

PROVIDING FOR THE CONSIDERATION OF H.R. 2366, THE
SMALL BUSINESS LIABILITY REFORM ACT OF 2000

FEBRUARY 15, 2000.—Referred to the House Calendar and ordered to be printed

Mr. LINDER, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. 423]

The Committee on Rules, having had under consideration House Resolution 423, by a nonrecord vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for the consideration of H.R. 2366, the Small Business Liability Reform Act of 2000, under a structured rule. The rule provides one hour of general debate dividing equally between the chairman and ranking minority member of the Committee on the Judiciary.

The rule makes in order the Committee on the Judiciary amendment in the nature of a substitute now printed in the bill as an original bill for the purpose of amendment. The rule makes in order only those amendments printed in this report. The rule provides that the amendments made in order may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in this report, which is necessary only for technical reasons.

The rule allows the Chairman of the Committee of the Whole to postpone votes during consideration of the bill, and to reduce voting time to five minutes on a postponed question if the vote follows a fifteen minute vote. Finally, the rule provides for one motion to recommit, with or without instructions.

COMMITTEE VOTES

Pursuant to clause 3(b) of House rule XIII the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 67

Date: February 15, 2000.

Measure: H.R. 2366, the Small Business Liability Reform Act of 2000.

Motion By: Mrs. Slaughter.

Summary of Motion: Make in order the Lofgren/McCarthy(NY)/DeLauro/DeGette/Carson amendment that preserved several causes of action that are being used by cities and counties to hold manufacturers of cheap Saturday-night specials and bad-apple gun dealers accountable by exempting those causes of action from the manufacturer and product seller titles of the bill.

Results: Defeated 3 to 6.

Vote by Member: Goss—Nay; Pryce—Nay; Hastings—Nay; Sessions—Nay; Reynolds—Nay; Moakley—Yea; Hall—Yea; Slaughter—Yea; Dreier—Nay.

Amendments made in order under the rule to H.R. 2366—The Small Business Liability Reform Act

Rogan/Hutchinson: Replaces section 103 (limitations on punitive damages) to allow a court to exceed the punitive damage caps in the event it finds by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought. (10 minutes)

Moran (VA): Adds a definition of “punitive damages” to Title I to clarify that the term does not include civil penalties, civil fines, or treble damages assessed or enforced by a government agency under federal or state statute. (10 minutes)

Watt #2: Strikes the part of the bill which precludes federal court jurisdiction under section 1337 of title 28, U.S. Code. (10 minutes)

Conyers/Scott: Narrows the definition of “small business” in Title I to include businesses which had revenues in each of the last two years of \$5,000,000 or less; limits Title II’s application to “small businesses”; limits Title I to product liability actions; revises the definition of Hate Crimes in Title I to mean “a crime in which the defendant intentionally selects a victim, or in the case of property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of any person”; creates True Two Way preemption in Title I by allowing the bill to create actions for punitive damages in states for which they do not exist today; Creates True State Opt-Out in Title I by allowing it to apply to statutes as well as “initiatives of referendum,” and by deleting the requirement that this be the only item described in such law; and, adds a similar State opt-out in Title II. (40 minutes)

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE ROGAN OF CALIFORNIA, OR REPRESENTATIVE HUTCHINSON OF ARKANSAS, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 7, strike line 13 through line 6 on page 8 and insert the following:

SEC. 103. LIMITATION ON PUNITIVE DAMAGES FOR SMALL BUSINESSES.

(a) GENERAL RULE.—Except as provided in section 105, in any civil action against a small business, punitive damages may, to the extent permitted by applicable Federal or State law, be awarded against the small business only if the claimant establishes by clear and convincing evidence that conduct carried out by that defendant with a conscious, flagrant indifference to the rights or safety of others was the proximate cause of the harm that is the subject of the action.

(b) LIMITATION ON AMOUNT.—In any civil action against a small business, punitive damages awarded against a small business shall not exceed the lesser of—

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

(2) \$250,000,

except that the court may make this subsection inapplicable if the court finds that the plaintiff established by clear and convincing evidence that the defendant acted with specific intent to cause the type of harm for which the action was brought.

