To amend the Internal Revenue Code of 1986 to provide additional tax relief for private sector job creation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 25 (legislative day, JANUARY 5), 2011

Mr. PORTMAN introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To amend the Internal Revenue Code of 1986 to provide additional tax relief for private sector job creation, and for other purposes.

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

SECTION 1. SHORT TITLE; ETC.

(a) Short Title.—This Act may be cited as the “Job Creation Act of 2011”.

(b) Table of Contents.—The table of contents of this Act is as follows:

Sec. 1. Short title; etc.

TITLE I—TAX AND REGULATORY RELIEF

Sec. 101. Temporary employer payroll tax cut.
Sec. 102. Repeal of individual mandate.
Sec. 103. Repeal of expansion of information reporting requirements.
Sec. 104. Environmental Protection Agency regulatory freeze.
Sec. 105. Repeal of sunset on increased limitations on small business expensing.
Sec. 106. Permanent extension of research credit.

TITLE II—ENACTING REAL MEDICAL LIABILITY REFORM

Sec. 201. Encouraging speedy resolution of claims.
Sec. 203. Maximizing patient recovery.
Sec. 204. Additional health benefits.
Sec. 205. Punitive damages.
Sec. 206. Authorization of payment of future damages to claimants in health care lawsuits.
Sec. 207. Definitions.
Sec. 208. Effect on other laws.
Sec. 209. State flexibility and protection of States’ rights.
Sec. 210. Applicability; effective date.

1 TITLE I—TAX AND REGULATORY RELIEF

2 SEC. 101. TEMPORARY EMPLOYER PAYROLL TAX CUT.

3 (a) IN GENERAL.—

4 (1) EMPLOYERS.—Section 601(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 is amended by striking “and” at the end of paragraph (1), by striking the period at the end of paragraph (2), and by adding at the end the following new paragraph:

“(3) with respect to remuneration received during the payroll tax holiday period, the rate of tax under 3111(a) of such Code shall be 4.2 percent (including for purposes of determining the applicable percentage under sections 3221(a) of such Code).”.

5 (2) SELF-EMPLOYED INDIVIDUALS.—Section 601(a) of such Act is amended by striking “10.40
percent” in paragraph (1) and inserting “8.40 per-
cent”.

(b) CONFORMING AMENDMENTS.—

(1) Section 601 of the Tax Relief, Unemploy-
ment Insurance Reauthorization, and Job Creation
Act of 2010 is amended by striking subsection (b).

(2) Section 601(e)(2) of such Act is amended
by striking “subsection (a)(2)” and inserting “para-
graphs (2) and (3) of subsection (a)”.

(3) The headings for title VI and section 601
of such Act are each amended by striking “em-
ployee”.

(e) EFFECTIVE DATE.—

(1) IN GENERAL.—The amendments made by
this section shall apply to wages paid and self-em-
ployment income earned after December 31, 2010.

(2) SPECIAL TRANSITION RULE.—

(A) NONAPPLICATION OF REDUCTION DUR-
ing FIRST QUARTER.—The amendments made
by subsection (a)(1) shall not apply with respect
to compensation paid during the first calendar
quarter of 2011.

(B) CREDITING OF FIRST QUARTER EX-
emption DURING SECOND QUARTER.—The
amount by which the tax imposed under sec-
tions 3111(a) and 3221(a) of the Internal Revenue Code of 1986 would (but for the application of subparagraph (A)) have been reduced with respect to compensation paid by an employer during the first calendar quarter of 2011 shall be treated as a payment against the tax imposed under section 3111(a) of such Code or section 3121(a) of such Code, as the case may be, with respect to the employer for the second calendar quarter of 2011 which is made on the date that such tax is due.

SEC. 102. REPEAL OF INDIVIDUAL MANDATE.

Section 5000A of the Internal Revenue Code of 1986, as added by the Patient Protection and Affordable Care Act, is amended by adding at the end the following new subsection:

“(h) Termination.—This section shall not apply with respect to any month beginning after the date of the enactment of this subsection.”.

SEC. 103. REPEAL OF EXPANSION OF INFORMATION REPORTING REQUIREMENTS.

