclusion of dividends and interest received by
individuals.”

6 (2) The first sentence of paragraph (2) of sec-
7 tion 265(a) of such Code is amended by inserting
8 before the period at the end thereof the following: “,
9 or to purchase or carry obligations or shares, or to
10 make deposits, to the extent the interest thereon is
11 excludable from gross income under section 116”.

12 (3) Subsection (c) of section 584 of such Code
13 is amended by adding at the end thereof the follow-
14 ing new sentence:

15 “The proportionate share of each participant in the
16 amount of dividends or interest received by the common
17 trust fund and to which section 116 applies shall be con-
18 sidered for purposes of such section as having been re-
19 ceived by such participant.”

20 (4) Subsection (a) of section 643(a) of such
21 Code is amended by inserting after paragraph (6)
22 the following new paragraph:

1 “(7) DIVIDENDS OR INTEREST.—There shall be
2 included the amount of any dividends or interest ex-
3 cluded from gross income pursuant to section 116.”

4 (5) Section 854 of such Code is amended by
5 adding at the end thereof the following new sub-
6 section:

7 “(c) TREATMENT UNDER SECTION 116.—

8 “(1) IN GENERAL.—For purposes of section
9 116, in the case of any dividend (other than a divi-
10 dend described in subsection (a)) received from a
11 regulated investment company which meets the re-
12 quirements of section 852 for the taxable year in
13 which it paid the dividend—

14 “(A) the entire amount of such dividend
15 shall be treated as a dividend if the aggregate
16 dividends and interest received by such com-
17 pany during the taxable year equal or exceed 75
18 percent of its gross income, or

19 “(B) if subparagraph (A) does not apply,
20 a portion of such dividend shall be treated as
21 a dividend (and a portion of such dividend shall
22 be treated as interest) based on the portion of
23 the company’s gross income which consists of
24 aggregate dividends or aggregate interest, as
25 the case may be.

1 For purposes of the preceding sentence, gross in-
2 come and aggregate interest received shall each be
3 reduced by so much of the deduction allowable by
4 section 163 for the taxable year as does not exceed
5 aggregate interest received for the taxable year.

6 “(2) NOTICE TO SHAREHOLDERS.—The amount
7 of any distribution by a regulated investment com-
8 pany which may be taken into account as a dividend
9 for purposes of the exclusion under section 116 shall
10 not exceed the amount so designated by the com-
11 pany in a written notice to its shareholders mailed
12 not later than 45 days after the close of its taxable
13 year.

14 “(3) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) The term ‘gross income’ does not in-
17 clude gain from the sale or other disposition of
18 stock or securities.

19 “(B) The term ‘aggregate dividends re-
20 ceived’ includes only dividends received from do-
21 mestic corporations other than dividends de-
22 scribed in section 116(b)(2). In determining the
23 amount of any dividend for purposes of this
24 subparagraph, the rules provided in section

1 116(c)(1) (relating to certain distributions)
2 shall apply.”

3 (6) Subsection (c) of section 857 of such Code
4 is amended to read as follows:

5 “(c) LIMITATIONS APPLICABLE TO DIVIDENDS RE-
6 CEIVED FROM REAL ESTATE INVESTMENT TRUSTS.—

7 “(1) IN GENERAL.—For purposes of section
8 116 (relating to an exclusion for dividends and inter-
9 est received by individuals) and section 243 (relating
10 to deductions for dividends received by corpora-
11 tions), a dividend received from a real estate invest-
12 ment trust which meets the requirements of this
13 part shall not be considered as a dividend.

14 “(2) TREATMENT AS INTEREST.—In the case of
15 a dividend (other than a capital gain dividend, as de-
16 fined in subsection (b)(3)(C)) received from a real
17 estate investment trust which meets the require-
18 ments of this part for the taxable year in which it
19 paid the dividend—

20 “(A) such dividend shall be treated as in-
21 terest if the aggregate interest received by the
22 real estate investment trust for the taxable year
23 equals or exceeds 75 percent of its gross in-
24 come, or

1 “(B) if subparagraph (A) does not apply,
2 the portion of such dividend which bears the
3 same ratio to the amount of such dividend as
4 the aggregate interest received bears to gross
5 income shall be treated as interest.

6 “(3) ADJUSTMENTS TO GROSS INCOME AND AG-
7 GREGATE INTEREST RECEIVED.—For purposes of
8 paragraph (2)—

9 “(A) gross income does not include the net
10 capital gain,

11 “(B) gross income and aggregate interest
12 received shall each be reduced by so much of
13 the deduction allowable by section 163 for the
14 taxable year (other than for interest on mort-
15 gages on real property owned by the real estate
16 investment trust) as does not exceed aggregate
17 interest received by the taxable year, and

18 “(C) gross income shall be reduced by the
19 sum of the taxes imposed by paragraphs (4),
20 (5), and (6) of section 857(b).

21 “(4) NOTICE TO SHAREHOLDERS.—The amount
22 of any distribution by a real estate investment trust
23 which may be taken into account as interest for pur-
24 poses of the exclusion under section 116 shall not
25 exceed the amount so designated by the trust in a

1 written notice to its shareholders mailed not later
2 than 45 days after the close of its taxable year.”

3 (c) EFFECTIVE DATE.—The amendments made by
4 this section shall apply with respect to taxable years begin-
5 ning after the date of the enactment of this Act.

6 **SEC. 212. ORDINARY-LOSS TREATMENT FOR LOSSES ON IN-**
7 **VESTMENTS IN STARTUP COMPANIES.**

8 (a) IN GENERAL.—Subparagraph (A) of section
9 1244(c)(1) of the Internal Revenue Code of 1986 (defin-
10 ing section 1244 stock) is amended by inserting before the
11 comma at the end the following: “or was a qualified start-
12 up company”.

13 (b) QUALIFIED STARTUP COMPANY.—Subsection (c)
14 of section 1244 of such Code is amended by adding at
15 the end the following new paragraph:

16 “(4) QUALIFIED STARTUP COMPANY.—

17 “(A) IN GENERAL.—For purposes of this
18 section, the term ‘qualified startup company’
19 means any domestic corporation if—

20 “(i) as of the time of the issuance of
21 the stock involved, substantially all of the
22 activities of the corporation involved the
23 manufacture of tangible personal property
24 in the United States,

1 “(ii) as of the time of the issuance of
2 the stock involved, no substantial part of
3 the business activities of the corporation
4 involved a business acquired from another
5 person, and

6 “(iii) the corporation had not been in
7 existence for more than 1 taxable year as
8 of the time of the issuance of the stock in-
9 volved.

10 “(B) IMPORTATION EXCLUDED.—For pur-
11 poses of subparagraph (A), the term ‘manufac-
12 ture’ does not include importation.”

13 (c) CONFORMING AMENDMENT.—The last sentence
14 of section 1244(d)(2) of such Code is amended by striking
15 “paragraphs (1)(C) and (3)(A)” and inserting “para-
16 graphs (1)(C), (3)(A), and (4)”.

17 (d) EFFECTIVE DATE.—The amendments made by
18 this section shall apply to stock issued after the date of
19 the enactment of this Act.

20 **TITLE III—COOPERATIVE**
21 **ENTERPRISE**

22 **SEC. 301. FINDINGS.**

23 The Congress finds that—

1 (1) the globalization of the economy makes
2 antitrust law much less relevant today, and even
3 counterproductive, than when it was developed;

4 (2) rapid technological change makes the cre-
5 ation of monopolies unlikely as the pace of product
6 and process innovation accelerates;

7 (3) cooperative efforts in today's world are pre-
8 dominantly pro-competitive rather than anticompeti-
9 tive; and

10 (4) changing the United States antitrust laws
11 to mirror the realities of the way in which other
12 countries enforce anticompetitive statutes would
13 make United States industries more competitive
14 internationally.

