

106TH CONGRESS  
1ST SESSION

# H. R. 2366

To provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

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## IN THE HOUSE OF REPRESENTATIVES

JUNE 25, 1999

Mr. ROGAN (for himself, Mr. HOLDEN, Mr. BURR of North Carolina, and Mr. MORAN of Virginia) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To provide small businesses certain protections from litigation excesses and to limit the product liability of nonmanufacturer product sellers.

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 “Small Business Liability Reform Act of 1999”.

6       (b) **TABLE OF CONTENTS.**—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.

## TITLE I—SMALL BUSINESS LAWSUIT ABUSE PROTECTION

- Sec. 101. Findings.  
 Sec. 102. Definitions.  
 Sec. 103. Limitation on punitive damages for small businesses.  
 Sec. 104. Limitation on several liability for noneconomic loss for small businesses.  
 Sec. 105. Exceptions to limitations on liability.  
 Sec. 106. Preemption and election of State nonapplicability.  
 Sec. 107. Effective date.

## TITLE II—PRODUCT SELLER FAIR TREATMENT

- Sec. 201. Findings; purposes.  
 Sec. 202. Definitions.  
 Sec. 203. Applicability; preemption.  
 Sec. 204. Liability rules applicable to product sellers, renters, and lessors.  
 Sec. 205. Federal cause of action precluded.  
 Sec. 206. Effective date.

1           **TITLE I—SMALL BUSINESS**  
 2           **LAWSUIT ABUSE PROTECTION**

3   **SEC. 101. FINDINGS.**

4           Congress finds that—

5                   (1) the United States civil justice system is in-  
 6                   efficient, unpredictable, unfair, costly, and impedes  
 7                   competitiveness in the marketplace for goods, serv-  
 8                   ices, business, and employees;

9                   (2) the defects in the civil justice system have  
 10                  a direct and undesirable effect on interstate com-  
 11                  merce by decreasing the availability of goods and  
 12                  services in commerce;

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

15                  (4) the spiralling costs of litigation and the  
 16                  magnitude and unpredictability of punitive damage

1 awards and noneconomic damage awards have con-  
2 tinued unabated for at least the past 30 years;

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

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

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

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

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

5           (10) liability reform for small businesses will  
6 promote the free flow of goods and services, lessen  
7 burdens on interstate commerce, and decrease liti-  
8 giousness; and

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

14 **SEC. 102. DEFINITIONS.**

15 In this title:

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

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

1           (3) ECONOMIC LOSS.—The term “economic  
2 loss” means any pecuniary loss resulting from harm  
3 (including the loss of earnings or other benefits re-  
4 lated to employment, medical expense loss, replace-  
5 ment services loss, loss due to death, burial costs,  
6 and loss of business or employment opportunities) to  
7 the extent recovery for such loss is allowed under ap-  
8 plicable State law.

9           (4) HARM.—The term “harm” includes phys-  
10 ical, nonphysical, economic, and noneconomic losses.

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

14           (6) INTERNATIONAL TERRORISM.—The term  
15 “international terrorism” has the same meaning as  
16 in section 2331 of title 18, United States Code.

17           (7) NONECONOMIC LOSS.—The term “non-  
18 economic loss” means loss for physical or emotional  
19 pain, suffering, inconvenience, physical impairment,  
20 mental anguish, disfigurement, loss of enjoyment of  
21 life, loss of society and companionship, loss of con-  
22 sortium (other than loss of domestic service), injury  
23 to reputation, or any other nonpecuniary loss of any  
24 kind or nature.

25           (8) SMALL BUSINESS.—

1 (A) IN GENERAL.—The term “small busi-  
2 ness” means any unincorporated business, or  
3 any partnership, corporation, association, unit  
4 of local government, or organization that has  
5 fewer than 25 full-time employees.

6 (B) CALCULATION OF NUMBER OF EM-  
7 PLOYEES.—For purposes of subparagraph (A),  
8 the number of employees of a subsidiary of a  
9 wholly owned corporation includes the employ-  
10 ees of—

- 11 (i) a parent corporation; and  
12 (ii) any other subsidiary corporation  
13 of that parent corporation.

14 (9) STATE.—The term “State” means each of  
15 the several States, the District of Columbia, the  
16 Commonwealth of Puerto Rico, the Virgin Islands,  
17 Guam, American Samoa, the Northern Mariana Is-  
18 lands, any other territory or possession of the  
19 United States, or any political subdivision of any  
20 such State, territory, or possession.