(a) In General.—

(1) Repeal of Payments for Property and Other Gross Proceeds.—Subsection (b) of section 9006 of the Patient Protection and Affordable Care
Act, and the amendments made thereby, are hereby repealed; and the Internal Revenue Code of 1986 shall be applied as if such subsection, and amendments, had never been enacted.

(2) Repeal of application to corporations and regulatory authority.—

(A) In general.—Section 6041 of the Internal Revenue Code of 1986, as amended by section 9006(a) of the Patient Protection and Affordable Care Act and section 2101 of the Small Business Jobs Act of 2010, is amended by striking subsections (i) and (j).

(B) Effective date.—The amendment made by this paragraph shall apply to payments made after December 31, 2010.

(b) Rescission of unspent federal funds to offset loss in revenues.—

(1) In general.—Notwithstanding any other provision of law, of all available unobligated funds, $39,000,000,000 in appropriated discretionary funds are hereby rescinded.

(2) Implementation.—The Director of the Office of Management and Budget shall determine and identify from which appropriation accounts the rescission under subsection (a) shall apply and the
amount of such rescission that shall apply to each such account. Not later than 60 days after the date of the enactment of this Act, the Director of the Office of Management and Budget shall submit a report to the Secretary of the Treasury and Congress of the accounts and amounts determined and identified for rescission under the preceding sentence.

(3) Exception.—This subsection shall not apply to the unobligated funds of the Department of Defense or the Department of Veterans Affairs.

SEC. 104. ENVIRONMENTAL PROTECTION AGENCY REGULATORY FREEZE.

(a) In General.—Notwithstanding any other provision of law and beginning on the date of enactment of this Act, the Administrator of the Environmental Protection Agency shall not promulgate or enforce any regulation for a period of 1 year, subject to subsection (b).

(b) Exception.—The Administrator of the Environmental Protection Agency may promulgate or enforce a regulation during the 1-year period described in subsection (a) if the Administrator determines that the promulgation or enforcement of the regulation is necessary for immediate health or safety reasons.
SEC. 105. REPEAL OF SUNSET ON INCREASED LIMITATIONS ON SMALL BUSINESS EXPENSING.

(a) In General.—Subsection (b)(1) of section 179 of the Internal Revenue Code of 1986, as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking “shall not exceed—” and all that follows and inserting “shall not exceed $500,000.”.

(b) Reduction in Limitation.—Subsection (b)(2) of section 179 of such Code, as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking “exceeds—” and all that follows and inserting “exceeds $2,000,000.”.

(c) Conforming Amendment.—Section 179(b) of such Code, as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking paragraph (6).

(d) Computer Software.—Section 179(d)(1)(A)(ii) of such Code, as amended by the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, is amended by striking “and before 2013”.

(e) Revocation of Election.—Section 179(c)(2) of such Code, as amended by the Tax Relief, Unemploy-
ment Insurance Reauthorization, and Job Creation Act of 2010, is amended to read as follows:

“(2) Revocation of election.—Any election made under this section, and any specification contained in any such election, may be revoked by the taxpayer with respect to any property, and such revocation, once made, shall be irrevocable.”.

(f) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2011.

SEC. 106. PERMANENT EXTENSION OF RESEARCH CREDIT.

(a) In General.—Section 41 of the Internal Revenue Code of 1986 is amended by striking subsection (h).

(b) Conforming Amendment.—Paragraph (1) of section 45C(b) of the Internal Revenue Code of 1986 is amended by striking subparagraph (D).

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

TITLE II—ENACTING REAL MEDICAL LIABILITY REFORM

SEC. 201. ENCOURAGING SPEEDY RESOLUTION OF CLAIMS.

The time for the commencement of a health care lawsuit shall be 3 years after the date of manifestation of injury or 1 year after the claimant discovers, or through
the use of reasonable diligence should have discovered, the
injury, whichever occurs first. In no event shall the time
for commencement of a health care lawsuit exceed 3 years
after the date of manifestation of injury unless tolled for
any of the following—

(1) upon proof of fraud;
(2) intentional concealment; or
(3) the presence of a foreign body, which has no
therapeutic or diagnostic purpose or effect, in the
person of the injured person.