15 **SEC. 302. MERGER ANALYSIS.**

16 Section 7 of the Clayton Act (15 U.S.C. 18) is
17 amended—

18 (1) in the first paragraph by striking “the ef-
19 fect of such acquisition may be substantially to less-
20 en competition, or to tend to create a monopoly”
21 and inserting in lieu thereof “there is a significant
22 probability that such acquisition will substantially
23 increase the ability to exercise market power”;

24 (2) in the second paragraph—

1 (A) by striking “the effect of” and insert-
2 ing in lieu thereof “there is a significant prob-
3 ability that”; and

4 (B) by striking “may be substantially to
5 lessen competition, or to tend to create a mo-
6 nopoly” and inserting in lieu thereof “will sub-
7 stantially increase the ability to exercise market
8 power”;

9 (3) in the third paragraph—

10 (A) by striking “the substantial lessening
11 of competition” in the first sentence and insert-
12 ing in lieu thereof “a substantial increase in the
13 ability to exercise market power”; and

14 (B) by striking “lessen competition” in the
15 second sentence and inserting in lieu thereof
16 “increase the ability to exercise market power”;
17 and

18 (4) by inserting after the third paragraph the
19 following new paragraph:

20 “For purposes of this section, the ability to exercise
21 market power is defined as the ability of one or more firms
22 profitably to maintain prices above competitive levels for
23 a significant period of time. In determining whether there
24 is a significant probability that any acquisition will sub-
25 stantially increase the ability to exercise market power, the

1 court shall duly consider all economic factors relevant to
2 the effect of the acquisition in the affected markets, in-
3 cluding (i) the number and size distribution of firms and
4 the effect of the acquisition thereon; (ii) ease or difficulty
5 of entry by foreign or domestic firms; (iii) the ability of
6 smaller firms in the market to increase production in re-
7 sponse to an attempt to exercise market power; (iv) the
8 nature of the product and terms of sale; (v) conduct of
9 firms in the market; (vi) efficiencies deriving from the ac-
10 quisition; and (vii) any other evidence indicating whether
11 the acquisition will or will not substantially increase the
12 ability, unilaterally or collectively, to exercise market
13 power.”.

14 **SEC. 303. JOINT PRODUCTION.**

15 The National Cooperative Research Act of 1984 (15
16 U.S.C. 4301 et seq.) is amended—

17 (1) in section 1, by striking “National Coopera-
18 tive Research Act of 1984” and inserting in lieu
19 thereof “National Cooperative Research, Develop-
20 ment, and Production Act”;

21 (2) by striking “joint research and development
22 venture” each place it appears and inserting in lieu
23 thereof “joint research, development, or production
24 venture”;

25 (3) in section 2(a)(6)—

1 (A) by striking “or” in subparagraph (D);

2 (B) by striking subparagraph (E) and in-
3 serting in lieu thereof the following:

4 “(E) the production of any product, proc-
5 ess, or service, or

6 “(F) any combination of the purposes
7 specified in subparagraphs (A), (B), (C), (D),
8 and (E),”; and

9 (C) by inserting “development, or produc-
10 tion,” after “the conducting of research,”;

11 (4) in section 2(b)(1), by striking “conduct the
12 research and development that is” and inserting in
13 lieu thereof “carry out”;

14 (5) by striking sections 2(b)(2) and 2(b)(3) and
15 inserting in lieu thereof the following:

16 “(2) entering into any agreement or engaging
17 in any other conduct restricting, requiring, or other-
18 wise involving the marketing by such venture or by
19 any person who is a party to such venture of any
20 product, process, or service developed through or
21 produced by such venture, other than—

22 “(A) the marketing by such venture of any
23 product, process, or service to any person who
24 is a party to such venture; or

1 “(B) the marketing of proprietary informa-
2 tion, such as patents, rights in mask works pro-
3 tected under title 17 of the United States Code,
4 know-how, and trade secrets; and

5 “(3) entering into any agreement or engaging
6 in any other conduct—

7 “(A) to restrict or require the sale, licens-
8 ing, or sharing by any person who is a party to
9 such venture of inventions, developments, prod-
10 ucts, processes, or services not developed
11 through or produced by such venture; or

12 “(B) to restrict or require participation by
13 such a party in other unilateral or joint re-
14 search, development, or production activities,
15 that is not reasonably required to prevent misappro-
16 priation of proprietary information contributed by
17 any person who is a party to such venture or of the
18 results of such venture.”;

19 (6) in section 3, by striking “research and de-
20 velopment markets” and inserting in lieu thereof
21 “research, development, product, process, or service
22 markets”;

23 (7) in the heading to section 6, by striking
24 “JOINT RESEARCH AND DEVELOPMENT VENTURE”

1 and inserting in lieu thereof “JOINT RESEARCH, DE-
2 VELOPMENT, OR PRODUCTION VENTURE”; and

3 (8) in section 6(a) by inserting “(or, with re-
4 spect to a venture involving the production of any
5 product, process, or service, not later than 90 days
6 after the effective date of the Fundamental Competi-
7 tiveness Act of 1993)” after “enactment of this
8 Act”.

9 **TITLE IV—BUSINESS LIABILITY**
10 **REFORM**
11 **Subtitle A—Findings**

12 **SEC. 401. FINDINGS.**

13 The Congress finds that—

14 (1) the increasing amount of litigation in our
15 society causes the wasteful use of time, money, and
16 energy which could be better allocated to research,
17 development, production, economic growth, and com-
18 petitiveness;

19 (2) the multitude of professional and product li-
20 ability suits has undermined the incentive and ability
21 of businesses to bring new products to the market
22 and has led professionals to be overly cautious in
23 providing services to the community;

24 (3) the excessive number of law suits and the
25 plethora of legal standards in the areas of profes-

1 sional and product liability for each State has led to
2 exorbitant compliance costs for manufacturers and
3 service providers;

4 (4) encouraging alternative dispute mechanisms
5 to resolve both professional and product liability
6 suits would reduce inordinate litigation cost and free
7 capital for more productive enterprises; and

8 (5) providing uniform legal standards for both
9 professional and product liability would eliminate
10 costly litigation, promote professional and product
11 innovation, reduce regulatory compliance costs, and
12 make the United States more competitive inter-
13 nationally.

14 **Subtitle B—Professionals’ Liability** 15 **Reform**

16 **SEC. 411. SHORT TITLE.**

17 This subtitle may be cited as “Professionals’ Liability
18 Reform Act of 1993”.

19 **SEC. 412. PURPOSE.**

20 The purpose of this subtitle is to establish uniform
21 standards of liability for professionals who provide profes-
22 sional service—

23 (1) to promote greater uniformity and predict-
24 ability with respect to liability arising out of such
25 services;

1 (2) to facilitate the provision of such services
2 through interstate commerce;

3 (3) to foster innovation by reducing the uncer-
4 tainty of risk to professionals who provide profes-
5 sional services; and

6 (4) to encourage the States to support alter-
7 native methods for resolving professional liability
8 disputes in order to reduce the costs of such dis-
9 putes to professionals and their clients.

10 **SEC. 413. SCOPE AND PREEMPTION.**

11 (a) IN GENERAL.—(1) This subtitle governs any pro-
12 fessional liability action brought in any Federal or State
13 court against a professional.

14 (2) This subtitle shall preempt and supersede any
15 State law to the extent that such law is inconsistent with
16 this subtitle. This subtitle shall not preempt or supersede
17 any State law that provides to professionals limitations of
18 liability or defenses which are additional to limitations or
19 defenses contained in this subtitle.

20 (b) HARM REQUIRED.—A claimant is not entitled to
21 recover damages in a professional liability action except
22 for damages which constitute harm as defined in section
23 416(4).

24 (c) CONSTRUCTION OF PROVISIONS.—Nothing in this
25 subtitle shall be construed—

1 (1) to waive or affect any defense of sovereign
2 immunity asserted by any State under any law;

3 (2) to waive or affect any defense of sovereign
4 immunity asserted by the United States;

5 (3) to affect the applicability of the Foreign
6 Services Immunities Act of 1976 (28 U.S.C. 1602 et
7 seq.);

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

11 (5) to affect the right of any court to transfer
12 venue or to apply the law of a foreign nation or to
13 dismiss a claim of a foreign nation or of a citizen
14 of a foreign nation on the ground of inconvenient
15 forum.

16 (d) ALTERNATIVE PROCEDURES, STANDARDS, AND
17 SYSTEMS.—Nothing in this subtitle shall prohibit States
18 from developing or implementing alternative procedures,
19 standards, or systems, which are not inconsistent with this
20 subtitle, for—

21 (1) expediting the adjudication of professional
22 liability claims,

23 (2) resolving professional liability disputes, and

24 (3) compensating harm caused by professional
25 services.