(c) APPLICATION BY THE COURT.—The limitation prescribed by this section shall be applied by the court and shall not be disclosed to the jury.

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2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MORAN OF VIRGINIA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 6, insert after line 15 the following:

(9) PUNITIVE DAMAGES.—The term “punitive damages” means damages awarded against any person or entity to punish or deter such person, entity, or others from engaging in similar behavior in the future. Such term does not include any civil penalties, fines, or treble damages that are assessed or enforced by an agency of State or Federal government pursuant to a State or Federal statute.

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3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WATT OF NORTH CAROLINA, OR A DESIGNEE, DEBATABLE FOR 10 MINUTES

Page 24, line 11, strike “or 1337”.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE CONYERS OF MICHIGAN, OR REPRESENTATIVE SCOTT OF VIRGINIA, OR A DESIGNEE, DEBATABLE FOR 40 MINUTES

(Small Business Definition)

Page 6, line 23, insert before the period the following: “and had revenues in each of the last 2 years of \$5,000,000 or less”.

Page 19, line 10, strike “(14)” and insert “(15)” and after line 9 insert the following:

(14) SMALL BUSINESS.—

(A) IN GENERAL.—The term “small business” means any unincorporated business, or any partnership, corporation, association, unit of local government, or organization that has fewer than 25 full-time employees as determined on the date the civil action involving the small business is filed and had revenues in each of the last 2 years of \$5,000,000 or less.

(B) CALCULATION OF NUMBER OF EMPLOYEES.—For purposes of subparagraph (A), the number of employees of a subsidiary of a wholly owned corporation includes the employees of—

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

(Title II Applicable to Small Business)

Page 21, line 12, insert after “title” the following: “brought against a small business”.

(Definition of Product and Product Liability Action)

Page 6, beginning in line 16 redesignate paragraphs (9) and (10) as paragraphs (11) and (12), respectively, and add after line 15 the following:

(9) PRODUCT.—

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

- (i) is capable of delivery itself or as an assembled whole, in a mixed or combined state, or as a component part or ingredient;
- (ii) is produced for introduction into trade or commerce;
- (iii) has intrinsic economic value; and
- (iv) is intended for sale or lease to persons for commercial or personal use.

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

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

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

(10) **PRODUCT LIABILITY ACTION.**—

(A) **GENERAL RULE.**—Except as provided in subparagraph (B), the term “product liability action” means a civil action brought on any theory for a claim for any physical injury, illness, disease, death, or damage to property that is caused by a product.

(B) The following claims are not included in the term “product liability action”:

(i) **NEGLIGENT ENTRUSTMENT.**—A claim for negligent entrustment.

(ii) **NEGLIGENCE PER SE.**—A claim brought under a theory of negligence per se.

(iii) **DRAM-SHOP.**—A claim brought under a theory of dram-shop or third-party liability arising out of the sale or providing of an alcoholic product to an intoxicated person or minor.

(Making Title I Applicable to only Product Liability Actions)

Page 6, line 22 and page 8, lines 1, 11, and 16, strike “civil action” and insert “product liability action”.

(Definition of Hate Crime)

Page 5, strike lines 23 through 25 and insert the following:

(5) **HATE CRIME.**—The term “hate crime” means a crime in which the defendant intentionally selects a victim, or in the case of property crime, the property that is the object of the crime, because of the actual or perceived race, color, religion, national origin, ethnicity, gender, disability, or sexual orientation of the victim or owner of the property.

(Making Section 103 Applicable to Punitive Damages Irrespective of State Law)

Page 7, beginning in line 17, strike “, to the extent permitted by applicable State law,”.

(Allowing State to Elect Nonapplicability by Enacting a Referendum or Initiative)

Page 11, line 9, after “a statute” insert “, an initiative, or referendum”, add “and” at the end of line 10, in line 13, strike “; and” and insert a period, and strike line 14

Page 21, insert after line 7 the following:

(d) **ELECTION OF STATE REGARDING NONAPPLICABILITY.**—This title does not apply to any action in a State court against a small business in which all parties are citizens of the State, if the State enacts a statute, an initiative, or referendum—

(1) citing the authority of this subsection; and

(2) declaring the election of such State that this title does not apply as of a date certain to such actions in the State.