21 **SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL**  
22 **BUSINESSES.**

23 (a) GENERAL RULE.—Except as provided in section  
24 105, in any civil action against a small business, punitive  
25 damages may, to the extent permitted by applicable State

1 law, be awarded against the small business only if the  
2 claimant establishes by clear and convincing evidence that  
3 conduct carried out by that defendant through willful mis-  
4 conduct or with a conscious, flagrant indifference to the  
5 rights or safety of others was the proximate cause of the  
6 harm that is the subject of the action.

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

10 (1) 3 times the total amount awarded to the  
11 claimant for economic and noneconomic losses; or

12 (2) \$250,000.

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

15 **SEC. 104. LIMITATION ON SEVERAL LIABILITY FOR NON-**  
16 **ECONOMIC LOSS FOR SMALL BUSINESSES.**

17 (a) GENERAL RULE.—Except as provided in section  
18 105, in any civil action against a small business, the liabil-  
19 ity of each defendant that is a small business, or the agent  
20 of a small business, for noneconomic loss shall be deter-  
21 mined in accordance with subsection (b).

22 (b) AMOUNT OF LIABILITY.—

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

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

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

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

20 **SEC. 105. EXCEPTIONS TO LIMITATIONS ON LIABILITY.**

21 The limitations on liability under sections 103 and  
22 104 do not apply to any misconduct of a defendant—

23 (1) that constitutes—

24 (A) a crime of violence;

25 (B) an act of international terrorism; or



1 (C) a hate crime;

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

5 (A) section 1002(b)(2)(A) of the Oil Pollu-  
6 tion Act of 1990 (33 U.S.C. 2702(b)(2)(A)); or

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

11 (3) that involves—

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

14 (B) a violation of a Federal or State civil  
15 rights law; or

16 (4) if the defendant was under the influence (as  
17 determined under applicable State law) of intoxi-  
18 cating alcohol or a drug at the time of the mis-  
19 conduct, and the fact that the defendant was under  
20 the influence was the cause of any harm alleged by  
21 the plaintiff in the subject action.

22 **SEC. 106. PREEMPTION AND ELECTION OF STATE NON-**  
23 **APPLICABILITY.**

24 (a) PREEMPTION.—Subject to subsection (b), this  
25 title preempts the laws of any State to the extent that

1 State laws are inconsistent with this title, except that this  
2 title shall not preempt any State law that provides addi-  
3 tional protections from liability for small businesses.

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

8 (1) citing the authority of this subsection;

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

12 (3) containing no other provision.

13 **SEC. 107. EFFECTIVE DATE.**

14 (a) IN GENERAL.—This title shall take effect 90 days  
15 after the date of enactment of this Act.

16 (b) APPLICATION.—This title applies to any claim for  
17 harm caused by an act or omission of a small business,  
18 if the claim is filed on or after the effective date of this  
19 title, without regard to whether the harm that is the sub-  
20 ject of the claim or the conduct that caused the harm oc-  
21 curred before such effective date.

22 **TITLE II—PRODUCT SELLER**  
23 **FAIR TREATMENT**

24 **SEC. 201. FINDINGS; PURPOSES.**

25 (a) FINDINGS.—Congress finds that—

1           (1) although damage awards in product liability  
2 actions may encourage the production of safer prod-  
3 ucts, they may also have a direct effect on interstate  
4 commerce and consumers of the United States by in-  
5 creasing the cost of, and decreasing the availability  
6 of, products;

7           (2) some of the rules of law governing product  
8 liability actions are inconsistent within and among  
9 the States, resulting in differences in State laws that  
10 may be inequitable with respect to plaintiffs and de-  
11 fendants and may impose burdens on interstate com-  
12 merce;

13           (3) product liability awards may jeopardize the  
14 financial well-being of individuals and industries,  
15 particularly the small businesses of the United  
16 States;

17           (4) because the product liability laws of a State  
18 may have adverse effects on consumers and busi-  
19 nesses in many other States, it is appropriate for the  
20 Federal Government to enact national, uniform  
21 product liability laws that preempt State laws; and

22           (5) under clause 3 of section 8 of article I of  
23 the United States Constitution, it is the constitu-  
24 tional role of the Federal Government to remove  
25 barriers to interstate commerce.