1 (e) LIMITATION OF ACTIONS.—No professional liabil-
2 ity action shall be maintained unless commenced within
3 3 years after the claimant discovered, or in the exercise
4 of reasonable diligence should have discovered, that such
5 claimant had suffered harm from professional services.

6 **SEC. 414. DESCRIPTION OF PROFESSIONAL LIABILITY**
7 **STANDARDS.**

8 (a) LIABILITY IN GENERAL.—A professional shall
9 not be liable for damages in any professional liability ac-
10 tion unless the claimant establishes in addition to any
11 other necessary elements of proof required by law—

12 (1) except as provided in subsection (b), that
13 such professional negligently rendered professional
14 services and such negligence was the proximate
15 cause of harm to the claimant; or

16 (2) in the case of a claim for economic injury,
17 that such professional negligently rendered profes-
18 sional services to or for the direct and intended ben-
19 efit of the claimant, and such services were the prox-
20 imate cause of the harm to the claimant.

21 (b) EXISTENCE OF CERTAIN SCIENTIFIC, MEDICAL,
22 LEGAL, OR TECHNICAL INFORMATION.—A professional
23 shall not be liable in a professional liability action for
24 harm caused by professional services rendered by such
25 professional unless the claimant establishes that, at the

1 time such services were rendered, knowledge of the cir-
2 cumstances that caused the harm and a practical means
3 to eliminate such circumstances were reasonably available
4 in light of scientific, medical, legal, or technical informa-
5 tion existing at the time the professional services were ren-
6 dered.

7 (c) ADDITIONAL LIMITATIONS ON LIABILITY.—(1) A
8 professional shall not be liable in a professional liability
9 action in which—

10 (A) the professional's services were rendered to
11 an agency of the Federal Government or of any
12 State;

13 (B) the Federal Government or the State estab-
14 lished or approved reasonably precise contract speci-
15 fications material to the claim made against the pro-
16 fessional; and

17 (C) the services rendered by the professional
18 conformed to such specifications in all respects ma-
19 terial to the claim.

20 (2) A determination by an agency of the Federal Gov-
21 ernment or the State that the services rendered by the
22 professional are in compliance with contract specifications
23 shall serve as conclusive evidence of such conformity.

24 (d) PERIODIC PAYMENTS.—(1) In any professional li-
25 ability action in which the award of future damages ex-

1 ceeds \$100,000, no person may be required to pay for fu-
2 ture loss in a single payment, but such person shall be
3 permitted to make such payments periodically based on
4 a projection of when damages are likely to occur.

5 (2) The court may require such person to purchase
6 an annuity making such periodic payments, if the court
7 finds a reasonable basis for concluding that the person
8 may not make the periodic payments.

9 (3) The judgment of the court awarding such periodic
10 payments may not be reopened at any time to contest,
11 amend, or modify the schedule or amount of the payments
12 in the absence of fraud.

13 (4) This subsection shall not be construed to preclude
14 a settlement providing for a single payment.

15 (f) COLLATERAL SOURCE BENEFITS.—(1) Any
16 award of damages to a claimant in a professional liability
17 action shall be reduced by any other past or future pay-
18 ment or benefit covered by this subsection which the per-
19 son has received or for which the person is eligible on ac-
20 count of the harm for which damages are awarded.

21 (2) As used in this subsection, the term “payment
22 or benefit covered by this subsection” means—

23 (A) any payment or benefit by or paid, in whole
24 or in part, by any agency or instrumentality of the
25 United States, a State, or local government; and

1 (B) any payment or benefit by a worker's com-
2 pensation system, a health insurance program, or in-
3 come replacement program.

4 (3) This subsection shall not preempt or supersede
5 any State law which provides that damage awards may
6 be reduced by payments or benefits other than those cov-
7 ered by this section.

8 (4) This subsection shall not apply to any payments
9 or benefits received before judgment if the application of
10 this subsection would reduce the amount of income that
11 would otherwise be considered under section 402(a)(17)
12 of the Social Security Act.

13 (5) The amount by which an award of damages to
14 an individual for an injury shall be reduced under para-
15 graph (1) shall be an amount equal to the difference be-
16 tween—

17 (A) the total amount of the payments (other
18 than such award) which have been made or which
19 will be made to such individual to compensate such
20 individual for such injury, minus

21 (B) the amount paid by such individual (or by
22 the spouse or parent of such individual) to secure
23 the payments described in subparagraphs (A) and
24 (B) of paragraph (2).

1 (g) LIMITATION ON ATTORNEYS' FEES.—(1) Except
2 as provided in paragraph (2), in any professional liability
3 action in which claimant receives settlement proceeds or
4 an award of damages, the amount of payments to such
5 individual's attorney shall not exceed—

6 (A) 33 $\frac{1}{3}$ percent of the first \$250,000 recov-
7 ered,

8 (B) 25 percent of the next \$250,000 recovered,
9 and

10 (C) 20 percent of any amount recovered in ex-
11 cess of \$500,000.

12 (2) In any civil action to which paragraph (1) applies,
13 the court may, after receiving a petition from the attorney
14 representing the individual who receives settlement pro-
15 ceeds or an award of damages, permit such attorney to
16 be paid an amount of fees in excess of the amount speci-
17 fied by such paragraph if the court determines that the
18 petition has adduced evidence justifying such additional
19 fees.

20 (h) LIABILITY OF CODEFENDANTS.—(1) Except as
21 provided in paragraph (2), in a professional liability ac-
22 tion, the trier of fact shall determine, with respect to each
23 person responsible for the harm, the percentage of that
24 person's responsibility for the harm for which the action
25 was brought. If damages are awarded to the claimant in

1 such action, a professional shall be liable, if otherwise lia-
2 ble to the claimant for damages, only for the percentage
3 of the damages which equals the percentage of that profes-
4 sional's responsibility for the harm for which the action
5 was brought.

6 (2) Paragraph (1) shall not apply with respect to per-
7 sons engaged in concerted action which proximately
8 caused the harm complained of by the claimant. For pur-
9 poses of this subsection, the term "concerted action"
10 means the participation in joint conduct by 2 or more per-
11 sons who consciously and deliberately agreed to jointly
12 participate in such conduct with actual knowledge of the
13 wrongfulness of the conduct.

14 (i) PUNITIVE DAMAGES.—(1) Punitive damages may,
15 if otherwise permitted by applicable law, be awarded to
16 any claimant who establishes, by clear and convincing evi-
17 dence, that the harm suffered was the result of conduct—

18 (A) manifesting a professional's malicious and
19 reckless disregard of those persons who might be
20 harmed as a result of the performance of profes-
21 sional service; and

22 (B) constituting an extreme departure from ac-
23 cepted standard of conduct.

24 (2) A failure to exercise reasonable care in choosing
25 among alternative types of services, designs, formulations,

1 instructions, or warnings does not, in and of itself, con-
2 stitute the conduct described in paragraph (1).

3 (3) Punitive damages may not be awarded in the ab-
4 sence of a compensatory award.

5 (4) Punitive damages may not be awarded for the
6 negligent provision of professional services.

7 (5) In determining whether punitive damages are to
8 be awarded, the trier of fact shall consider—

9 (A) the likelihood at the relevant time that seri-
10 ous harm would arise from the professional's con-
11 duct described in paragraph (1),

12 (B) the degree of the professional's awareness
13 of that likelihood,

14 (C) the duration of the conduct and any con-
15 cealment of it by the professional,

16 (D) the attitude and action of the professional
17 upon discovery of the conduct and whether the con-
18 duct has been terminated, and

19 (E) whether the harm suffered by the claimant
20 was also the result of the claimant's—

21 (i) disregard for personal safety;

22 (ii) failure to provide the professional with
23 all material information or other matters rel-
24 evant to the rendering of professional services;

25 or

1 (iii) disregard for the consequences of any
2 action taken by the claimant in reliance on pro-
3 fessional services.

4 (6) At the request of the professional, the trier of
5 fact shall consider in a separate proceeding whether puni-
6 tive damages are to be awarded. If a separate proceeding
7 is requested, evidence relevant only to the claim of punitive
8 damages, as determined by applicable State law, shall be
9 inadmissible in any proceeding to determine whether com-
10 pensatory damages are to be awarded.