Actions by a minor shall be commenced within 3 years
from the date of the alleged manifestation of injury except
that actions by a minor under the full age of 6 years shall
be commenced within 3 years of manifestation of injury
or prior to the minor’s 8th birthday, whichever provides
a longer period. Such time limitation shall be tolled for
minors for any period during which a parent or guardian
and a health care provider or health care organization
have committed fraud or collusion in the failure to bring
an action on behalf of the injured minor.

SEC. 202. COMPENSATING PATIENT INJURY.

(a) UNLIMITED AMOUNT OF DAMAGES FOR ACTUAL
ECONOMIC LOSSES IN HEALTH CARE LAWSUITS.—In any
health care lawsuit, nothing in this title shall limit a claim-
ant’s recovery of the full amount of the available economic damages, notwithstanding the limitation in subsection (b).

(b) ADDITIONAL NONECONOMIC DAMAGES.—In any health care lawsuit, the amount of noneconomic damages, if available, may be as much as $250,000, regardless of the number of parties against whom the action is brought or the number of separate claims or actions brought with respect to the same injury.

(e) NO DISCOUNT OF AWARD FOR NONECONOMIC DAMAGES.—For purposes of applying the limitation in subsection (b), future noneconomic damages shall not be discounted to present value. The jury shall not be informed about the maximum award for noneconomic damages. An award for noneconomic damages in excess of $250,000 shall be reduced either before the entry of judgment, or by amendment of the judgment after entry of judgment, and such reduction shall be made before accounting for any other reduction in damages required by law. If separate awards are rendered for past and future noneconomic damages and the combined awards exceed $250,000, the future noneconomic damages shall be reduced first.

(d) FAIR SHARE RULE.—In any health care lawsuit, each party shall be liable for that party’s several share of any damages only and not for the share of any other
person. Each party shall be liable only for the amount of damages allocated to such party in direct proportion to such party’s percentage of responsibility. Whenever a judgment of liability is rendered as to any party, a separate judgment shall be rendered against each such party for the amount allocated to such party. For purposes of this section, the trier of fact shall determine the proportion of responsibility of each party for the claimant’s harm.

**SEC. 203. MAXIMIZING PATIENT RECOVERY.**

(a) **Court Supervision of Share of Damages Actually Paid to Claimants.**—In any health care lawsuit, the court shall supervise the arrangements for payment of damages to protect against conflicts of interest that may have the effect of reducing the amount of damages awarded that are actually paid to claimants. In particular, in any health care lawsuit in which the attorney for a party claims a financial stake in the outcome by virtue of a contingent fee, the court shall have the power to restrict the payment of a claimant’s damage recovery to such attorney, and to redirect such damages to the claimant based upon the interests of justice and principles of equity. In no event shall the total of all contingent fees for representing all claimants in a health care lawsuit exceed the following limits:
(1) 40 percent of the first $50,000 recovered by
the claimant(s).

(2) 33⅓ percent of the next $50,000 recovered
by the claimant(s).

(3) 25 percent of the next $500,000 recovered
by the claimant(s).

(4) 15 percent of any amount by which the re-
covery by the claimant(s) is in excess of $600,000.

(b) APPLICABILITY.—The limitations in this section
shall apply whether the recovery is by judgment, settle-
ment, mediation, arbitration, or any other form of alter-
native dispute resolution. In a health care lawsuit involv-
ing a minor or incompetent person, a court retains the
authority to authorize or approve a fee that is less than
the maximum permitted under this section. The require-
ment for court supervision in the first two sentences of
subsection (a) applies only in civil actions.

SEC. 204. ADDITIONAL HEALTH BENEFITS.

In any health care lawsuit involving injury or wrong-
ful death, any party may introduce evidence of collateral
source benefits. If a party elects to introduce such evi-
dence, any opposing party may introduce evidence of any
amount paid or contributed or reasonably likely to be paid
or contributed in the future by or on behalf of the oppos-
ing party to secure the right to such collateral source bene-
fits. No provider of collateral source benefits shall recover any amount against the claimant or receive any lien or credit against the claimant’s recovery or be equitably or legally subrogated to the right of the claimant in a health care lawsuit involving injury or wrongful death. This section shall apply to any health care lawsuit that is settled as well as a health care lawsuit that is resolved by a fact finder. This section shall not apply to section 1862(b) (42 U.S.C. 1395y(b)) or section 1902(a)(25) (42 U.S.C. 1396a(a)(25)) of the Social Security Act.