1 (b) PURPOSES.—The purposes of this Act, based on  
2 the powers of the United States under clause 3 of section  
3 8 of article I of the United States Constitution, are to  
4 promote the free flow of goods and services and lessen the  
5 burdens on interstate commerce, by—

6 (1) establishing certain uniform legal principles  
7 of product liability that provide a fair balance among  
8 the interests of all parties in the chain of production,  
9 distribution, and use of products; and

10 (2) reducing the unacceptable costs and delays  
11 in product liability actions caused by excessive litiga-  
12 tion that harms both plaintiffs and defendants.

13 **SEC. 202. DEFINITIONS.**

14 In this title:

15 (1) ALCOHOL PRODUCT.—The term “alcohol  
16 product” includes any product that contains not less  
17 than  $\frac{1}{2}$  of 1 percent of alcohol by volume and is in-  
18 tended for human consumption.

19 (2) CLAIMANT.—The term “claimant” means  
20 any person who brings an action covered by this title  
21 and any person on whose behalf such an action is  
22 brought. If such an action is brought through or on  
23 behalf of an estate, the term includes the claimant’s  
24 decedent. If such an action is brought through or on

1       behalf of a minor or incompetent, the term includes  
2       the claimant’s legal guardian.

3               (3) COMMERCIAL LOSS.—The term “commercial  
4       loss” means—

5                       (A) any loss or damage solely to a product  
6       itself;

7                       (B) loss relating to a dispute over the  
8       value of a product; or

9                       (C) consequential economic loss, the recov-  
10      ery of which is governed by applicable State  
11      commercial or contract laws that are similar to  
12      the Uniform Commercial Code.

13               (4) COMPENSATORY DAMAGES.—The term  
14      “compensatory damages” means damages awarded  
15      for economic and noneconomic losses.

16               (5) DRAM-SHOP.—The term “dram-shop”  
17      means a drinking establishment where alcoholic bev-  
18      erages are sold to be consumed on the premises.

19               (6) ECONOMIC LOSS.—The term “economic  
20      loss” means any pecuniary loss resulting from harm  
21      (including the loss of earnings or other benefits re-  
22      lated to employment, medical expense loss, replace-  
23      ment services loss, loss due to death, burial costs,  
24      and loss of business or employment opportunities) to

1 the extent recovery for that loss is allowed under ap-  
2 plicable State law.

3 (7) HARM.—The term “harm” includes phys-  
4 ical, nonphysical, economic, and noneconomic loss.

5 (8) MANUFACTURER.—The term “manufac-  
6 turer” means—

7 (A) any person who—

8 (i) is engaged in a business to  
9 produce, create, make, or construct any  
10 product (or component part of a product);  
11 and

12 (ii)(I) designs or formulates the prod-  
13 uct (or component part of the product); or

14 (II) has engaged another person to  
15 design or formulate the product (or compo-  
16 nent part of the product);

17 (B) a product seller, but only with respect  
18 to those aspects of a product (or component  
19 part of a product) that are created or affected  
20 when, before placing the product in the stream  
21 of commerce, the product seller—

22 (i) produces, creates, makes, con-  
23 structs and designs, or formulates an as-  
24 pect of the product (or component part of  
25 the product) made by another person; or

1                   (ii) has engaged another person to de-  
2                   sign or formulate an aspect of the product  
3                   (or component part of the product) made  
4                   by another person; or

5                   (C) any product seller not described in  
6                   subparagraph (B) that holds itself out as a  
7                   manufacturer to the user of the product.

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

16                  (10) PERSON.—The term “person” means any  
17                  individual, corporation, company, association, firm,  
18                  partnership, society, joint stock company, or any  
19                  other entity (including any governmental entity).

20                  (11) PRODUCT.—

21                  (A) IN GENERAL.—The term “product”  
22                  means any object, substance, mixture, or raw  
23                  material in a gaseous, liquid, or solid state  
24                  that—

1 (i) is capable of delivery itself or as an  
2 assembled whole, in a mixed or combined  
3 state, or as a component part or ingre-  
4 dient;

5 (ii) is produced for introduction into  
6 trade or commerce;

7 (iii) has intrinsic economic value; and

8 (iv) is intended for sale or lease to  
9 persons for commercial or personal use.

10 (B) EXCLUSION.—The term “product”  
11 does not include—

12 (i) tissue, organs, blood, and blood  
13 products used for therapeutic or medical  
14 purposes, except to the extent that such  
15 tissue, organs, blood, and blood products  
16 (or the provision thereof) are subject,  
17 under applicable State law, to a standard  
18 of liability other than negligence; or

19 (ii) electricity, water delivered by a  
20 utility, natural gas, or steam.