11 (7) If the trier of fact determines that a professional
12 has engaged in conduct described under paragraph (1),
13 the court may award punitive damages. In determining the
14 amount of such damages, the court shall consider—

15 (A) the factors described in paragraph (4),

16 (B) the profitability to the professional of the
17 conduct for which punitive damages are to be
18 awarded,

19 (C) the total effect of other punishment im-
20 posed or likely to be imposed upon the professional
21 as a result of the conduct, including punitive damage
22 awards to persons similarly situated to the claimant
23 and the severity of civil or criminal penalties to
24 which the professional has been or may be subjected.

1 (8)(A) A claimant's actual recovery of punitive dam-
2 ages awarded under paragraph (5) may not exceed 3 times
3 the amount of compensatory damages awarded to such
4 claimant.

5 (B) Any punitive damages awarded by the court in
6 excess of the amount referred to in subparagraph (A) shall
7 be paid—

8 (i) to the State in which the case is litigated,
9 if the case is litigated in State court; or

10 (ii) to the Federal Government, if the case is
11 litigated in Federal court.

12 (C) Notwithstanding subparagraph (B), the court
13 may award attorneys' fees from such damages to the
14 claimant's attorney as compensation for work attributable
15 to obtaining an award of such damages.

16 (j) COUNSEL'S LIABILITY FOR FRIVOLOUS SUITS.—
17 If the court finds in any professional liability action that
18 such action was commenced—

19 (1) without a good faith belief by the attorney
20 representing the claimant that there was a reason-
21 able basis in law and in fact for recovery of the relief
22 requested, or

23 (2) by such attorney merely for purposes of
24 achieving a monetary settlement where there was no
25 reasonable prospect for an award of damages,

1 the attorney shall be liable for costs, fees, and expenses,
2 including attorney fees, reasonably incurred by the defend-
3 ant.

4 **SEC. 415. FORMATION OF RISK MANAGEMENT PROGRAMS.**

5 (a) IN GENERAL.—Each State should encourage pro-
6 fessional organizations, whose membership includes pro-
7 fessionals who practice within the State, to put into effect
8 risk management programs including peer review of pro-
9 fessional office policies and practices, organization, and
10 quality of performance.

11 (b) RECORDS INADMISSIBLE AS EVIDENCE.—
12 Records of the implementation of and conclusions reached
13 by such risk management programs, including peer review
14 of professional office policies and practices, organization,
15 and quality of performance, shall not be admissible in evi-
16 dence against any professional who is the subject of such
17 records.

18 **SEC. 416. DEFINITIONS.**

19 For purposes of this subtitle—

20 (1) the term “professional” means—

21 (A) any person engaged in work (i) pre-
22 dominantly intellectual and varied in character
23 as opposed to routine mental, manual, mechani-
24 cal, or physical work; (ii) involving the consist-
25 ent exercise of discretion and judgment in its

1 performance; (iii) of such a character that the
2 output produced or the result accomplished can-
3 not be standardized in relation to a given period
4 of time; and (iv) requiring knowledge of an ad-
5 vanced type in a field of science or learning cus-
6 tomarily acquired by a prolonged course of spe-
7 cialized intellectual instruction and study in an
8 institution of higher learning or a hospital, as
9 distinguished from a general academic edu-
10 cation or from an apprenticeship or from train-
11 ing in the performance of routine mental, man-
12 ual, or physical processes; or

13 (B) any person, who (i) has completed the
14 courses of specialized intellectual instruction
15 and study described in clause (iv) of subpara-
16 graph (A), and (ii) is performing related work
17 under the supervision of a professional to qual-
18 ify himself or herself to become a professional
19 as defined in subparagraph (A);

20 (2) the term “State” means any State of the
21 United States, the District of Columbia, the Com-
22 monwealth of Puerto Rico, the Commonwealth of the
23 Northern Mariana Islands, the Virgin Islands,
24 Guam, American Samoa, and any other territory or

1 possession of the United States, or any political sub-
2 division thereof;

3 (3) the term “claimant” means any person—

4 (A) who has suffered harm from the provi-
5 sion of professional services and who brings a
6 professional liability action, or

7 (B) who brings such an action on behalf of
8 any person who has suffered harm from the
9 provision of professional services or who brings
10 such an action because a person suffered harm
11 from such services;

12 (4) the term “harm” means—

13 (A) illness, bodily injury, or the death of
14 the claimant,

15 (B) mental anguish of, or emotional harm
16 to, the claimant caused by the claimant’s illness
17 or bodily injury,

18 (C) physical damage to property, or

19 (D) economic injury; and

20 (5) the term “professional liability action”
21 means a civil action brought against a professional
22 for personal injury, property damage, or harm suf-
23 fered by the claimant because of the provision of
24 professional services.

1 **Subtitle C—Product Liability**
2 **Fairness**

3 **PART I—GENERAL PROVISIONS**

4 **SEC. 421. SHORT TITLE.**

5 This subtitle may be cited as the “Product Liability
6 Fairness Act”.

7 **SEC. 422. DEFINITIONS.**

8 As used in this subtitle, the term—

9 (1) “claimant” means any person who brings a
10 civil action pursuant to this subtitle, and any person
11 on whose behalf such an action is brought; if such
12 an action is brought through or on behalf of an es-
13 tate, the term includes the claimant’s decedent, or if
14 it is brought through or on behalf of a minor or in-
15 competent, the term includes the claimant’s parent
16 or guardian;

17 (2) “clear and convincing evidence” is that
18 measure or degree of proof that will produce in the
19 mind of the trier of fact a firm belief or conviction
20 as to the truth of the allegations sought to be estab-
21 lished; the level of proof required to satisfy such
22 standard is more than that required under prepon-
23 derance of the evidence, but less than that required
24 for proof beyond a reasonable doubt;

1 (3) “collateral benefits” means all benefits and
2 advantages received or entitled to be received (re-
3 gardless of any right any other person has or is enti-
4 tled to assert for recoupment through subrogation,
5 trust agreement, lien, or otherwise) by any claimant
6 harmed by a product or by any other person as re-
7 imbursement of loss because of harm to person or
8 property payable or required to be paid to the claim-
9 ant, under—

10 (A) any Federal law or the laws of any
11 State (other than through a claim for breach of
12 an obligation or duty); or

13 (B) any life, health, or accident insurance
14 or plan, wage or salary continuation plan, or
15 disability income or replacement service insur-
16 ance, or any benefit received or to be received
17 as a result of participation in any pre-paid med-
18 ical plan or health maintenance organization;

19 (4) “commerce” means trade, traffic, com-
20 merce, or transportation (A) between a place in a
21 State and any place outside of that State; or (B)
22 which affects trade, traffic, commerce, or transpor-
23 tation described in clause (A);

24 (5) “commercial loss” means economic injury,
25 whether direct, incidental, or consequential, includ-

1 ing property damage and damage to the product it-
2 self;

3 (6) “economic loss” means any pecuniary loss
4 resulting from harm which is allowed under State
5 law;

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

11 (8) “harm” means any harm recognized under
12 the law of the State in which the civil action is
13 maintained, other than—

14 (A) loss or damage caused to a product it-
15 self; and

16 (B) commercial loss;

17 (9) “manufacturer” means (A) any person who
18 is engaged in a business to produce, create, make,
19 or construct any product (or component part of a
20 product) and who designs or formulates the product
21 (or component part of the product) or has engaged
22 another person to design or formulate the product
23 (or component part of the product); (B) a product
24 seller with respect to all aspects of a product (or
25 component part of a product) which are created or

1 affected when, before placing the product in the
2 stream of commerce, the product seller produces,
3 creates, makes, or constructs and designs or formu-
4 lates, or has engaged another person to design or
5 formulate, an aspect of a product (or component
6 part of a product) made by another; or (C) any
7 product seller not described in clause (B) which
8 holds itself out as a manufacturer to the user of a
9 product;

10 (10) “noneconomic loss” means loss caused by
11 a product other than economic loss or commercial
12 loss;

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

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

22 (13) “product” means any object, substance,
23 mixture, or raw material in a gaseous, liquid, or
24 solid state (A) which is capable of delivery itself or
25 as an assembled whole, in a mixed or combined

1 state, or as a component part or ingredient; (B)
2 which is produced for introduction into trade or
3 commerce; (C) which has intrinsic economic value;
4 and (D) which is intended for sale or lease to per-
5 sons for commercial or personal use; the term does
6 not include human tissue, blood and blood products,
7 or organs unless specifically recognized as a product
8 pursuant to State law;

9 (14) “product seller” means a person who, in
10 the course of a business conducted for that purpose,
11 sells, distributes, leases, prepares, blends, packages,
12 labels, or otherwise is involved in placing a product
13 in the stream of commerce, or who installs, repairs,
14 or maintains the harm-causing aspect of a product;
15 the term does not include—

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

17 (B) a provider of professional services in
18 any case in which the sale or use of a product
19 is incidental to the transaction and the essence
20 of the transaction is the furnishing of judg-
21 ment, skill, or services; or

22 (C) any person who—

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

1 (ii) leases a product under a lease ar-
2 rangement in which the selection, posses-
3 sion, maintenance, and operation of the
4 product are controlled by a person other
5 than the lessor; and

6 (15) "State" means any State of the United
7 States, the District of Columbia, the Commonwealth
8 of Puerto Rico, the Commonwealth of the Northern
9 Mariana Islands, the Virgin Islands, Guam, Amer-
10 ican Samoa, and any other territory or possession of
11 the United States, or any political subdivision
12 thereof.