SEC. 205. PUNITIVE DAMAGES.

(a) IN GENERAL.—Punitive damages may, if otherwise permitted by applicable State or Federal law, be awarded against any person in a health care lawsuit only if it is proven by clear and convincing evidence that such person acted with malicious intent to injure the claimant, or that such person deliberately failed to avoid unnecessary injury that such person knew the claimant was substantially certain to suffer. In any health care lawsuit where no judgment for compensatory damages is rendered against such person, no punitive damages may be awarded with respect to the claim in such lawsuit. No demand for punitive damages shall be included in a health care lawsuit as initially filed. A court may allow a claimant to file an amended pleading for punitive damages only upon a mo-
tion by the claimant and after a finding by the court, upon
review of supporting and opposing affidavits or after a
hearing, after weighing the evidence, that the claimant has
established by a substantial probability that the claimant
will prevail on the claim for punitive damages. At the re-
quest of any party in a health care lawsuit, the trier of
fact shall consider in a separate proceeding—

(1) whether punitive damages are to be award-
ed and the amount of such award; and

(2) the amount of punitive damages following a
determination of punitive liability.

If a separate proceeding is requested, evidence relevant
only to the claim for punitive damages, as determined by
applicable State law, shall be inadmissible in any pro-
ceeding to determine whether compensatory damages are
to be awarded.

(b) Determining Amount of Punitive Dam-
ages.—

(1) Factors Considered.—In determining
the amount of punitive damages, if awarded, in a
health care lawsuit, the trier of fact shall consider
only the following—

(A) the severity of the harm caused by the

conduct of such party;
(B) the duration of the conduct or any concealment of it by such party;

(C) the profitability of the conduct to such party;

(D) the number of products sold or medical procedures rendered for compensation, as the case may be, by such party, of the kind causing the harm complained of by the claimant;

(E) any criminal penalties imposed on such party, as a result of the conduct complained of by the claimant; and

(F) the amount of any civil fines assessed against such party as a result of the conduct complained of by the claimant.

(2) MAXIMUM AWARD.—The amount of punitive damages, if awarded, in a health care lawsuit may be as much as $250,000 or as much as two times the amount of economic damages awarded, whichever is greater. The jury shall not be informed of this limitation.
SEC. 206. AUTHORIZATION OF PAYMENT OF FUTURE DAMAGES TO CLAIMANTS IN HEALTH CARE LAWSUITS.

(a) In General.—In any health care lawsuit, if an award of future damages, without reduction to present value, equaling or exceeding $50,000 is made against a party with sufficient insurance or other assets to fund a periodic payment of such a judgment, the court shall, at the request of any party, enter a judgment ordering that the future damages be paid by periodic payments. In any health care lawsuit, the court may be guided by the Uniform Periodic Payment of Judgments Act promulgated by the National Conference of Commissioners on Uniform State Laws.

(b) Applicability.—This section applies to all actions which have not been first set for trial or retrial before the effective date of this title.

SEC. 207. DEFINITIONS.

In this title:

(1) Alternative dispute resolution system; ADR.—The term “alternative dispute resolution system” or “ADR” means a system that provides for the resolution of health care lawsuits in a manner other than through a civil action brought in a State or Federal court.
(2) **CLAIMANT.**—The term “claimant” means any person who brings a health care lawsuit, including a person who asserts or claims a right to legal or equitable contribution, indemnity, or subrogation, arising out of a health care liability claim or action, and any person on whose behalf such a claim is asserted or such an action is brought, whether deceased, incompetent, or a minor.

(3) **COLLATERAL SOURCE BENEFITS.**—The term “collateral source benefits” means any amount paid or reasonably likely to be paid in the future to or on behalf of the claimant, or any service, product, or other benefit provided or reasonably likely to be provided in the future to or on behalf of the claimant, as a result of the injury or wrongful death, pursuant to—

(A) any State or Federal health, sickness, income-disability, accident, or workers’ compensation law;

(B) any health, sickness, income-disability, or accident insurance that provides health benefits or income-disability coverage;

(C) any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of
medical, hospital, dental, or income-disability
benefits; and

(D) any other publicly or privately funded
program.