21 (12) PRODUCT LIABILITY ACTION.—The term  
22 “product liability action” means a civil action  
23 brought on any theory for any physical injury, ill-  
24 ness, disease, death, or damage to property that is  
25 caused by a product.



1 (13) PRODUCT SELLER.—

2 (A) IN GENERAL.—The term “product sell-  
3 er” means a person who in the course of a busi-  
4 ness conducted for that purpose—

5 (i) sells, distributes, rents, leases, pre-  
6 pares, blends, packages, labels, or other-  
7 wise is involved in placing a product in the  
8 stream of commerce; or

9 (ii) installs, repairs, refurbishes, re-  
10 conditions, or maintains the harm-causing  
11 aspect of the product.

12 (B) EXCLUSION.—The term “product sell-  
13 er” does not include—

14 (i) a seller or lessor of real property;

15 (ii) a provider of professional services  
16 in any case in which the sale or use of a  
17 product is incidental to the transaction and  
18 the essence of the transaction is the fur-  
19 nishing of judgment, skill, or services; or

20 (iii) any person who—

21 (I) acts in only a financial capac-  
22 ity with respect to the sale of a prod-  
23 uct; or

24 (II) leases a product under a  
25 lease arrangement in which the lessor

1 does not initially select the leased  
2 product and does not during the lease  
3 term ordinarily control the daily oper-  
4 ations and maintenance of the prod-  
5 uct.

6 (14) STATE.—The term “State” means each of  
7 the several States, the District of Columbia, the  
8 Commonwealth of Puerto Rico, the Virgin Islands,  
9 Guam, American Samoa, the Northern Mariana Is-  
10 lands, any other territory or possession of the  
11 United States, or any political subdivision of any  
12 such State, territory, or possession.

13 **SEC. 203. APPLICABILITY; PREEMPTION.**

14 (a) APPLICABILITY.—

15 (1) IN GENERAL.—Except as provided in para-  
16 graph (2), this title governs any product liability ac-  
17 tion brought in any Federal or State court.

18 (2) ACTIONS EXCLUDED.—

19 (A) ACTIONS FOR COMMERCIAL LOSS.—A  
20 civil action brought for commercial loss shall be  
21 governed only by applicable State commercial or  
22 contract laws that are similar to the Uniform  
23 Commercial Code.

1 (B) ACTIONS FOR NEGLIGENT ENTRUST-  
2 MENT; NEGLIGENCE PER SE CONCERNING FIRE-  
3 ARMS AND AMMUNITION; DRAM-SHOP.—

4 (i) NEGLIGENT ENTRUSTMENT.—A  
5 civil action for negligent entrustment shall  
6 not be subject to the provisions of this title  
7 governing product liability actions, but  
8 shall be subject to any applicable Federal  
9 or State law.

10 (ii) NEGLIGENCE PER SE CON-  
11 CERNING FIREARMS AND AMMUNITION.—A  
12 civil action brought under a theory of neg-  
13 ligence per se concerning the use of a fire-  
14 arm or ammunition shall not be subject to  
15 the provisions of this title governing prod-  
16 uct liability actions, but shall be subject to  
17 any applicable Federal or State law.

18 (iii) DRAM-SHOP.—A civil action  
19 brought under a theory of dram-shop or  
20 third-party liability arising out of the sale  
21 or providing of an alcoholic product to an  
22 intoxicated person or minor shall not be  
23 subject to the provisions of this title, but  
24 shall be subject to any applicable Federal  
25 or State law.

1           (b) RELATIONSHIP TO STATE LAW.—This title su-  
2   persedes a State law only to the extent that the State law  
3   applies to an issue covered by this title. Any issue that  
4   is not governed by this title, including any standard of  
5   liability applicable to a manufacturer, shall be governed  
6   by any applicable Federal or State law.

7           (c) EFFECT ON OTHER LAW.—Nothing in this title  
8   shall be construed to—

9           (1) waive or affect any defense of sovereign im-  
10   munity asserted by any State under any State law;

11          (2) supersede or alter any Federal law;

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

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

16          (5) preempt State choice-of-law rules with re-  
17   spect to claims brought by a foreign nation or a cit-  
18   izen of a foreign nation;

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

24          (7) supersede or modify any statutory or com-  
25   mon law, including any law providing for an action

1 to abate a nuisance, that authorizes a person to in-  
2 stitute an action for civil damages or civil penalties,  
3 cleanup costs, injunctions, restitution, cost recovery,  
4 punitive damages, or any other form of relief, for re-  
5 mediation of the environment (as defined in section  
6 101(8) of the Comprehensive Environmental Re-  
7 sponse, Compensation, and Liability Act of 1980 (42  
8 U.S.C. 9601(8))).