13 **SEC. 423. PREEMPTION.**

14 (a) This subtitle governs any civil action brought
15 against a manufacturer or product seller, on any theory,
16 for harm caused by a product. A civil action brought
17 against a manufacturer or product seller for loss or dam-
18 age to a product itself or for commercial loss is not subject
19 to this subtitle.

20 (b) This subtitle supersedes any State law regarding
21 recovery for harm caused by a product only to the extent
22 that this subtitle establishes a rule of law applicable to
23 any such recovery. Any issue arising under this subtitle
24 that is not governed by any such rule of law shall be gov-
25 erned by applicable State or Federal law.

1 (c) Nothing in this subtitle act shall be construed
2 to—

3 (1) waive or affect any defense of sovereign im-
4 munity asserted by any State under any provision of
5 law;

6 (2) supersede any Federal law, except the Fed-
7 eral Employees Compensation Act and the Long-
8 shoremen's and Harbor Workers' Compensation Act;

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

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

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

16 (6) affect the right of any court to transfer
17 venue or to apply the law of a foreign nation or to
18 dismiss a claim of a foreign nation or of a citizen
19 of a foreign nation on the ground of inconvenient
20 forum; or

21 (7) supersede any statutory or common law, in-
22 cluding an action to abate a nuisance, that author-
23 izes a State or person to institute an action for civil
24 damages or civil penalties, cleanup costs, injunc-
25 tions, restitution, cost recovery, punitive damages, or

1 any other form of relief resulting from contamina-
2 tion or pollution of the environment, or the threat of
3 such contamination or pollution.

4 (d) As used in this section, the term “environment”
5 has the meaning given to such term in section 101(8) of
6 the Comprehensive Environmental Response, Compensa-
7 tion, and Liability Act of 1980 (42 U.S.C. 9601(8)).

8 (e) This subtitle shall be construed and applied after
9 consideration of its legislative history to promote uniform-
10 ity of law in the various jurisdictions.

11 **SEC. 424. JURISDICTION OF FEDERAL COURTS.**

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

16 **SEC. 425. EFFECTIVE DATE.**

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

22 (b) If any provision of this subtitle would shorten the
23 period during which a manufacturer or product seller
24 would otherwise be exposed to liability, the claimant may,
25 notwithstanding the otherwise applicable time period,

1 bring any civil action pursuant to this subtitle within one
2 year after the effective date of this subtitle.

3 **PART II—OUT OF COURT PROCEDURES**

4 **SEC. 431. EXPEDITED PRODUCT LIABILITY SETTLEMENTS.**

5 (a) Any claimant may bring a civil action for damages
6 against a person for harm caused by a product pursuant
7 to applicable State law, except to the extent such law is
8 superseded by this part.

9 (b) Any claimant may, in addition to any claim for
10 relief made in accordance with State law, include in such
11 claimant's complaint an offer of settlement for a specific
12 dollar amount.

13 (c) The defendant may make an offer of settlement
14 for a specific dollar amount within sixty days after service
15 of the claimant's complaint or within the time permitted
16 pursuant to State law for a responsive pleading, whichever
17 is longer, except that if such pleading includes a motion
18 to dismiss in accordance with applicable law, the defend-
19 ant may tender such relief to the claimant within ten days
20 after the court's determination regarding such motion.

21 (d) In any case in which an offer of settlement is
22 made pursuant to subsection (b) or (c) of this section, the
23 court may, upon motion made prior to the expiration of
24 the applicable period for response, enter an order extend-
25 ing such period. Any such order shall contain a schedule

1 for discovery of evidence material to the issue of the ap-
2 propriate amount of relief, and shall not extend such pe-
3 riod for more than sixty days. Any such motion shall be
4 accompanied by a supporting affidavit of the moving party
5 setting forth the reasons why such extension is necessary
6 to promote the interests of justice and stating that the
7 information likely to be discovered is material, and is not,
8 after reasonable inquiry, otherwise available to the moving
9 party.

10 (e) If the defendant, as offeree, does not accept the
11 offer of settlement made by a claimant in accordance with
12 subsection (b) of this section within the time permitted
13 pursuant to State law for a responsive pleading or, if such
14 pleading includes a motion to dismiss in accordance with
15 applicable law, within thirty days after the court's deter-
16 mination regarding such motion, and a verdict is entered
17 in such action equal to or greater than the specific dollar
18 amount of such offer of settlement, the court shall enter
19 judgment against the defendant and shall include in such
20 judgment an amount for the claimant's reasonable attor-
21 ney's fees and costs. Such fees shall be offset against any
22 fees owed by the claimant to the claimant's attorney by
23 reason of the verdict.

24 (f) If the claimant, as offeree, does not accept the
25 offer of settlement made by a defendant in accordance

1 with subsection (c) of this section within thirty days after
2 the date on which such offer is made and a verdict is en-
3 tered in such action equal to or less than the specific dollar
4 amount of such offer of settlement, the court shall reduce
5 the amount of the verdict in such action by an amount
6 equal to the reasonable attorney's fees and costs owed by
7 the defendant to the defendant's attorney by reason of the
8 verdict, except that the amount of such reduction shall not
9 exceed that portion of the verdict which is allocable to non-
10 economic loss and economic loss for which the claimant
11 has received or will receive collateral benefits.

12 (g) For purposes of this section, attorney's fees shall
13 be calculated on the basis of an hourly rate which should
14 not exceed that which is considered acceptable in the com-
15 munity in which the attorney practices, considering the at-
16 torney's qualifications and experience and the complexity
17 of the case.

18 **SEC. 432. ALTERNATIVE DISPUTE RESOLUTION PROCE-**
19 **DURES.**

20 (a) In lieu of or in addition to making an offer of
21 settlement under section 431 of this part, a claimant or
22 defendant may, within the time permitted for the making
23 of such an offer under section 431 of this part, offer to
24 proceed pursuant to any voluntary alternative dispute res-
25 olution procedure established or recognized under the law

1 of the State in which the civil action for damages for harm
2 caused by a product is brought or under the rules of the
3 court in which such action is maintained.

4 (b) If the offeree refuses to proceed pursuant to such
5 alternative dispute resolution procedure and the court de-
6 termines that such refusal was unreasonable or not in
7 good faith, the court shall assess reasonable attorney's
8 fees and costs against the offeree.

9 (c) For the purposes of this section, there shall be
10 created a rebuttable presumption that a refusal by an
11 offeree to proceed pursuant to such alternative dispute
12 resolution procedure was unreasonable or not in good
13 faith, if a verdict is rendered in favor of the offeror.

14 **PART III—COURT PROCEDURES**

15 **SEC. 441. CIVIL ACTIONS.**

16 A person seeking to recover for harm caused by a
17 product may bring a civil action against the product's
18 manufacturer or product seller pursuant to applicable
19 State or Federal law, except to the extent such law is su-
20 perseded by this subtitle.