(4) COMPENSATORY DAMAGES.—The term
"compensatory damages" means objectively
verifiable monetary losses incurred as a result of the
 provision of, use of, or payment for (or failure to
provide, use, or pay for) health care services or med-
ic products, such as past and future medical ex-
penses, loss of past and future earnings, cost of ob-
taining domestic services, loss of employment, and
loss of business or employment opportunities, dam-
ages for physical and emotional pain, suffering, in-
convenience, physical impairment, mental anguish,
disfigurement, loss of enjoyment of life, loss of soci-
ety and companionship, loss of consortium (other
than loss of domestic service), hedonic damages, in-
jury to reputation, and all other nonpecuniary losses
of any kind or nature. The term "compensatory
damages" includes economic damages and non-
economic damages, as such terms are defined in this
section.

(5) CONTINGENT FEE.—The term "contingent
fee" includes all compensation to any person or per-
sons which is payable only if a recovery is effected on behalf of one or more claimants.

(6) **Economic damages.**—The term “economic damages” means objectively verifiable monetary losses incurred as a result of the provision of, use of, or payment for (or failure to provide, use, or pay for) health care services or medical products, such as past and future medical expenses, loss of past and future earnings, cost of obtaining domestic services, loss of employment, and loss of business or employment opportunities.

(7) **Health care lawsuit.**—The term “health care lawsuit” means any health care liability claim concerning the provision of health care goods or services or any medical product affecting interstate commerce, or any health care liability action concerning the provision of health care goods or services or any medical product affecting interstate commerce, brought in a State or Federal court or pursuant to an alternative dispute resolution system, against a health care provider, a health care organization, or the manufacturer, distributor, supplier, marketer, promoter, or seller of a medical product, regardless of the theory of liability on which the claim is based, or the number of claimants, plain-
tiffs, defendants, or other parties, or the number of
claims or causes of action, in which the claimant al-
leges a health care liability claim. Such term does
not include a claim or action which is based on
criminal liability; which seeks civil fines or penalties
paid to Federal, State, or local government; or which
is grounded in antitrust.

(8) Health care liability action.—The
term “health care liability action” means a civil ac-
tion brought in a State or Federal court or pursuant
to an alternative dispute resolution system, against
a health care provider, a health care organization, or
the manufacturer, distributor, supplier, marketer,
promoter, or seller of a medical product, regardless
of the theory of liability on which the claim is based,
or the number of plaintiffs, defendants, or other par-
ties, or the number of causes of action, in which the
claimant alleges a health care liability claim.

(9) Health care liability claim.—The
term “health care liability claim” means a demand
by any person, whether or not pursuant to ADR,
avoid a health care provider, health care organiza-
tion, or the manufacturer, distributor, supplier, mar-
keter, promoter, or seller of a medical product, in-
cluding, but not limited to, third-party claims, cross-
claims, counter-claims, or contribution claims, which
are based upon the provision of, use of, or payment
for (or the failure to provide, use, or pay for) health
care services or medical products, regardless of the
theory of liability on which the claim is based, or the
number of plaintiffs, defendants, or other parties, or
the number of causes of action.

(10) Health care organization.—The term
“health care organization” means any person or en-
tity which is obligated to provide or pay for health
benefits under any health plan, including any person
or entity acting under a contract or arrangement
with a health care organization to provide or admin-
ister any health benefit.

(11) Health care provider.—The term
“health care provider” means any person or entity
required by State or Federal laws or regulations to
be licensed, registered, or certified to provide health
care services, and being either so licensed, reg-
istered, or certified, or exempted from such require-
ment by other statute or regulation.

(12) Health care goods or services.—The
term “health care goods or services” means any
goods or services provided by a health care organiza-
tion, provider, or by any individual working under
the supervision of a health care provider, that relates
to the diagnosis, prevention, or treatment of any
human disease or impairment, or the assessment or
care of the health of human beings.

(13) MALICIOUS INTENT TO INJURE.—The
term “malicious intent to injure” means inten-
tionally causing or attempting to cause physical in-
jury other than providing health care goods or serv-
ices.

