

106TH CONGRESS  
1ST SESSION

# S. 1185

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

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## IN THE SENATE OF THE UNITED STATES

MAY 27, 1999

Mr. ABRAHAM (for himself, Mr. LIEBERMAN, Mr. HATCH, Mr. MCCAIN, Mr. McCONNELL, Mr. LOTT, Mr. BOND, Mr. ASHCROFT, Mr. COVERDELL, Mr. NICKLES, Mr. BROWNBACK, Mr. GORTON, Mr. GRASSLEY, Mr. SESSIONS, Mr. BURNS, Mr. INHOFE, Mr. HELMS, Mr. ALLARD, Mr. HAGEL, Mr. MACK, Mr. BUNNING, Mr. JEFFORDS, Mr. DEWINE, Mr. CRAIG, Mrs. HUTCHISON, and Mr. ENZI) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide small businesses certain protections from litigation excesses and to limit the product liability of non-manufacturer 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.**

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.

#### 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 14  
 13          amendment to the Constitution of the United States.

14 **SEC. 102. DEFINITIONS.**

15          In this title:

16           (1) ACT OF INTERNATIONAL TERRORISM.—The  
 17           term “act of international terrorism” has the same  
 18           meaning as in section 2331 of title 18, United  
 19           States Code.

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

23           (3) DRUG.—The term “drug” means any con-  
 24           trolled substance (as defined in section 102 of the  
 25           Controlled Substances Act (21 U.S.C. 802(b)) that

1 was not legally prescribed for use by the defendant  
2 or that was taken by the defendant other than in ac-  
3 cordance with the terms of a lawfully issued pre-  
4 scription.

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

13 (5) HARM.—The term “harm” includes phys-  
14 ical, nonphysical, economic, and noneconomic losses.

15 (6) HATE CRIME.—The term “hate crime”  
16 means a crime described in section 1(b) of the Hate  
17 Crime Statistics Act (28 U.S.C. 534 note).

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

1 (8) SMALL BUSINESS.—

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

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

12 (i) a parent corporation; and

13 (ii) any other subsidiary corporation  
14 of that parent corporation.

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

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

24 (a) GENERAL RULE.—Except as provided in section  
25 105, in any civil action against a small business, punitive

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

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

11 (1) 2 times the total amount awarded to the  
 12 claimant for economic and noneconomic losses; or

13 (2) \$250,000.

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

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

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

23 (b) AMOUNT OF LIABILITY.—

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

(A) each defendant described in that subsection shall be liable only for the amount of noneconomic loss allocated to that defendant in direct proportion to the percentage of responsibility of that defendant (determined in accordance with paragraph (2)) for the harm to the claimant with respect to which the defendant is liable; and

(B) the court shall render a separate judgment against each defendant described in that subsection in an amount determined under subparagraph (A).

(2) PERCENTAGE OF RESPONSIBILITY.—For purposes of determining the amount of noneconomic loss allocated to a defendant under this section, the trier of fact shall determine the percentage of responsibility of each person responsible for the harm to the claimant, regardless of whether or not the person is a party to the action.

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

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

(1) that constitutes—

(A) a crime of violence;

(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 recovery of which is governed by applicable State  
10       commercial or contract laws that are similar to  
11       the Uniform Commercial Code.

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

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

17           (6) ECONOMIC LOSS.—The term “economic  
18       loss” means any pecuniary loss resulting from harm  
19       (including the loss of earnings or other benefits related to employment, medical expense loss, replacement services loss, loss due to death, burial costs, and loss of business or employment opportunities) to  
20  
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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) PREEMPTION.—

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-

edly caused the harm that is the subject of the complaint, independent of any express warranty made by a manufacturer as to the same product;

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

(iii) the failure of the product to conform to the warranty caused the harm to the claimant; or

(C)(i) the product seller engaged in intentional wrongdoing, as determined under applicable State law; and

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

(2) REASONABLE OPPORTUNITY FOR INSPECTION.—For purposes of paragraph (1)(A)(ii), a product seller shall not be considered to have failed to exercise reasonable care with respect to a product based upon an alleged failure to inspect the product, if—

(A) the failure occurred because there was no reasonable opportunity to inspect the product; or

(B) the inspection, in the exercise of reasonable 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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