21 **SEC. 442. UNIFORM STANDARDS OF PRODUCT SELLER LI-** 22 **ABILITY.**

23 (a) Notwithstanding the provisions of section 441 of
24 this part, in any civil action for harm caused by a product,
25 a product seller other than a manufacturer is liable to a

1 claimant, only if the claimant establishes by a preponder-
2 ance of the evidence that—

3 (1)(A) the individual product unit which alleg-
4 edly caused the harm complained of was sold by the
5 defendant;

6 (B) the product seller failed to exercise reason-
7 able care with respect to the product; and

8 (C) such failure to exercise reasonable care was
9 a proximate cause of the claimant's harm; or

10 (2)(A) the product seller made an express war-
11 ranty, independent of any express warranty made by
12 a manufacturer as to the same product;

13 (B) the product failed to conform to the war-
14 ranty; and

15 (C) the failure of the product to conform to the
16 warranty caused the claimant's harm.

17 (b)(1) In determining whether a product seller is sub-
18 ject to liability under subsection (a)(1) of this section, the
19 trier of fact may consider the effect of the conduct of the
20 product seller with respect to the construction, inspection,
21 or condition of the product, and any failure of the product
22 seller to pass on adequate warnings or instructions from
23 the product's manufacturer about the dangers and proper
24 use of the product.

1 (2) A product seller shall not be liable in a civil action
2 subject to this part based upon an alleged failure to pro-
3 vide warnings or instructions unless the claimant estab-
4 lishes that, when the product left the possession and con-
5 trol of the product seller, the product seller failed—

6 (A) to provide to the person to whom the prod-
7 uct seller relinquished possession and control of the
8 product any pamphlets, booklets, labels, inserts, or
9 other written warnings or instructions received while
10 the product was in the product seller's possession
11 and control; or

12 (B) to make reasonable efforts to provide users
13 with those warnings and instructions which it re-
14 ceived after the product left its possession and con-
15 trol.

16 (3) A product seller shall not be liable in a civil action
17 subject to this part except for breach of express warranty
18 where there was no reasonable opportunity to inspect the
19 product in a manner which would or should, in the exercise
20 of reasonable care, have revealed the aspect of the product
21 which allegedly caused the claimant's harm.

22 (c) Notwithstanding subsection (b), a product seller
23 shall be treated as the manufacturer of a product and
24 shall be liable for harm to the claimant caused by a prod-
25 uct as if it were the manufacturer of the product if—

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

4 (2) the court determines that the claimant
5 would be unable to enforce a judgment against the
6 manufacturer.

7 **SEC. 443. UNIFORM STANDARDS FOR AWARD OF PUNITIVE**
8 **DAMAGES.**

9 (a) Punitive damages may, if otherwise permitted by
10 applicable law, be awarded in any civil action subject to
11 this part to any claimant who establishes by clear and con-
12 vincing evidence that the harm suffered was the result of
13 conduct manifesting a manufacturer's or product seller's
14 conscious, flagrant indifference to the safety of those per-
15 sons who might be harmed by a product. A failure to exer-
16 cise reasonable care in choosing among alternative product
17 designs, formulations, instructions, or warnings is not of
18 itself such conduct. Except as provided in subsection (b)
19 of this section, punitive damages may not be awarded in
20 the absence of a compensatory award.

21 (b) In any civil action in which the alleged harm to
22 the claimant is death and the applicable State law pro-
23 vides, or has been construed to provide, for damages only
24 punitive in nature, a defendant may be liable for any such
25 damages regardless of whether a claim is asserted under

1 this section. The recovery of any such damages shall not
2 bar a claim under this section.

3 (c)(1) Punitive damages shall not be awarded pursu-
4 ant to this section against a manufacturer or product sell-
5 er of a drug (as defined in section 201(g)(1) of the Fed-
6 eral Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1))
7 or medical device (as defined under section 201(h) of the
8 Federal Food, Drug, and Cosmetic Act (21 U.S.C.
9 321(h)) which caused the claimant's harm where—

10 (A) such drug or device was subject to pre-mar-
11 ket approval by the Food and Drug Administration
12 with respect to the safety of the formulation or per-
13 formance of the aspect of such drug or device which
14 caused the claimant's harm or the adequacy of the
15 packaging or labeling of such drug or device, and
16 such drug was approved by the Food and Drug Ad-
17 ministration; or

18 (B) the drug is generally recognized as safe and
19 effective pursuant to conditions established by the
20 Food and Drug Administration and applicable regu-
21 lations, including packaging and labeling regulations.
22 The provisions of this paragraph shall not apply (i)
23 in any case in which the defendant withheld from or
24 misrepresented to the Food and Drug Administra-
25 tion or any other agency or official of the Federal

1 Government information that is material and rel-
2 evant to the performance of such drug or device, or
3 (ii) in any case in which the defendant made an ille-
4 gal payment to an official of the Food and Drug Ad-
5 ministration for the purpose of securing approval of
6 such drug or device.

7 (2) Punitive damages shall not be awarded pursuant
8 to this section against a manufacturer of an aircraft which
9 caused the claimant's harm where—

10 (A) such aircraft was subject to pare-market
11 certification by the Federal Aviation Administration
12 with respect to the safety of the design or perform-
13 ance of the aspect of such aircraft which caused the
14 claimant's harm or the adequacy of the warnings re-
15 garding the operation or maintenance of such air-
16 craft;

17 (B) the aircraft was certified by the Federal
18 Aviation Administration under the Federal Aviation
19 Act of 1958 (49 App. U.S.C. 1301 et seq.); and

20 (C) the manufacturer of the aircraft complied,
21 after delivery of the aircraft to a user, with Federal
22 Aviation Administration requirements and obliga-
23 tions with respect to continuing airworthiness, in-
24 cluding the requirement to provide maintenance and
25 service information related to airworthiness whether

1 or not such information is used by the Federal Avia-
2 tion Administration in the preparation of mandatory
3 maintenance, inspection, or repair directives.

4 The provisions of this paragraph shall not apply in any
5 case in which the defendant withheld from or misrepre-
6 sented to the Federal Aviation Administration information
7 that is material and relevant to the performance or the
8 maintenance or operation of such aircraft.

9 (d) At the request of the manufacturer or product
10 seller, the trier of fact shall consider in a separate proceed-
11 ing (1) whether punitive damages are to be awarded and
12 the amount of such award, or (2) the amount of punitive
13 damages following a determination of punitive liability. If
14 a separate proceeding is requested, evidence relevant only
15 to the claim of punitive damages, as determined by appli-
16 cable State law, shall be inadmissible in any proceeding
17 to determine whether compensatory damages are to be
18 awarded.

19 (e) In determining the amount of punitive damages,
20 the trier of fact shall consider all relevant evidence, includ-
21 ing—

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

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

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

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

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

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

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

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

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

18 **SEC. 444. UNIFORM TIME LIMITATIONS ON LIABILITY.**

19 (a) Any civil action subject to this part shall be
20 barred unless the complaint is filed within two years of
21 the time the claimant discovered or, in the exercise of rea-
22 sonable care, should have discovered the harm and its
23 cause, except that any such action of a person under legal
24 disability may be filed within two years after the disability
25 ceases. If the commencement of such an action is stayed

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

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

13 (2) A motor vehicle, vessel, aircraft, or railroad used
14 primarily to transport passengers for hire shall not be sub-
15 ject to the provisions of this subsection.

16 (3) As used in this section, the term—

17 (A) "time of delivery" means the time when a
18 product is delivered to its first purchaser or lessee
19 who was not involved in the business of manufactur-
20 ing or selling such product or using it as a compo-
21 nent part of another product to be sold;

22 (B) "capital good" means any product, or any
23 component of any such product, which is of a char-
24 acter subject to allowance for depreciation under the
25 Internal Revenue Code of 1986, and which was—

- 1 (i) used in a trade or business;
- 2 (ii) held for the production of income; or
- 3 (iii) sold or donated to a governmental or
- 4 private entity for the production of goods, for
- 5 training, for demonstration, or for other similar
- 6 purposes; and

7 (C) “toxic harm” means harm which is func-

8 tional impairment, illness, or death of a human

9 being resulting from exposure to an object, sub-

10 stance, mixture, raw material, or physical agent of

11 particular chemical composition.

12 (c) Nothing in this section shall affect the right of

13 any person who is subject to liability for harm under this

14 subtitle to seek and obtain contribution or indemnity from

15 any other person who is responsible for such harm.