(14) MEDICAL PRODUCT.—The term “medical
product” means a drug, device, or biological product
intended for humans, and the terms “drug”, “de-
vice”, and “biological product” have the meanings
given such terms in sections 201(g)(1) and 201(h)
of the Federal Food, Drug and Cosmetic Act (21
U.S.C. 321(g)(1) and (h)) and section 351(a) of the
Public Health Service Act (42 U.S.C. 262(a)), re-
spectively, including any component or raw material
used therein, but excluding health care services.

(15) NONECONOMIC DAMAGES.—The term
“noneconomic damages” means damages for phys-
ical and emotional pain, suffering, inconvenience,
physical impairment, mental anguish, disfigurement,
loss of enjoyment of life, loss of society and compan-
ionship, loss of consortium (other than loss of do-
mestic service), hedonic damages, injury to reputation, and all other nonpecuniary losses of any kind or nature.

(16) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded, for the purpose of punishment or deterrence, and not solely for compensatory purposes, against a health care provider, health care organization, or a manufacturer, distributor, or supplier of a medical product. Punitive damages are neither economic nor noneconomic damages.

(17) RECOVERY.—The term “recovery” means the net sum recovered after deducting any disbursements or costs incurred in connection with prosecution or settlement of the claim, including all costs paid or advanced by any person. Costs of health care incurred by the plaintiff and the attorneys’ office overhead costs or charges for legal services are not deductible disbursements or costs for such purpose.

(18) STATE.—The term “State” means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, and
any other territory or possession of the United States, or any political subdivision thereof.

SEC. 208. EFFECT ON OTHER LAWS.

(a) VACCINE INJURY.—

(1) To the extent that title XXI of the Public Health Service Act establishes a Federal rule of law applicable to a civil action brought for a vaccine-related injury or death—

(A) this title does not affect the application of the rule of law to such an action; and

(B) any rule of law prescribed by this title in conflict with a rule of law of such title XXI shall not apply to such action.

(2) If there is an aspect of a civil action brought for a vaccine-related injury or death to which a Federal rule of law under title XXI of the Public Health Service Act does not apply, then this title or otherwise applicable law (as determined under this title) will apply to such aspect of such action.

(b) OTHER FEDERAL LAW.—Except as provided in this section, nothing in this title shall be deemed to affect any defense available to a defendant in a health care lawsuit or action under any other provision of Federal law.
SEC. 209. STATE FLEXIBILITY AND PROTECTION OF STATES’ RIGHTS.

(a) Health Care Lawsuits.—The provisions governing health care lawsuits set forth in this title preempt, subject to subsections (b) and (c), State law to the extent that State law prevents the application of any provisions of law established by or under this title. The provisions governing health care lawsuits set forth in this title supersede chapter 171 of title 28, United States Code, to the extent that such chapter—

(1) provides for a greater amount of damages or contingent fees, a longer period in which a health care lawsuit may be commenced, or a reduced applicability or scope of periodic payment of future damages, than provided in this title; or

(2) prohibits the introduction of evidence regarding collateral source benefits, or mandates or permits subrogation or a lien on collateral source benefits.

(b) Protection of States’ Rights and Other Laws.—(1) Any issue that is not governed by any provision of law established by or under this title (including State standards of negligence) shall be governed by otherwise applicable State or Federal law.

(2) This title shall not preempt or supersede any State or Federal law that imposes greater procedural or
substantive protections for health care providers and
health care organizations from liability, loss, or damages
than those provided by this title or create a cause of ac-
tion.

(c) STATE FLEXIBILITY.—No provision of this title
shall be construed to preempt—

(1) any State law (whether effective before, on,
or after the date of the enactment of this Act) that
specifies a particular monetary amount of compen-
satory or punitive damages (or the total amount of
damages) that may be awarded in a health care law-
suit, regardless of whether such monetary amount is
greater or lesser than is provided for under this title,
notwithstanding section 202(a); or

(2) any defense available to a party in a health
care lawsuit under any other provision of State or
Federal law.

SEC. 210. APPLICABILITY; EFFECTIVE DATE.

This title shall apply to any health care lawsuit
brought in a Federal or State court, or subject to an alter-
native dispute resolution system, that is initiated on or
after the date of the enactment of this Act, except that
any health care lawsuit arising from an injury occurring
prior to the date of the enactment of this Act shall be
governed by the applicable statute of limitations provisions in effect at the time the injury occurred.