9 **SEC. 204. LIABILITY RULES APPLICABLE TO PRODUCT**  
10 **SELLERS, RENTERS, AND LESSORS.**

11 (a) GENERAL RULE.—

12 (1) IN GENERAL.—In any product liability ac-  
13 tion covered under this Act, a product seller other  
14 than a manufacturer shall be liable to a claimant  
15 only if the claimant establishes that—

16 (A)(i) the product that allegedly caused the  
17 harm that is the subject of the complaint was  
18 sold, rented, or leased by the product seller;

19 (ii) the product seller failed to exercise rea-  
20 sonable care with respect to the product; and

21 (iii) the failure to exercise reasonable care  
22 was a proximate cause of the harm to the  
23 claimant;

24 (B)(i) the product seller made an express  
25 warranty applicable to the product that alleg-

1 edly caused the harm that is the subject of the  
2 complaint, independent of any express warranty  
3 made by a manufacturer as to the same prod-  
4 uct;

5 (ii) the product failed to conform to the  
6 warranty; and

7 (iii) the failure of the product to conform  
8 to the warranty caused the harm to the claim-  
9 ant; or

10 (C)(i) the product seller engaged in inten-  
11 tional wrongdoing, as determined under applica-  
12 ble State law; and

13 (ii) the intentional wrongdoing caused the  
14 harm that is the subject of the complaint.

15 (2) REASONABLE OPPORTUNITY FOR INSPEC-  
16 TION.—For purposes of paragraph (1)(A)(ii), a  
17 product seller shall not be considered to have failed  
18 to exercise reasonable care with respect to a product  
19 based upon an alleged failure to inspect the product,  
20 if—

21 (A) the failure occurred because there was  
22 no reasonable opportunity to inspect the prod-  
23 uct; or

24 (B) the inspection, in the exercise of rea-  
25 sonable care, would not have revealed the as-

1           pect of the product that allegedly caused the  
2           claimant’s harm.

3           (b) SPECIAL RULE.—

4           (1) IN GENERAL.—A product seller shall be  
5           deemed to be liable as a manufacturer of a product  
6           for harm caused by the product, if—

7                   (A) the manufacturer is not subject to  
8                   service of process under the laws of any State  
9                   in which the action may be brought; or

10                   (B) the court determines that the claimant  
11                   is or would be unable to enforce a judgment  
12                   against the manufacturer.

13           (2) STATUTE OF LIMITATIONS.—For purposes  
14           of this subsection only, the statute of limitations ap-  
15           plicable to claims asserting liability of a product sell-  
16           er as a manufacturer shall be tolled from the date  
17           of the filing of a complaint against the manufacturer  
18           to the date that judgment is entered against the  
19           manufacturer.

20           (c) RENTED OR LEASED PRODUCTS.—

21           (1) DEFINITION.—For purposes of paragraph  
22           (2), and for determining the applicability of this title  
23           to any person subject to that paragraph, the term  
24           “product liability action” means a civil action

1 brought on any theory for harm caused by a product  
2 or product use.

3 (2) LIABILITY.—Notwithstanding any other  
4 provision of law, any person engaged in the business  
5 of renting or leasing a product (other than a person  
6 excluded from the definition of product seller under  
7 section 202(13)(B)) shall be subject to liability in a  
8 product liability action under subsection (a), but any  
9 person engaged in the business of renting or leasing  
10 a product shall not be liable to a claimant for the  
11 tortious act of another solely by reason of ownership  
12 of that product.

13 **SEC. 205. FEDERAL CAUSE OF ACTION PRECLUDED.**

14 The district courts of the United States shall not  
15 have jurisdiction under this title based on section 1331  
16 or 1337 of title 28, United States Code.

17 **SEC. 206. EFFECTIVE DATE.**

18 This title shall apply with respect to any action com-  
19 menced on or after the date of enactment of this Act with-  
20 out regard to whether the harm that is the subject of the  
21 action or the conduct that caused the harm occurred be-  
22 fore that date of enactment.

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