16 **SEC. 445. UNIFORM STANDARDS FOR OFFSET OF WORKERS’**

17 **COMPENSATION BENEFITS.**

18 (a) In any civil action subject to this part in which

19 damages are sought for harm for which the person injured

20 is or would have been entitled to receive compensation

21 under any State or Federal workers’ compensation law,

22 any damages awarded shall be reduced by the sum of the

23 amount paid as workers’ compensation benefits for such

24 harm and the present value of all workers’ compensation

25 benefits to which the employee is or would be entitled for

1 such harm. The determination of workers' compensation
2 benefits by the trier of fact in a civil action subject to
3 this part shall have no binding effect on and shall not be
4 used as evidence in any other proceeding.

5 (b) A claimant in a civil action subject to this part
6 who is or may be eligible to receive compensation under
7 any State or Federal workers' compensation law must pro-
8 vide written notice of the filing of the civil action to the
9 claimant's employer within 30 days of the filing. The writ-
10 ten notice shall include information regarding the date and
11 court in which the civil action was filed, the names and
12 addresses of all plaintiffs and defendants appearing on the
13 complaint, the court docket number if available, and a
14 copy of the complaint which was filed in the civil action.
15 A copy of such written notice shall be filed with the court
16 and served upon all parties to the action. A claimant's fail-
17 ure to comply with the requirements of this subsection
18 shall suspend the deadlines for filing responsive pleadings
19 and commencing discovery in the civil action, until the
20 claimant complies with the requirements of this sub-
21 section.

22 (c) In any civil action subject to this part in which
23 damages are sought for harm for which the person injured
24 is entitled to receive compensation under any State or
25 Federal workers' compensation law, the action shall, on

1 application of the claimant made at claimant's sole discre-
2 tion, be stayed until such time as the full amount payable
3 as workers' compensation benefits has been finally deter-
4 mined under such workers' compensation law.

5 (d)(1) Except as provided in paragraph (2) of this
6 subsection, unless the manufacturer or product seller has
7 expressly agreed to indemnify or hold an employer harm-
8 less for harm to an employee caused by a product, neither
9 the employer nor the workers' compensation insurance
10 carrier of the employer shall have a right of subrogation,
11 contribution or implied indemnity against the manufac-
12 turer or product seller or a lien against the claimant's re-
13 covery from the manufacturer or product seller if the harm
14 is one for which a civil action for harm caused by a prod-
15 uct may be brought pursuant to this subtitle.

16 (2) Paragraph (1) of this subsection shall not apply
17 if the employer or the workers' compensation insurer of
18 the employer establishes, and the trier of fact determines,
19 that the claimant's harm was not in any way caused by
20 the fault of the claimant's employer or coemployees. In
21 order to establish this fact an employer or the workers'
22 compensation insurer of the employer may intervene in a
23 civil action filed by an employee at any time after the filing
24 of a complaint. In the event that the civil action is resolved
25 prior to obtaining a verdict by the trier of fact, any resolu-

1 tion of the action by settlement or other means shall af-
2 ford the employer or the workers' compensation insurer
3 of the employer an opportunity to participate and to assert
4 a right of subrogation, contribution, or implied indemnity
5 if the claimant's harm was not in any way caused by the
6 fault of the claimant's employer or coemployees.

7 (e)(1) Except as provided in subsection (f), in any
8 civil action subject to this part in which damages are
9 sought for harm for which the person injured is or would
10 have been entitled to receive compensation under any
11 State or Federal workers' compensation law, no third-
12 party tortfeasor may maintain any action for implied in-
13 demnity or contribution against the employer, any
14 coemployee, or the exclusive representative of the person
15 who was injured.

16 (2) Nothing in this subtitle shall be construed to af-
17 fect any provision of a State or Federal workers' com-
18 pensation law which prohibits a person who is or would
19 have been entitled to receive compensation under any such
20 law, or any other person whose claim is or would have
21 been derivative from such a claim, from recovering for
22 harm caused by a product in any action other than a work-
23 ers' compensation claim against a present or former em-
24 ployer or workers' compensation insurer of the employer,
25 any coemployee, or the exclusive representative of the per-

1 son who was injured. Any action other than such a work-
2 ers' compensation claim shall be prohibited, except that
3 nothing in this subtitle shall be construed to affect any
4 State or Federal workers' compensation law which permits
5 recovery based on a claim of an intentional tort by the
6 employer or coemployee, where the claimant's harm was
7 caused by such an intentional tort.

8 (f) Subsection (e) shall not apply and applicable State
9 law shall control if the employer or the workers' compensa-
10 tion insurer of the employer, in a civil action subject to
11 this part, asserts or attempts to assert, because of sub-
12 section (d), a right of subrogation, contribution, or implied
13 indemnity against the manufacturer or product seller or
14 a lien against the claimant's recovery from the manufac-
15 turer or product seller.

16 **SEC. 446. SEVERAL LIABILITY FOR NONECONOMIC DAM-**
17 **AGES.**

18 (a) In any product liability action, the liability of each
19 defendant for noneconomic damages shall be several only
20 and shall not be joint. Each defendant shall be liable only
21 for the amount of noneconomic damages allocated to such
22 defendant in direct proportion to such defendant's per-
23 centage of responsibility as determined under subsection
24 (b) of this section. A separate judgment shall be rendered
25 against such defendant for that amount.

1 (b) For purposes of this section, the trier of fact shall
2 determine the proportion of responsibility of each party
3 for the claimant's harm.

4 (c) As used in this section, the term—

5 (1) “noneconomic damages” means subjective,
6 nonmonetary losses including, but not limited to,
7 pain, suffering, inconvenience, mental suffering,
8 emotional distress, loss of society and companion-
9 ship, loss of consortium, injury to reputation and
10 humiliation; the term does not include objectively
11 verifiable monetary losses including, but not limited
12 to, medical expenses, loss of earnings, burial costs,
13 loss of use of property, costs of repair or replace-
14 ment, costs of obtaining substitute domestic services,
15 rehabilitation and training expenses, loss of employ-
16 ment, or loss of business or employment opportuni-
17 ties; and

18 (2) “product liability action” includes any ac-
19 tion involving a claim, third-party claim, cross-claim,
20 counterclaim, or contribution claim in a civil action
21 in which a manufacturer or product seller is found
22 liable for harm caused by a product.

1 **SEC. 447. DEFENSES INVOLVING INTOXICATING ALCOHOL**
2 **OR DRUGS.**

3 (a) In any civil action subject to this subtitle in which
4 all defendants are manufacturers or product sellers, it
5 shall be a complete defense to such action that the claim-
6 ant was intoxicated or was under the influence of intoxi-
7 cating alcohol or any drug and that as a result of such
8 intoxication or the influence of the alcohol or drug the
9 claimant was more than 50 percent responsible for the ac-
10 cident or event which resulted in such claimant's harm.

11 (b) In any civil action subject to this subtitle in which
12 not all defendants are manufacturers or product sellers
13 and the trier of fact determines that no liability exists
14 against those defendants who are not manufacturers or
15 product sellers, the court shall enter a judgment notwith-
16 standing the verdict in favor of any defendant which is
17 a manufacturer or product seller if it is proved that the
18 claimant was intoxicated or was under the influence of in-
19 toxicating alcohol or any drug and that as a result of such
20 intoxication or the influence of the alcohol or drug the
21 claimant was more than 50 percent responsible for the ac-
22 cident or event which resulted in such claimant's harm.

23 (c)(1) For purposes of this section, the determination
24 of whether a person was intoxicated or was under the in-
25 fluence of intoxicating alcohol or any drug shall be made
26 pursuant to applicable State law.

1 (2) As used in this section, the term “drug” means
2 any non-over-the-counter drug which has not been pre-
3 scribed by a physician for use by the claimant.

4 **TITLE V—REGULATORY REVIEW**

5 **SEC. 501. FINDINGS.**

6 The Congress finds that—

7 (1) administrative action is too frequently pro-
8 pelled by a concern with politically visible results, at
9 the expense of less apparent impacts;

10 (2) traditional regulatory cost-benefit analysis
11 frequently fails to examine the effect of restrictive
12 regulations on overall human welfare in terms of re-
13 duced health and safety, reduced consumer choice,
14 substitution effects, and impeded technological ad-
15 vancement;

16 (3) in promulgating regulations, agencies often
17 fail to examine the risk that their suppositions are
18 erroneous, or to compare the risks of acting on
19 faulty suppositions with the risks of inaction; and

20 (4) in analyzing new and existing regulations,
21 there is a need for agencies to move beyond tradi-
22 tional cost-benefit analysis to risk-risk analysis
23 which examines the factors described in paragraph
24 (2).

1 **SEC. 502. COMPETITIVENESS RISK ASSESSMENT.**

2 No agency shall propose or promulgate a regulation
3 without first analyzing its effects on the health and safety
4 of consumers and workers, both directly and indirectly, in-
5 cluding effects due to wage and job losses, price increases,
6 product restrictions, technological delays, and substitution
7 effects. In any such analysis, health and safety effects
8 shall be expressed both in monetary terms and in terms
9 of lives lost and injuries occurred. Such analysis shall also
10 examine related distributional effects, describing any eco-
11 nomic and social groups who will be disproportionately af-
12 fected.

13 **TITLE VI—TOTAL QUALITY**
14 **MANAGEMENT**

15 **SEC. 601. FORMATION AND USE OF QUALITY CIRCLES AND**
16 **JOINT PRODUCTION TEAMS.**

17 (a) IN GENERAL.—Section 8(a)(2) of the National
18 Labor Relations Act (29 U.S.C. 158(a)(2)) is amended by
19 inserting before the semicolon at the end the following:
20 “: *Provided further*, That nothing in this paragraph shall
21 prohibit the formation or operation of quality circles or
22 joint production teams composed of labor and manage-
23 ment, with or without the participation of representatives
24 of labor organizations”.

25 (b) EFFECTIVE DATE.—The amendment made by
26 this section shall apply to the formation or operation of

1 quality circles or joint production teams after the date of
2 the enactment of this Act.

3 **TITLE VII—LONG-TERM** 4 **INVESTMENT**

5 **SEC. 701. SHORT TITLE.**

6 This title may be cited as the “Long-Term Invest-
7 ment Promotion Act of 1993”.

8 **SEC. 702. FINDINGS.**

9 The Congress finds that—

10 (1) there is an urgent need to extend the time
11 horizons of industry in the United States and there
12 is too much pressure to maximize short-term profits
13 and shareholder value, often at the expense of long-
14 term competitive viability;

15 (2) a fundamental cause of United States in-
16 dustry’s preoccupation with short-term performance
17 is the Securities and Exchange Commission’s re-
18 quirement for publicly-held corporations to report
19 their financial status on a quarterly basis;

20 (3) a large and growing share of the capital of
21 United States firms is owned by mutual funds and
22 pension funds, and the managers of these funds are
23 under constant pressure to maximize the current
24 value of their portfolios since this is the principal
25 criteria by which their performance is judged;

1 (4) because portfolio managers and stockholders
2 evaluate a company's performance on the basis of
3 quarterly financial reports, managers tend to empha-
4 size short-term profits even when it raises possible
5 conflicts with longer term investment;

6 (5) short-term business horizons can lead to
7 underinvestment in technology development, human
8 resources, total quality, and capital assets;

9 (6) a preoccupation with short-term business
10 horizons worked before when America dominated the
11 world economy but such an antiinvestment and
12 antimodernization approach seems ill-suited to a
13 world characterized by rapid technological change,
14 global competition based on quality and a constant
15 need for bringing innovation into the marketplace;

16 (7) achievement of continuously improved tech-
17 nology and quality requires long-term investment in
18 research, development, commercialization, and acqui-
19 sition of new capital equipment; and

20 (8) in contrast to the short-term preoccupation
21 in the United States, in Japan and Germany firms
22 report their financial results on an annual rather
23 than quarterly basis and this factor contributes to
24 significantly longer time horizons, in some instances
25 spanning many decades, for business decisions.

1 **SEC. 703. ELIMINATION OF QUARTERLY REPORTS.**

2 Section 13(a)(2) of the Securities Exchange Act of
3 1934 (15 U.S.C. 78m(a)(2)) is amended by striking “, and
4 such quarterly reports (and such copies thereof),”.

5 **TITLE VIII—AMENDMENTS TO**
6 **THE STEVENSON-WYDLER**
7 **TECHNOLOGY INNOVATION**
8 **ACT OF 1980**

9 **SEC. 801. AMENDMENT TO THE STEVENSON-WYDLER TECH-**
10 **NOLOGY INNOVATION ACT OF 1980.**

11 Section 12(a) of the Stevenson-Wydler Technology
12 Innovation Act of 1980 (15 U.S.C. 3710a(a)) is amended
13 by striking “may permit” and inserting in lieu thereof
14 “shall permit, under authority of this or any other appro-
15 priate Act,”.

16 **SEC. 802. COPYRIGHT FOR SOFTWARE.**

17 (a) Section 12 of the Stevenson-Wydler Technology
18 Innovation Act of 1980 (15 U.S.C. 3710a) is amended by
19 adding at the end the following new subsection:

20 “(h) COPYRIGHT OF COMPUTER SOFTWARE.—Each
21 Federal agency may secure copyright on behalf of the
22 United States as author or proprietor in any computer
23 software prepared in whole or in part by employees of the
24 United States Government in the course of work under
25 a cooperative research and development agreement entered
26 into under the authority of subsection (a)(1) of this sec-

1 tion, or under any other equivalent authority, notwith-
2 standing the limitations contained in section 105 of title
3 17, United States Code; and may grant or agree to grant
4 in advance to a collaborating party, licenses or assign-
5 ments for such copyrights, or options thereto, retaining
6 a nonexclusive, nontransferable, irrevocable, paid-up li-
7 cense to reproduce, adapt, translate, distribute, and pub-
8 licly perform or display the computer software throughout
9 the world by or on behalf of the Government and such
10 other rights as the Federal agency deems appropriate.”.

11 (b) Section 4 of the Stevenson-Wydler Technology In-
12 novation Act of 1980 (15 U.S.C. 3703) is amended by
13 adding at the end the following new paragraph:

14 “(14) ‘Computer software’ means a computer
15 program, as defined in section 101 of title 17, Unit-
16 ed States Code, and any associated documentation,
17 supporting materials, or user instructions.”.

18 **SEC. 803. ROYALTY PAYMENTS TO AUTHORS.**

19 SEC. 3. (a) Section 14(a) (1)(A), (2), and (3) of the
20 Stevenson-Wydler Technology Innovation Act of 1980 (15
21 U.S.C. 3710c(a) (1)(A), (2), and (3)) is amended—

22 (1) by inserting “or computer software” after
23 “inventions” each place it appears;

24 (2) by inserting “or computer software” after
25 “invention” each place it appears;

1 (3) by inserting “or author” after “inventor”
2 each place it appears;

3 (4) by inserting “or co-author” after “co-inven-
4 tor” each place it appears;

5 (5) by inserting “or authors” after “inventors”
6 each place it appears;

7 (6) by inserting “or co-authors” after “co-in-
8 ventors” each place it appears; and

9 (7) by inserting “or author’s” after “inven-
10 tor’s” each place it appears.

11 (b) Section 14(a)(1)(B) of the Stevenson-Wydler
12 Technology Innovation Act of 1980 (15 U.S.C.
13 3710c(a)(1)(B)) is amended—

14 (1) by inserting “or computer software” after
15 “income from any invention”;

16 (2) by inserting “or computer software was de-
17 veloped” after “the invention occurred”;

18 (3) by inserting “or computer software” after
19 “licensing of inventions” in clause (i);

20 (4) by inserting “or computer software which
21 was developed” after “with respect to inventions” in
22 clause (i); and

23 (5) by inserting “or computer software” after
24 “organizations for invention” in clause (i).

1 (c) Section 14(c) of the Stevenson-Wydler Technology
 2 Innovation Act of 1980 (15 U.S.C. 3710c(c)) is amended
 3 by inserting “or author” after “including inventor”.

4 **SEC. 804. TECHNICAL AND CONFORMING AMENDMENTS.**

5 Section 12(c) of the Stevenson-Wydler Technology
 6 Innovation Act of 1980 (15 U.S.C. 3710a(c)), is amended
 7 by inserting “or computer software” after “inventions”
 8 each place it appears.

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HR 1450 IH—2

HR 1450 IH—3

HR 1450 IH—4

HR 1450 IH—5

HR 1450 IH—6

HR 1450 IH—7

HR 1450 IH—8